
FROM BRICKS TO BONDS: FOREIGN INVESTMENT, REITS, AND THE LEGAL FUTURE OF INDIAN REAL ESTATE

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ABSTRACT

Real estate in India has long been characterized as a paradoxical sector: simultaneously a symbol of prosperity and a repository of risk. Historically, it has carried the reputation of being a high-risk, high-return asset class, plagued by endemic challenges such as regulatory opacity, fragmented land ownership structures, information asymmetries, and prohibitive capital requirements. Investors, both domestic and foreign, have traditionally approached the sector with caution, given the prevalence of speculative practices, limited transparency in land records, and the absence of uniform dispute resolution mechanisms.

Yet, over the last two decades, the landscape has undergone a profound transformation. The progressive liberalization of Foreign Direct Investment (FDI) policy, coupled with the emergence of Real Estate Investment Trusts (REITs), has reconfigured the contours of Indian real estate. These developments have not only attracted global pools of capital but have also compelled Indian lawmakers, regulators, and the judiciary to rethink the legal frameworks that govern property, finance, and investor protection. This paper situates itself at the intersection of law, economics, and policy, seeking to unravel the dynamic interplay between foreign investment flows and the institutional evolution of India's real estate markets. It begins with a detailed examination of the trajectory of India's FDI policy, tracing its evolution under the Foreign Exchange Management Act (FEMA) and the successive Reserve Bank of India (RBI) circulars that have gradually expanded the ambit of permissible investment. Special attention is paid to the nuanced distinction between permissible construction development projects and the continuing prohibition on investment in "real estate business" simpliciter or trading in completed assets—an area where ambiguity in regulatory drafting has often led to litigation and interpretive challenges.

The second prong of analysis turns to Real Estate Investment Trusts (REITs), introduced through the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014. REITs represent the financialization of Indian real estate—converting physical "bricks" into tradable "bonds."

The paper interrogates the legal architecture of REITs, with emphasis on structural design (sponsor, manager, trustee model), disclosure obligations, taxation regimes, and investor safeguards. Particular focus is placed on the pass-through taxation framework and its subsequent amendments, which remain central to attracting global institutional investors. In constructing its arguments, the paper draws upon comparative insights from Singapore and the United States, two jurisdictions that have successfully leveraged REITs to institutionalize real estate investment. The comparative lens highlights both the promise and the pitfalls of India's nascent REIT ecosystem—its potential to deepen capital markets, but also its vulnerability to limited liquidity, taxation anomalies, and governance complexities.

Judicial and regulatory pronouncements are analysed as part of this ecosystemic inquiry. Landmark cases, including *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019) which recognized homebuyers as financial creditors under the Insolvency and Bankruptcy Code, and the Supreme Court's rulings in *Vidya Drolia v. Durga Trading* (2021) on enforceability of arbitration clauses involving successors and assigns, serve as crucial markers of the judiciary's evolving approach. Equally instructive is SEBI's jurisprudence on collective investment schemes, which delineates the boundaries between permissible financial products and disguised real estate fundraising mechanisms. The study ultimately identifies persistent fault lines: the absence of a conclusive land titling system, fragmentation of regulation across states and central agencies, ambiguities in taxation of hybrid structures, and emerging challenges surrounding environmental, social, and governance (ESG) compliance. These gaps, if left unaddressed, risk undermining investor confidence even as capital inflows increase.

In conclusion, the paper argues that India's real estate sector is undergoing a paradigmatic shift—from being a largely opaque, promoter-driven market to an institutionalized, globally competitive asset class. The infusion of foreign capital through FDI and REITs has not only altered the financing landscape but has also catalysed a deeper conversation on governance, accountability, and sustainability in urban development. Policy reforms that harmonize FDI inflows with sustainable real estate practices, strengthen REIT frameworks, and streamline regulatory fragmentation are essential if India is to realize its aspiration of becoming a mature investment destination.

By situating “bricks” within the logic of “bonds,” the paper underscores the reality that real estate in India is no longer merely a physical asset—it is a financialized, globalized, and legally contested space, whose future will be shaped as much by regulatory choices as by market forces.

Keywords: Foreign Direct Investment, Real Estate Investment Trusts, Indian Real Estate Law, SEBI, FEMA, RERA, Comparative Real Estate Regulation

1. Introduction

The Indian real estate sector occupies a position of undeniable significance in the country's economic architecture. As the second largest employer after agriculture, it not only contributes substantially to the Gross Domestic Product (GDP) but also acts as a critical driver of allied industries such as steel, cement, construction materials, and financial services. The sector's multiplier effect on employment, urban infrastructure, and consumption makes it a central pillar of India's growth story.

