

Realty Check

April 28, 2011

FUNDING REAL ESTATE PROJECTS - EXIT CHALLENGES

After our most recent Realty Check on "Real Estate in India – A Practical Insight" aimed at familiarizing you with the essentials of real estate in India, we present to you our next research paper in the Realty Check series - "*Funding Real Estate Projects – Exit Challenges*".

The attached paper analyses the legal and regulatory restrictions that a foreign investor may face while exiting its investments from a real estate project in India. While few of these exit restrictions have been expressly provided in the regulations, there are few restrictions that emanate from the regulatory approach in specific situations as witnessed by us in our experience as counsels to a majority of real estate private equity funds and strategic foreign investors. Some of the restrictions discussed in the attached paper are as follows

- What is the extent of the 3 year Lock-In condition?
- What is the new tranche by tranche 3 year Lock-In condition?
- Can a foreign investor exit after the fulfillment of the 3 year Lock-In condition but before completion of 50% of the real estate project?
- Can a call / put option be enforced in India in light of the restrictions under the Securities and Contracts Regulations Act, which permits only spot delivery contracts?
- What is the regulatory approach to fixed IRR call / put options?
- What are the pricing restrictions on exit?

Realty Check is our initiative to provide an in-depth insight into the legal, tax and regulatory framework for funding real estate projects in India addressing critical issues and challenges faced by foreign investors in making such investments.

Please [click here](#) to view our paper on *Funding Real Estate Projects – Exit Challenges* authored by Ruchir Sinha and Nishchal Joshipura

The attached paper also annexes a white presented by United States India Business Council's (USIBC) Real Estate Committee¹ last year with Nishith Desai Associates as the knowledge partners. The white paper and presented to Union Commerce Minister Mr. Anand Sharma at Washington DC discusses some of the most pertinent issues for real estate investments such as:

- Built up area for the purposes of the minimum area calculation
- 50% completion in five years rule?
- Lock-in Provisions? When are the reckoned from?
- Non FDI Compliant Projects
- Affordable Housing
- FDI in Built-Up and Completed Projects
- External Commercial Borrowing (ECB) / Investment in Real Estate
- FDI in Agricultural Land

Please watch-out this space for our next Realty Check on *Funding Real Estate Projects – Security Enforcement Challenges*.

– Ruchir Sinha & Nishchal Joshipura

You can direct your queries or comments to the authors

¹ Copy of the white paper is attached hereto as **Annexure I**

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Medical Device Industry in India

April 28, 2025

Clinical Trials and Biomedical Research in India

April 22, 2025

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX

not substitute the need to refer to the original pronouncements.

April 01, 2025

**Vaibhav Parikh, Partner, Nishith
Desai Associate on Tech, M&A, and
Ease of Doing Business**

March 19, 2025

**SIAC 2025 Rules: Key changes &
Implications**

February 18, 2025