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Opportunities for Chartered Accountants in Real Estate Finance

Understanding the Funding Ecosystem • Advisory Roles • Career Opportunities

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Agenda

What we will cover today

01

Real Estate Industry Overview & Growth Drivers

The big picture — market size, segments, tailwinds

02

Funding Options for Real Estate Developers

Bank finance, structured credit, equity, LAP, inventory funding

03

Eligibility Criteria for Bank & NBFC Funding

What lenders look for before saying yes

04

Choosing the Right Funding Option

Decision framework for developers and their advisors

05

Role of Chartered Accountants

Advisory, compliance, due diligence, and structuring

06

Emerging Opportunities & Conclusion

New avenues — REITs, InvITs, distressed assets, RERA advisory

Real Estate Industry Overview

India's second-largest employment generator after agriculture

₹33 Lakh Cr

Estimated market size by 2047

~7-8%

Contribution to India's GDP

#4

Globally, by market size

~6 Cr

Jobs supported directly & indirectly

Key Segments

Residential

Affordable, mid-income focus; but luxury housing also growing

Commercial

Office spaces, IT parks, co-working; FDI-driven growth

Retail

Malls, high-street retail; recovering post-pandemic

Industrial & Logistics

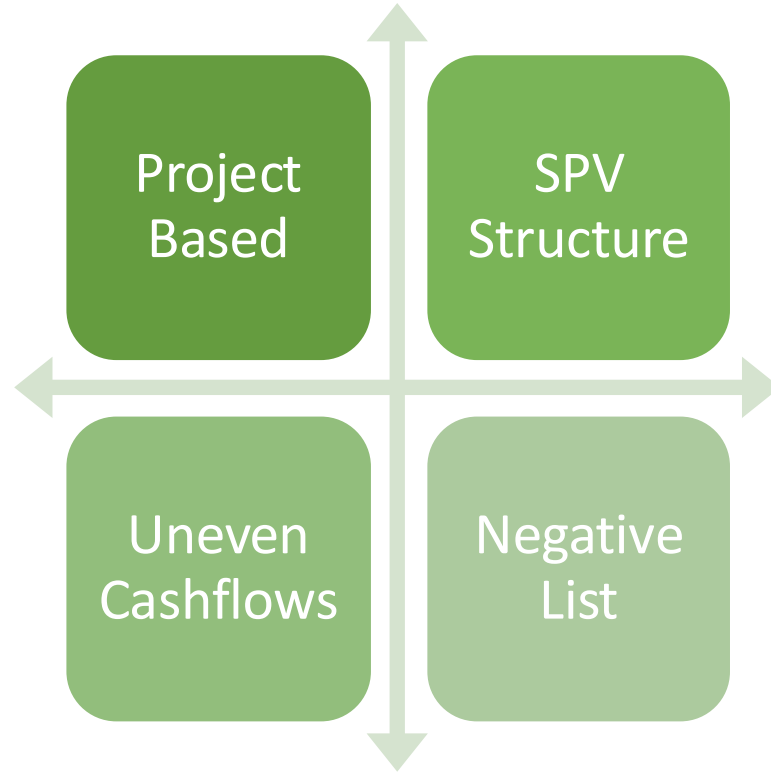
Warehousing, cold chain, data centres; fastest-growing

Hospitality

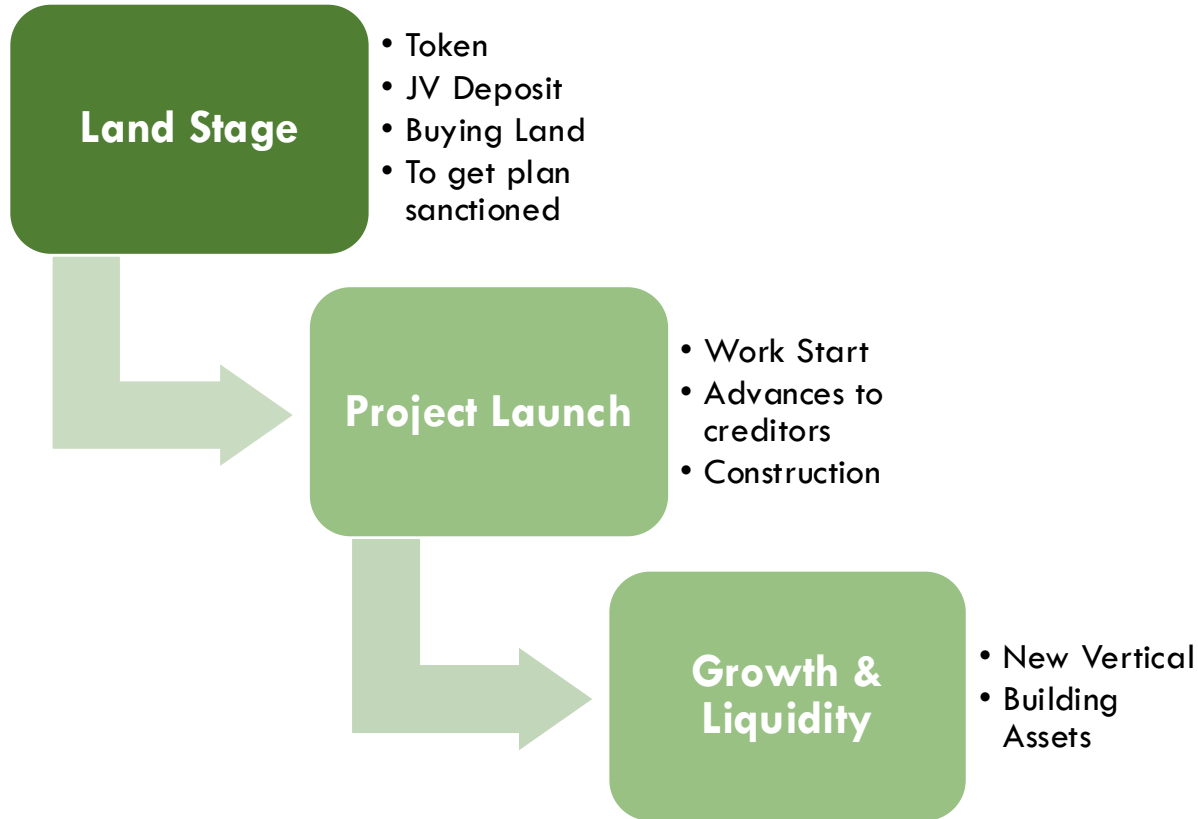
Hotels, resorts; tied to India's tourism growth