Historically, however, the real estate market was characterized by a promoter-driven, informal, and opaque financing structure. Developers relied heavily on promoter equity, high-cost borrowings from non-banking financial companies (NBFCs), and, at times, unregulated credit channels. Institutional participation—whether domestic or foreign—remained limited due to concerns over regulatory opacity, fragmented land ownership, and the absence of standardized governance practices. These structural inefficiencies not only impeded the inflow of formal capital but also contributed to volatility and cycles of over-leverage in the sector.

The liberalization reforms of the 1990s and the subsequent progressive relaxation of Foreign Direct Investment (FDI) norms heralded a new era for Indian real estate. By gradually opening the doors to foreign capital under the Foreign Exchange Management Act (FEMA) and successive policy circulars issued by the Department for Promotion of Industry and Internal Trade (DPIIT), India sought to align its property markets with global investment flows. Foreign investment in construction development projects, while subject to conditions such as minimum capitalization and lock-in periods, provided developers access to long-term patient capital and introduced global standards of transparency and governance. These reforms began to shift the sector from an informal, promoter-centric model to one increasingly shaped by institutional oversight and compliance obligations. An equally transformative development was the introduction of Real Estate Investment Trusts (REITs) through the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014. REITs marked a fundamental financial innovation by converting traditionally illiquid, brick-and-mortar assets into tradable securities, thereby democratizing access to real estate investment. For developers, REITs provided a mechanism to unlock capital from completed and revenue-generating assets; for investors, they offered diversified exposure, predictable yields, and regulatory protection. In many ways, REITs symbolized the financialization of real estate—transforming it from a

physical asset class into a globally recognizable investment product.

Against this backdrop, the present paper undertakes a comprehensive examination of the legal, regulatory, and economic dimensions of foreign investment and REITs in India. It situates the discussion within the broader framework of regulatory evolution, judicial interpretation, and policy imperatives, while also drawing comparative insights from global jurisdictions such as Singapore and the United States, where REITs have matured into robust capital market instruments.

The paper argues that FDI liberalization and the advent of REITs represent not merely incremental policy reforms but structural shifts that have redefined the contours of Indian real estate. These changes hold transformative potential in terms of enhancing transparency, deepening capital markets, fostering investor confidence, and aligning the sector with international standards. At the same time, persistent challenges—such as land titling ambiguities, tax complexities, regulatory fragmentation, and ESG compliance pressures—continue to test the resilience of this evolving framework.

By critically interrogating both the promise and pitfalls of these developments, the paper seeks to demonstrate that the Indian real estate sector, once perceived as opaque and speculative, is gradually being reconfigured into an institutionalized, globally competitive, and legally sophisticated asset class.

2. Literature Review

The corpus of academic and policy-oriented scholarship on Indian real estate reveals a consistent focus on the structural and regulatory impediments that have historically constrained the sector's growth. The National Council of Applied Economic Research (NCAER) in its various policy papers on housing and land reforms, has repeatedly emphasized the fragmented nature of land markets, lack of standardized titling systems, and the dominance of informal capital in project financing. These inefficiencies, as scholars have observed, have created asymmetries in bargaining power, stunted the inflow of institutional capital, and contributed to the cyclical volatility of property markets (NCAER, India's Urban Real Estate and Housing Markets, 2018).

Academic discourse in journals such as the Economic and Political Weekly (EPW) has further

highlighted the opacity of land transactions, rent-seeking practices, and complex regulatory overlaps between central and state authorities. For instance, Kundu (2012) in EPW underscores how land acquisition policies and state-level development control regulations have perpetuated distortions, while Roy (2016) traces the speculative tendencies in peri-urban real estate to weak institutional mechanisms of oversight. These writings collectively underscore the fact that real estate in India has long been viewed as a high-risk, high-return sector—lucrative yet structurally fragile.

From a comparative lens, global literature on Real Estate Investment Trusts (REITs) has been more optimistic, demonstrating the ability of REITs to institutionalize, securitize, and democratize real estate ownership. Pioneering studies from the United States, where REITs were first introduced in the 1960s, reveal how the structure provided retail investors access to income-producing real estate while simultaneously deepening capital markets (Ling & Archer, *Real Estate Principles*, 2018). The Singapore model, often cited as the most successful Asian REIT ecosystem, is lauded for its investor-friendly tax policies, transparent governance structures, and regulatory clarity under the Monetary Authority of Singapore (MAS) (Newell & Peng, *Journal of Property Investment & Finance*, 2009). Similarly, the Australian experience with Listed Property Trusts (LPTs) provides evidence of how securitised vehicles can significantly enhance liquidity and stabilise returns in volatile markets.