Growth Drivers: Urbanisation (600M urban by 2036) • PMAY & affordable housing push • RERA-driven formalisation • Rising FDI • Data centre & logistics boom • Massive Infrastructure/Connectivity Growth

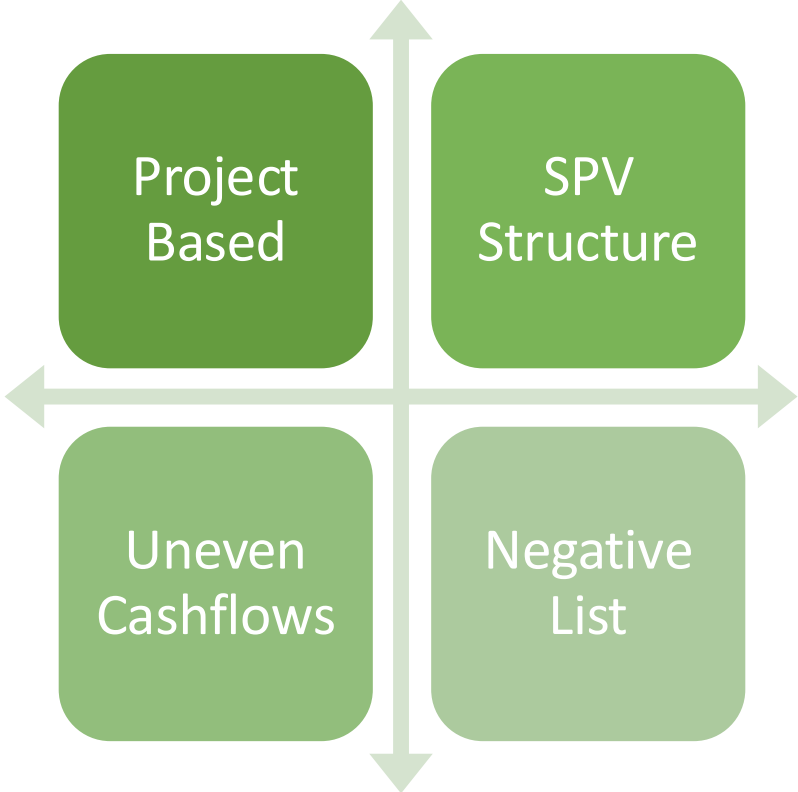
What's Different About Fund Raising for Real Estate



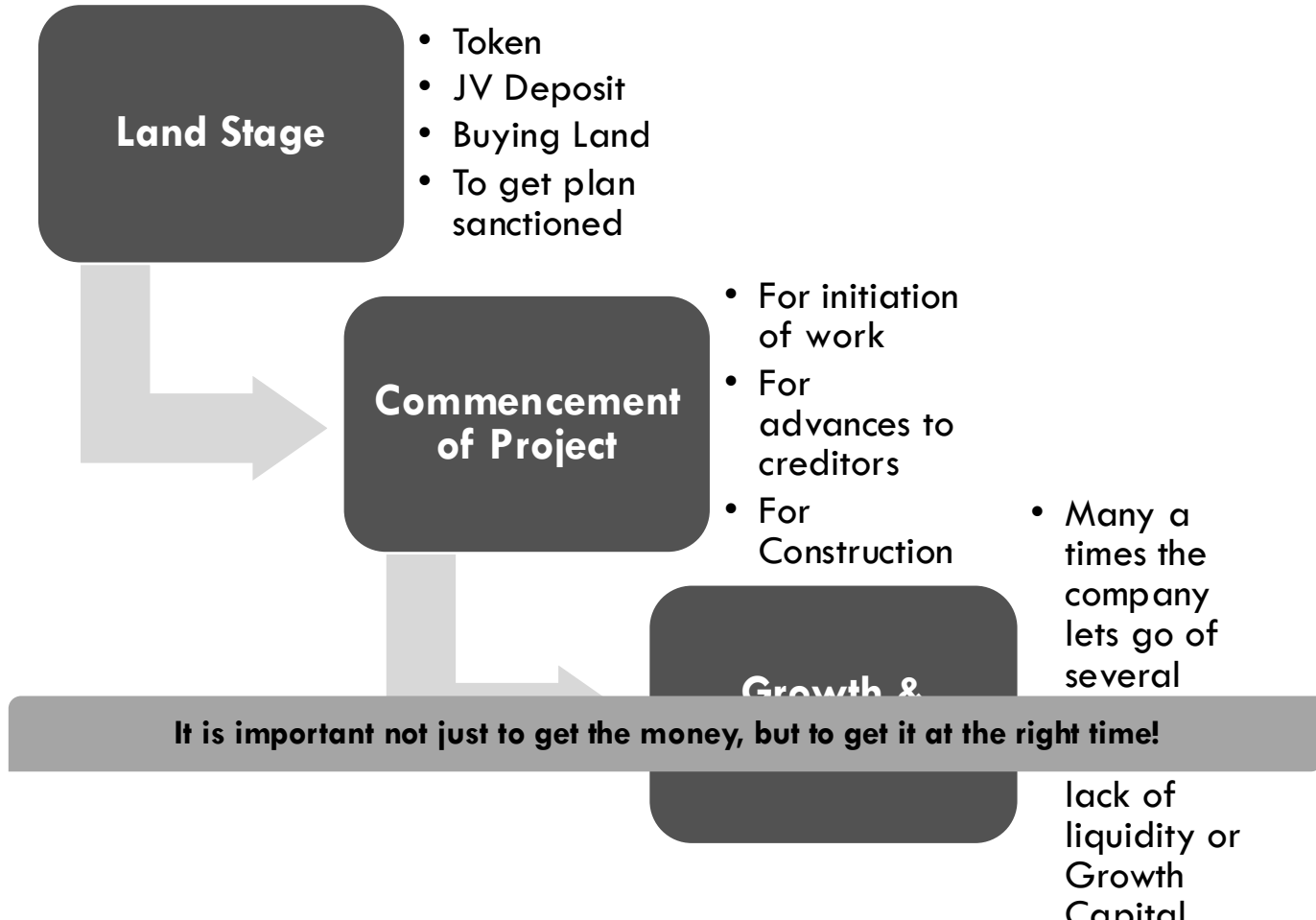
Why do Developers need money?



What's Different About Fund Raising for Real Estate



Why do you need money?



Funding Options for Real Estate Developers

The capital stack — from senior debt to equity

Bank Finance / Senior Debt

Cost: 10–13% p.a.

Loan Against Property (LAP)

Cost: 11–14% p.a.

Inventory Funding (NHB / HFC)

Cost: 11–15% p.a.

Structured Credit / NCDs

Cost: 16–24% p.a.

Private Equity / Equity JVs

Cost: IRR 20–28%+

← Lower Risk / Lower Cost

Higher Risk / Higher Return →

Choosing depends on:

- Stage of project (pre-launch / under-construction / completed)
- Promoter's credit profile & track record
- Nature of asset — residential / commercial / mixed
- Speed of fund requirement
- Appetite for dilution (equity vs. debt)
- Availability of security / collateral
- Project cash flow visibility

Bank Finance & Loan Against Property (LAP)

Traditional secured lending — the bedrock of real estate finance

Bank Finance / Project Finance

Purpose	Construction finance for approved projects
Lenders	PSU banks, Private banks, Housing Finance Cos.
LTV	Upto 65–75% of project cost
Security	Mortgage of land + project receivables
Rate	MCLR / Repo-linked, 10.5–13% p.a.
Tenure	3–5 years with phased drawdown
Key Condition	RERA approval + clear land title mandatory
Repayment	Linked to project milestones / sales collections

Loan Against Property (LAP)

Purpose	Working capital, land acquisition, project expenses
Lenders	NBFCs, Banks, HFCs
LTV	Upto 55–65% of property value
Security	Mortgage of existing encumbrance-free property
Rate	11–14.5% p.a. (NBFCs ~13–16%)
Tenure	5–10 years; EMI or OD structure
Key Advantage	No end-use restriction; faster processing
Key Risk	Concentration risk; asset valuation scrutiny

Structured Credit & Equity Funding

High-yield debt and equity — bridging the funding gap

A. Structured Credit / Non-Convertible Debentures (NCDs) / Mezzanine Finance

Providers	NBFCs, AIFs (Category II), family offices, HNI pools, PE credit arms
Typical Ticket	₹20 Cr – ₹500 Cr; structured as NCDs, optionally convertible
Cost	16–24% p.a. (IRR basis), sometimes structured as equity upside via warrants
Use Case	Land acquisition, pre-RERA stage, last-mile funding, distressed turnaround
Security	Pledge of shares + mortgage; often with promoter guarantee
Key Feature	Flexible repayment; may include revenue sharing or profit participation

B. Private Equity / Joint Development / Joint Venture (JV) Funding

Investors	PE funds (Blackstone, Piramal, HDFC Capital), family offices, sovereign funds
Structure	JV (land + PE capital), JDA (builder construct, landowner gets % revenue)
Return Expectation	20–28%+ IRR; involves equity dilution or profit-share
When to Consider	Large projects, portfolio deals, premium residential / commercial assets

Inventory Funding

Unlocking cash from completed but unsold residential inventory

What is Inventory Funding?

A loan product offered by HFCs, NBFCs, and banks against completed, unsold residential units. The developer receives liquidity while retaining ownership, repaying the loan as units are sold or via bullet repayment.