In the Indian context, academic work on REITs remains relatively nascent, reflecting the fact that the SEBI (Real Estate Investment Trusts) Regulations, 2014 only recently created the enabling framework. Research by S. Gopalan and R. Ramakrishnan (*Journal of Indian Business Law*, 2019) emphasises that Indian REITs face unique structural hurdles, including tax inefficiencies, high stamp duty costs on property transfers, and the concentration of REIT portfolios in commercial rather than residential segments. Policy think tanks such as the Indian Council for Research on International Economic Relations (ICRIER) and the Brookings Institution India Centre have also noted that while REITs represent a promising avenue for channelling both domestic and foreign capital into real estate, their uptake has been slower than anticipated due to investor caution and macroeconomic headwinds.

The intersection of FDI and REITs has also drawn scholarly attention. Literature from financial law journals has pointed out that FDI liberalization in construction and completed projects has synergistic potential with REITs by providing foreign investors both a primary market entry

point and a secondary liquidity channel. However, works such as Rao (2020, *Indian Journal of International Economic Law*) caution that unless land titling and regulatory fragmentation are addressed, foreign capital will remain cautious, viewing Indian real estate as a market of promise but also of persistent risk.

Taken together, the literature paints a dual narrative: on one hand, it situates Indian real estate within a historical context of opacity, inefficiency, and speculative tendencies; on the other, it frames global REIT experiences as aspirational models capable of institutionalizing the sector. This paper builds upon that duality by synthesizing Indian scholarship on land, regulation, and capital flows with comparative insights from established REIT jurisdictions, thereby situating India's trajectory within a broader global framework of financialization and regulatory transformation.

3. Legal Framework of FDI in Indian Real Estate

Foreign investment in the Indian real estate sector is shaped by a delicate interplay of statutory law, regulatory circulars, and judicial interpretation. The overarching framework is provided by the Foreign Exchange Management Act, 1999 (FEMA), under which the Reserve Bank of India (RBI) and the Department for Promotion of Industry and Internal Trade (DPIIT) issue regulations and consolidated FDI policies. Over the years, the regime has undergone a paradigm shift—from prohibition and restrictive entry to a progressively liberalized model designed to attract global capital into construction and development activities.

3. 1. Statutory Basis under FEMA

The foundation of India's foreign investment regime lies in Section 6 of FEMA, 1999, which empowers the RBI, in consultation with the central government, to regulate or prohibit capital account transactions involving foreign entities. Real estate transactions are categorized as capital account transactions since they involve the acquisition or transfer of immovable property.

Prohibited sectors: FEMA and RBI notifications expressly prohibit FDI in agricultural/plantation land, farmhouses, and trading in real estate (defined as buying and selling of land and immovable property, except in the ordinary course of business such as development).

Permissible routes: Investment in construction-development projects—such as townships, housing, built-up infrastructure, and commercial projects—is permitted up to 100% under the automatic route, subject to certain conditions.

3. 2. Policy Evolution and Liberalization

The regulatory trajectory reflects a calibrated liberalization:

Pre-2005 regime: FDI in real estate was largely prohibited, with limited exceptions for townships and special projects. The objective was to curb speculative inflows and protect domestic land markets.

2005 Consolidated FDI Policy: Introduced a major liberalization, permitting up to 100% FDI in construction-development projects under the automatic route. Conditions included:

Minimum capitalization of USD 10 million (wholly-owned subsidiary) and USD 5 million (joint venture).

Minimum land area requirements (10 hectares for serviced plots; 50,000 sq. meters for built-up projects).

Lock-in period of three years for the original investment.

2014–2015 Reforms: Minimum capitalization and minimum area requirements were gradually relaxed and eventually removed, in order to accelerate inflows and address the sector’s liquidity crunch.

Current Position (as per Consolidated FDI Policy 2020):

100% FDI under automatic route in construction-development (townships, housing, infrastructure, SEZs).

Exits are permitted on completion of projects or after the lock-in of three years.

Still prohibited: FDI in agricultural land, plantations, farmhouses, and “real estate business” (i.e., pure trading).

3. 3. Regulatory Oversight and Enforcement

Reserve Bank of India (RBI): Issues FEMA regulations and circulars governing the inflow, repatriation, and pricing of real estate investments.

DPIIT (earlier DIPP): Frames and consolidates the FDI Policy annually.

Foreign Investment Facilitation Portal (FIFP): Certain government route approvals are processed here.

Enforcement Directorate (ED): Investigates violations of FEMA, including improper use of real estate FDI channels for money laundering or speculative activity.