Eligible Assets

RERA-registered, occupation certificate obtained, unsold residential / commercial units

Providers

NHB-regulated HFCs, NBFCs, select PSU banks

Repayment

EMI or linked to unit-wise sale proceeds; moratorium possible

LTV

55–70% of registered / market value of unsold inventory

Interest Rate

11–15% p.a. depending on project quality & promoter profile

Key Benefit

Improves cash flow without distress-selling at discounts

Watch Out: Inventory funding is often misused to avoid disclosing project stress. CAs must verify project cash flows independently.

Typical Eligibility Criteria — Banks & NBFCs

What lenders scrutinise before sanctioning real estate credit

Promoter / Entity Criteria	Project-Level Criteria	Financial Documentation
<ul style="list-style-type: none"> Minimum 3–5 years of track record in real estate 	<ul style="list-style-type: none"> Clear and marketable title to land (title search report) 	<ul style="list-style-type: none"> Last 3 years audited financial statements
<ul style="list-style-type: none"> Positive net worth; no NPA / write-off history 	<ul style="list-style-type: none"> RERA registration (mandatory post-2017) 	<ul style="list-style-type: none"> CA-certified project cost estimate & cash flow
<ul style="list-style-type: none"> Credit score (CIBIL/CRIF) > 700 for promoters 	<ul style="list-style-type: none"> All statutory approvals — building plan, IOD, CC 	<ul style="list-style-type: none"> RERA-mandated Quarterly Progress Reports (QPR)
<ul style="list-style-type: none"> No ongoing legal disputes on land / projects 	<ul style="list-style-type: none"> LTV within lender policy (60–70% of cost/value) 	<ul style="list-style-type: none"> Bank statements — 12 months of all accounts
<ul style="list-style-type: none"> Demonstrated project completion record 	<ul style="list-style-type: none"> Positive DSCR ($\geq 1.25x$ for project finance) 	<ul style="list-style-type: none"> GST returns, ITR of entity + promoters
<ul style="list-style-type: none"> Adequate skin-in-the-game (promoter equity contribution) 	<ul style="list-style-type: none"> Escrow of sale proceeds; RERA trust account mechanism 	<ul style="list-style-type: none"> Existing loan obligations & repayment track record

Note: NBFCs are more flexible on promoter profile & project stage but price risk through higher rates. Banks require stricter compliance and have lower concentration limits per project/group.

How to Choose the Right Funding Option

A decision framework for real estate developers

Situation / Need	Recommended Option	Key Consideration
Land acquisition, pre-approvals stage	NBFC Structured Credit / AIF	Higher cost; quick disbursal; no bank willing pre-RERA
Construction finance (RERA approved)	Bank Project Finance / HFC	Lower cost; milestone-based drawdown; RERA escrow mandatory
Completed unsold inventory	Inventory Funding (HFC/NBFC)	Fast liquidity; no distress sale; OC obtained
Short-term working capital	LAP / OD against property	Flexible; no end-use restriction; LTV critical
Large township / mixed-use development	PE Equity / JV / JDA	Scale; brand; dilution acceptable; promoter capability key
Distressed project / last-mile funding	Mezzanine / NCD (AIF Cat II)	High cost; must show exit path; SWAMIH if eligible
Affordable housing project	NHB / PMAY linked bank finance	Subsidised rates; long tenure; strict eligibility

Pro Tip: Real projects rarely use a single funding instrument. A blended capital stack (bank debt + structured credit + promoter equity) optimises cost, speed, and flexibility.

Role of Chartered Accountants in Real Estate Finance

From compliance to strategic advisory — CAs are indispensable across the lifecycle

01

Project Finance Advisory

Structuring bank/NBFC loans, preparing project reports, cash flow models, and DSCR workings; liaising with lenders during appraisal

02

Financial Due Diligence

Conducting buy-side or lender-side FDD — verifying land cost, construction cost, collection schedules, and promoter financials

03

RERA Compliance

Auditing quarterly project accounts; certifying withdrawal eligibility from designated accounts; ensuring 70% rule compliance

04

Tax Structuring

Optimising developer entity structure (LLP/JDA/Company); GST advisory on TDR, JDA, works contracts, and input tax credit

05

PE / AIF Fund Advisory

Assisting in term sheet negotiation, investor reporting, AIF compliance, distribution waterfall calculations

06

Valuations & Certifications

Registered Valuer under IBBI, valuation for stamp duty/FEMA/FDI, net worth certificates for lenders

Emerging Opportunities for CAs in Real Estate

Beyond conventional practice — high-growth niches

REITs & InvITs Advisory

India now has 4 listed REITs (Embassy, Mindspace, Brookfield, Nexus). CAs are essential for NAV certification, distribution calculations, SEBI compliance, and investor reporting. Growing pool of InvIT opportunities in infra-linked real estate.

RERA Conciliation & Arbitration

CAs are eligible as technical experts in RERA dispute resolution. Growing practice area for those with project accounting expertise — allottee refund calculations, delay compensation, and carpet area reconciliation.

SWAMIH Fund & Stressed Project Advisory

SWAMIH Investment Fund (₹25,000 Cr) is completing stalled projects. CAs play a vital role in FDD, project restart feasibility, cost-to-complete analysis, and resolution advisory under IBC for real estate companies.

Fractional Ownership & SM REITs

SEBI's SM REIT framework (2024) enables ₹50 Cr+ commercial assets to be listed. CAs required for valuation, sponsor due diligence, unit-holder reporting, and ongoing audit under SEBI regulations.

Also watch: Data centre & logistics fund advisory • ESG reporting for listed real estate • Transfer pricing for JV structures • NRI investment structuring (FEMA / LRS)

Key Takeaways

1

India's real estate sector is at an inflection point — formalization via RERA, strong end-user demand, and growing institutional capital create enormous opportunity.

2

The funding ecosystem is complex — bank debt, NBFCs, structured credit, equity, and inventory funding each serve a distinct purpose in the developer's capital stack.

3

Lenders scrutinize promoter credibility, project approvals, financial discipline, and cash flow more than ever — creating a direct mandate for CA-quality financial advisory.

4

Chartered Accountants are uniquely positioned — combining financial expertise, regulatory knowledge, and professional credibility — to serve developers, lenders, and investors.

5

New frontiers like REITs, SM REITs, SWAMIH, and fractional ownership platforms are creating entirely new practice areas requiring specialized CA expertise.

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Annexure: Regulatory Framework of Real Estate Funding

A: RBI Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

Definition

- Real Estate is generally defined as an immovable asset - land (earth space) and the permanently attached improvements to it.
- "Income-producing real estate (IPRE) refers to a method of providing funding to real estate (such as, office buildings to let, retail space, multifamily residential buildings, industrial or warehouse space, and hotels) where the prospects for repayment and recovery on the exposure depend primarily on the cash flows generated by the asset. The primary source of these cash flows would generally be lease or rental payments or the sale of the asset.
- The borrower may be, but is not required to be, an SPE (Special Purpose Entity), an operating company focused on real estate construction or holdings, or an operating company with sources of revenue other than real estate.
- The distinguishing characteristic of IPRE versus other corporate exposures that are collateralised by real estate is the strong positive correlation between the prospects for repayment of the exposure and the prospects for recovery in the event of default, with both depending primarily on the cash flows generated by a property.
- The primary source of cash flow (i.e., more than 50 per cent of cash flows) for repayment would generally be lease or rental payments or the sale of the assets as also for recovery in the event of default where such asset is taken as security.

Categories in Real Estate & Their Impact

	Income Producing Real Estate – IPRE	Commercial Real Estate - Residential (CRE)	Commercial Real Estate non-IPRE
Definition	All loans where the main source of repayment is from the Real Estate project.	Upto 2 Residential houses (even when the 2 nd one is given on rental)	Loan for Real Estate asset but the repayment is not from that sale/lease of that asset
Source of repayment	Lease or rental payments or the sale of the asset.	Any income other than that from sale or lease of asset	Repayment is from Operating profit from business operations
Examples	Residential buildings, Office buildings, Retail space Industrial or Warehouse space	Residential house, Plot purchased for construction house, upgrade, repairs, redevelopment of own property etc.	Property for own usage, Own office, Hospital, Hotel, Theme Park etc.
Risk Weight & Asset Provisioning	Risk weight of 100% & standard asset provisioning of 1.00%	Lower risk weight of 75% & standard asset provisioning of 0.75%	As per Commercial lending norms

Inclusions & Exclusions in Real Estate Definition

These guidelines shall also apply in cases where the exposure may not be directly linked to the creation or acquisition of CRE, but where the repayment is primarily dependent on cash flows generated by CRE.

Examples include:

Exposures taken against existing CRE assets, whose repayments primarily depend on rental / sale proceeds.

- (ii) Guarantees extended on behalf of companies engaged in CRE activities.
- (iii) Exposures on account of derivative transactions with real estate companies.
- (iv) Corporate loans to real estate companies.
- (v) Investments in equity or debt instruments of real estate companies.

(4) As follows from sub-paragraphs (2) and (3) above, if the repayment primarily depends on other factors such as operating profit from business operations, quality of goods and services, tourist arrivals etc., the exposure shall not be counted as CRE.

Loans for Housing Units – not CRE

- Loans for multiple houses intended to be rented out
- The housing loans extended in cases where houses are rented out need to be treated differently. As per Basel 2 Framework, loans secured by a single or small number of condominium or co-operative residential housing units in a single building or complex also fall within the scope of the residential mortgage category and national supervisors may set limits on the maximum number of housing units per exposure.
- Therefore, such loans need not necessarily be classified as CRE Exposures. **However, if the total number of such units is more than two, the exposure for the third unit onwards may be treated as CRE Exposure** as the borrower may be renting these housing units and the rental income would be the primary source of repayment.
- The bank's exposures to third dwelling unit onwards to an individual will also be treated as CRE exposures, as indicated in paragraph 130(1)(ii) of these Directions.

Exposures which shall not be classified as CRE

Exposures to entrepreneurs for acquiring real estate for the purpose of their carrying on business activities, which shall be serviced out of the cash flows generated by those business activities. The exposure could be secured by the real estate where the activity is carried out, as would generally be the case, or could even be unsecured.

- (a) Loans extended for construction of a cinema theatre, establishment of an amusement park, hotels and hospitals, cold storages, warehouses, educational institutions, running haircutting saloons and beauty parlors, restaurant, gymnasium etc. to those entrepreneurs who themselves run these ventures shall fall in this category. Such loans would generally be secured by these properties. For instance, in the case of hotels and hospitals, the source of repayment in normal course would be the cash flows generated by the services rendered by the hotel and hospital. In the case of a hotel, the cash flows would be mainly sensitive to the factors influencing the flow of tourism, not directly to the fluctuations in the real estate prices.
- (b) The above principle shall also be applicable in the cases where the developers / owners of the real estate assets (hotels, hospitals, warehouses, etc.) lease out the assets on revenue sharing or profit sharing arrangement and the repayment of exposure depends upon the cash flows generated by the services rendered, instead of fixed lease rentals.
- (c) Loans extended to entrepreneurs, for setting up industrial units shall also fall in this category. In such cases, the repayment would be made from the cash flows generated by the industrial unit from sale of the material produced which would mainly depend upon demand and supply factors. The recovery in case of default may partly depend upon the sale of land and building if secured by these assets. Thus, it shall be seen that in these cases the real estate prices do not affect repayment though recovery of the loan could partly be from sale of real estate.

Loans extended against the security of future rent receivables

- A few banks have formulated schemes where the owners of existing real estate such as shopping malls, office premises, etc. have been offered finance to be repaid out of the rentals generated by these properties.
- Even though such exposures do not result in funding / acquisition of CRE, the repayment might be sensitive to fall in real estate rentals and as such generally such exposures shall be classified as CRE. However, if there are certain in-built safety conditions which have the effect of delinking the repayments from real estate price volatility like, the lease rental agreement between the lessor and lessee has a lock in period which is not shorter than the tenor of loan and there is no clause which allows a downward revision in the rentals during the period covered by the loan, the bank shall classify such exposures as non CRE.
- The bank shall, however, record a reasoned note in all such cases.

Credit facilities provided to construction companies which work as contractors

- The working capital facilities extended to construction companies working as contractors, rather than builders, shall not be treated as CRE exposures because the repayment would depend upon the contractual payments received in accordance with the progress in completion of work.

Financing of acquisition / renovation of self-owned office / company premises

- Such exposures shall not be treated as CRE exposure because the repayment will come from company revenues.

Loans and Advances to Commercial Real Estate - Residential Housing

- Commercial Real Estate – Residential Housing (CRE-RH), has been carved out as a separate sub-sector from the broader CRE sector, in view of the lower risk and volatility associated with residential housing projects, as compared to CRE Sector taken as a whole.
- CRE-RH includes loans to builders / developers for residential housing projects (except for captive consumption) under CRE segment. Such projects shall generally not include non-residential commercial real estate.
- However, integrated housing projects comprising of some commercial space (e.g. shopping complex, school, etc.) may qualify as CRE-RH, provided that the commercial area in the residential housing project does not exceed 10% of the total Floor Space Index (FSI) of the project. In case the FSI of the commercial area in the predominantly residential housing complex exceeds the ceiling of 10%, the project loans shall be classified as CRE and not CRE-RH.
- The CRE-RH segment shall attract a lower risk weight of 75% and lower standard asset provisioning of 0.75% as against 100% and 1.00%, respectively for the CRE segment or as updated from time to time

Declarations Regarding Unauthorized Constructions (Para 92)

(1) In cases where the applicant owns a plot / land and approaches the bank for a credit facility to construct a house, a copy of the sanctioned plan by competent authority in the name of a person applying for such credit facility shall be obtained by the bank before sanctioning the home loan.

(2) An affidavit-cum-undertaking shall be obtained from the persons applying for such credit facility that they shall not violate the sanctioned plan, construction shall be strictly as per the sanctioned plan and it shall be the sole responsibility of the executants to obtain completion certificate within 3 months of completion of construction, failing which the bank shall have the power and the authority to recall the entire loan with interest, costs and other usual bank charges.

(3) An Architect appointed / empanelled by the bank shall also certify at various stages of construction of building that the construction of the building is strictly as per sanctioned plan and shall also certify at a particular point of time that the completion certificate of the building issued by the competent authority has been obtained.

Declarations Regarding Unauthorized Constructions (Para 92)

(4) In cases where the applicant approaches the bank for a credit facility to purchase a built-up house / flat, it shall be mandatory for them to declare by way of an affidavit-cum-undertaking that the built up property has been constructed as per the sanctioned plan and /or building bye-laws and as far as possible has a completion certificate also.

(5) An Architect appointed / empanelled by the bank shall also certify before disbursement of the loan that the built-up property is strictly as per sanctioned plan and / or building byelaws.

(6) No loan should be given in respect of those properties which fall in the category of unauthorized colonies unless and until they have been regularized and development and other charges paid.

(7) No loan should also be given in respect of properties meant for residential use but which the applicant intends to use for commercial purposes and declares so while applying for loan.

Upfront Disbursal (80/20 Scheme)

- It has been observed that some banks have introduced certain innovative Housing Loan Schemes in association with developers / builders, e.g., upfront 51 disbursal of sanctioned individual housing loans to the builders without linking the disbursals to various stages of construction of housing project, Interest / EMI on the housing loan availed of by the individual borrower being serviced by the builders during the construction period/ specified period, etc.
- Disbursal of housing loans sanctioned to individuals shall be closely linked to the stages of construction of the housing project / houses and upfront disbursal shall not be made in cases of incomplete / under-construction / green field housing projects.
- It is emphasized that the bank while introducing any kind of product shall take into account the customer suitability and appropriateness and also ensure that the borrowers / customers are made fully aware of the risks and liabilities under such products.

Disclosure Requirements

In view of the observations of Hon'ble High Court of Judicature at Bombay, while granting finance to specific housing / development projects, the bank shall stipulate as a part of the terms and conditions that:

- (1) the builder / developer / company shall disclose in the Pamphlets / Brochures etc., the name(s) of the bank(s) to which the property is mortgaged.
- (2) the builder / developer / company shall append the information relating to mortgage while publishing advertisement of a particular scheme in newspapers / magazines etc.
- (3) the builder / developer / company shall indicate in their pamphlets / brochures, that they shall provide No Objection Certificate (NOC) / permission of the mortgagee bank for sale of flats / property, if required.
- (4) The bank shall ensure compliance of the above terms and conditions and funds shall not be released unless the builder / developer / company fulfils the above requirements.
- (5) The above-mentioned provisions will be mutatis-mutandis, applicable to Commercial Real Estate also.

Approvals from Statutory / Regulatory Authorities

- While appraising loan proposals involving real estate, the bank shall ensure that the borrowers obtain prior permission from government / local governments / other statutory authorities for the project, wherever required.
- In order that the loan approval process is not hampered on account of this, while the proposals could be sanctioned in normal course, the disbursements shall be made only after the borrower has obtained requisite clearances from the government authorities.

National Building Code (NBC)

- The Bank shall adhere to the National Building Code (NBC) formulated by the Bureau of Indian Standards (BIS), considering the importance of safety of buildings especially against natural disasters.
- The bank may consider incorporating this aspect in their loan policy.
- The bank may also adopt the guidelines issued by the National Disaster Management Authority (NDMA) and suitably incorporate them into their loan policy, procedures and documentation.

B: ECB (FEMA) Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

What is ECB

- External Commercial Borrowings are:
 - commercial loans
 - raised by eligible resident entities
 - from recognised non-resident entities
 - and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.
- ECB can be raised either in a recognised foreign currency (FCY ECB) or even in Indian rupees from foreign entities (INR ECB).

Eligible Borrowers

- All entities eligible to receive FDI. Further, the following entities are also eligible to raise FCY ECB:
 - i. Port Trusts;
 - ii. Units in SEZ;
 - iii. SIDBI; and
 - iv. EXIM Bank of India.
- **In addition, for ECB in Indian Rupees following are also eligible:** Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.

Proposed Change: Any entity regulated by Central or State Laws

Eligible Lenders

- **The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However,**
- a) **Multilateral and Regional Financial Institutions** where India is a member country will also be considered as recognised lenders;
- b) **Individuals** as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- c) **Foreign branches / subsidiaries of Indian banks** are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs). *Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.*

Minimum Average Maturity Period (MAMP)

- **MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. For the specific categories mentioned below, the MAMP will be:**
 - ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year - **1 Year**
 - ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans - **5 years**
 - ECB raised for repayment of Rupee loans availed domestically for capital expenditure – **7 Years**
 - ECB raised for repayment of Rupee loans availed domestically for purposes other than capital expenditure – **10 Years**
 - ECB raised for working capital purposes or general corporate purposes - **10 Years**

Interest Rate

- All-in-cost ceiling per annum
- **For Foreign Currency ECB**
 - **For existing ECBs** linked to LIBOR whose benchmarks are changed to ARR: Benchmark Rate plus 550 bps spread
 - **For new ECBs:** Benchmark rate plus 500 bps spread
- **For Rupee ECB**
 - Benchmark rate plus 450 bps spread.
- Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

Proposed Change: For ECB above 3 years, the cap of interest rate to be removed

Negative List of Funds Usage

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above.
- e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above.
- f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above.
- g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.

Proposed Change: End use to be allowed subject to conditions for a) Mergers & Amalgamations b) Companies in NCLT c) Companies/Promoters under investigation d) On-lending to group companies

Parking of ECB Proceeds

- **Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.
- **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Procedure of Raising ECB

- All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework.
- For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.
- **Procedure in Short: Loan Agreement with Lender -> File ECB -> Get LRN -> Create Security -> File ECB2 for Disbursement -> Get Disbursement -> Keep filing ECB 2 for further disbursements**

B: FDI (FEMA) Guidelines

REGULATORY FRAMEWORK OF REAL ESTATE FUNDING

Definition of Foreign Investment

- **'Foreign Investment'** is any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of an LLP.
- **'Foreign Direct Investment' (FDI)** is the investment through equity instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.
- **'Non-Resident Indian (NRI)'** is an individual resident outside India who is citizen of India.

Residential Status

- **'Non-Resident Indian (NRI)'** is an individual resident outside India who is citizen of India.
- **'Overseas Citizen of India (OCI)'** is an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.
- **'Resident Indian citizen'** is an individual who is a person resident in India and is citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Prohibited Sectors

- **Investment by a person resident outside India is prohibited in the following sectors:**

- (1) Lottery Business including Government/ private lottery, online lotteries.
- (2) Gambling and betting including casinos.
- (3) Chit funds
- (4) Nidhi company
- (5) Trading in Transferable Development Rights (TDRs).
- (6) Real Estate Business or Construction of farm houses.
- (7) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- (8) Activities/sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- (9) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

Types of Instruments

- An Indian company is permitted to receive foreign investment by issuing equity instruments to the investor. The equity instruments are equity shares, convertible debentures, preference shares and share warrants issued by the Indian company.
- **Equity shares:** Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include equity shares that have been partly paid.
- **Share Warrants:** are those issued by an Indian Company in accordance with the Regulations issued by the SEBI in this regard.
- **Debentures:** Debentures which are fully, compulsorily and mandatorily convertible are treated as equity instruments.
- **Preference shares:** Preference shares are fully, compulsorily and mandatorily convertible preference shares.

Entry Routes

Foreign investment in the equity instruments of an Indian company can be made through two routes:

- **Automatic Route:** is the entry route in which investment by a person resident outside India does not require the prior approval from the Central Government.
- **Government Route:** is the entry route in which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

FDI in Real Estate - Overview

- In the construction development sector, 100% FDI is allowed under the automatic route. Investors are permitted to exit on completion of the project or after the development of trunk infrastructure (i.e. roads, water supply, street lighting, drainage and sewerage).
- While each phase of a project is considered a separate project, the investor is also permitted to exit and repatriate the foreign investment before completion of the project, subject to a lock-in period of three years, calculated with reference to each tranche of the FDI.
- These exit restrictions are not applicable to investment in sectors such as hotels, tourist resorts, hospitals, special economic zones, educational institutions and industrial parks (which have been specifically defined for FDI purposes).
- The transfer of a stake by one non-resident or foreign investor to another without repatriation of the investment is allowed, subject to neither any lock-in period nor any government approval.
- No FDI is permitted in an Indian company engaged in the construction of farmhouses, trading in transferable development rights, or the real estate business. The term “real estate business” includes dealing in land and immovable property with a view to earning profit.

FDI in Real Estate – What is not Real Estate as per FEMA

- **Real Estate does not include the development of:**
 - townships;
 - construction of residential or commercial premises;
 - roads or bridges;
 - REITs;
 - educational institutions;
 - recreational facilities; and
 - city and regional-level infrastructure. Further, earnings from rent or income on the lease of a property, not amounting to a transfer, are exempted from the definition of “real estate business”.
- The 100% FDI under the automatic route is also permitted in “completed projects” for the operation and management of townships, malls and shopping complexes, and business centres. However, there is a lock-in period of three years, calculated with reference to each tranche of investment, and transfer of immovable property or part thereof is not permitted during this period. The regulations also allow 100% FDI under the automatic route in real estate broking services.

Sectoral Caps

- Foreign investment is permitted up to 100% on the automatic route, subject to applicable laws/rules/regulations, security and other conditionalities, in sectors/ activities:
 - i) not listed in Schedule I of the NDI Rules and
 - ii) not prohibited under Para (2) of Schedule I of the NDI Rules.
- This condition is not applicable for activities in financial services.

- Foreign investment in financial services other than those indicated under serial number “F” of table under Para (3)(b) of Schedule I of the NDI Rules would require prior Government approval.

Pricing of Shares

- **Listed Company:** The price worked out in accordance with the relevant SEBI guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the SEBI (Delisting of Equity Shares) Regulations, 2009; or
- **Unlisted Company:** the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a SEBI registered Merchant Banker or a practicing Cost Accountant, in case of an unlisted Indian Company.
- 8.1.2 In case of convertible equity instruments, the price/ conversion formula of the instrument is required to be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA rules.

Non-repatriable Investment

- Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, is permitted to purchase/ contribute to the following on a non-repatriation basis:
 - (a) Any capital instrument issued by a company without any limit either on the stock exchange or outside it.
 - (b) Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
 - (c) The capital of a Limited Liability Partnership without any limit.
 - (d) Convertible notes issued by a startup company in accordance with NDI Rules.
- *The investment detailed at 1.1 above will be deemed to be domestic investment at par with the investment made by residents.*

Investment in a Proprietorship/Partnership Firm

- An NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India.
- *The investee firm or proprietary concern should not be engaged in any agricultural/ plantation activity or print media or real estate business i.e., dealing in land and immovable property with a view to earning profit or earning income therefrom.*
- The amount of consideration should be received from abroad through banking channels or paid out of funds held in NRE/ FCNR(B)/ NRO accounts. The disinvestment proceeds should be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid.
- The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon cannot be repatriated abroad.

Investment in LLP

- A person resident is permitted to contribute to the capital of an LLP operating in sectors/ activities where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions
- An LLP having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into a company under the automatic route and vice-versa a Company can be converted into a LLP.
- The disinvestment proceeds can be remitted outside India or may be credited to NRE or FCNR(B) account of the person concerned.

FDI in LLP – Practical Issues

- Some of the sectors such as non-banking financial companies (NBFCs), Construction Development (including Townships, Housing, Built-Up infrastructure), Industrial Parks, Pharmaceutical in brownfield, Retail Trading impose clear FDI performance-based conditions such as minimum capitalization, minimum area to be developed, local sourcing, lock-in periods. These conditions relate directly to how the foreign investment is utilized and are therefore considered performance linked.
- The existing ambiguity in the definition of *FDI-linked performance conditions* which is creating confusion and resulting in erroneous treatment of sectors with mere procedural and compliance-based conditions as the sector having FDI-linked performance conditions has a significant impact on the ability of LLPs (and companies in few cases) to receive FDI in several high-potential sectors. Sectors such as wholesale trading, manufacturing, agriculture and allied activities, pharmaceuticals (particularly greenfield projects), and regulated financial services often fall into this grey area. As a result, only a limited number of sectors such as software development and business consultancy services, which have no sectoral conditions, remain fully open for LLPs and non-operational companies to attract foreign investment.
- This misinterpretation causes additional scrutiny by AD Banks and unnecessary referrals to DPIIT which, in turn, slows down the investment timelines and increase compliance costs.

Source: Nishith Desai & Associates <https://nishithdesai.com/default.aspx?id=15405>

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