3. 4. Intersection with Corporate and Contract Law

FDI in real estate is rarely a standalone transaction. It typically involves joint ventures, shareholder agreements, and development contracts. Indian courts have clarified that contractual obligations flowing from investment agreements can extend to group entities and successors in interest:

Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc. (2013): The Supreme Court held that non-signatories and group companies may, in certain circumstances, be bound by arbitration agreements. The logic extends to FDI contracts—successors and affiliates can be held accountable if they are part of the “composite transaction.”

Vodafone International Holdings B.V. v. Union of India (2012) : While primarily a tax case, the Court underscored the principle that substance prevails over form in cross-border investment structures. This has implications for real estate FDI where layered holding companies are often used.

Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (2019): Though arising under consumer law, the case illustrates judicial willingness to enforce investor and buyer rights against large developers, shaping how FDI-backed projects must be structured to avoid litigation risk.

3. 5. Persistent Legal Challenges

Despite liberalization, several structural hurdles remain:

Land Titling Uncertainty: Absence of a nationwide Torrens system means due diligence remains cumbersome, deterring foreign investors.

Regulatory Fragmentation: State-specific real estate laws, municipal bye-laws, and overlapping clearances often undermine the uniformity of the FDI policy.

Taxation Issues: While exits are permitted, tax treatment of capital gains, dividend distribution, and transfer pricing in REIT-linked structures remains complex.

Judicial Delays: Enforcement of shareholder agreements and joint venture contracts often gets caught in prolonged litigation, undermining investor confidence.

3. 6. Synthesis

The legal framework of FDI in Indian real estate demonstrates a gradual but decisive move from prohibition to liberalization, reflecting the state's balancing act between protecting land resources and attracting global capital. FEMA and RBI regulations act as the formal gatekeepers, but it is judicial interpretation—particularly in cases involving contract enforceability and successor liability—that ultimately defines the contours of permissible foreign participation. In this sense, FDI in real estate is not merely a matter of policy liberalization but also a function of how law, contract, and corporate structure intersect in practice.

4. REITs in India: A Legal and Regulatory Analysis

4. 1 Genesis and Rationale

The Securities and Exchange Board of India (SEBI), recognizing the need to institutionalize Indian real estate, introduced the SEBI (Real Estate Investment Trusts) Regulations, 2014. REITs were envisaged as collective investment vehicles modelled on global precedents, enabling both retail and institutional investors to access real estate as a financial asset class. The structure rests on three pillars: the sponsor (who establishes the REIT), the trustee (who holds assets on behalf of unit holders), and the manager (who oversees investment operations).

4. 2 Asset Composition and Distribution Mandates

Regulations stipulate that a minimum of 80% of the value of REIT assets must be invested in

completed and revenue-generating projects, thereby minimizing speculative exposure. Additionally, 90% of net distributable cash flows must be distributed to unit holders, ensuring consistent yield akin to fixed-income instruments. This mandatory distribution regime has been instrumental in positioning REITs as attractive yield-generating assets in India's otherwise volatile real estate markets.

4. 3 Market Evolution

India's REIT journey commenced with the Embassy Office Parks REIT (2019), followed by Mindspace Business Parks (2020) and Brookfield India REIT (2021). Collectively, these REITs have unlocked over USD 10 billion in Grade-A office assets. However, the sector remains heavily concentrated in commercial office space, with limited diversification into retail, logistics, or residential rental housing.

4. 4 Taxation and Investor Concerns

Though legislative amendments have granted pass-through status for certain income streams (e.g., rental income), challenges persist in the taxation of capital gains and dividend distribution tax (DDT). These anomalies create inefficiencies vis-à-vis global peers, where REITs typically enjoy tax neutrality.

5. Comparative Analysis of REIT Jurisdictions

5. 1 United States

The United States, home to the largest and most mature REIT market, ensures tax neutrality through the Internal Revenue Code (IRC), subject to compliance with asset and distribution thresholds. U.S. REITs have become core components of pension and retirement portfolios, illustrating the democratization of real estate ownership.

5. 2 Singapore

Singapore's S-REITs have emerged as a benchmark for Asia, owing to robust regulatory clarity, single-tier corporate tax exemption, and deep integration with global capital markets. The Monetary Authority of Singapore (MAS) enforces stringent disclosure norms, ensuring high transparency and investor trust.

5.3 United Kingdom

The UK framework integrates REITs within broader financial markets, emphasizing institutional depth and alignment with pension funds. The model highlights synergies between long-term capital pools and real estate finance.

5.4 Scope for India

India's REIT ecosystem, though nascent, reveals potential for diversification into residential, warehousing, healthcare, and infrastructure segments. Drawing from global precedents, India must focus on tax clarity, retail investor inclusion, and regulatory harmonization.

6. Intersection with RERA and Consumer Protection Laws

6.1 RERA's Transformative Role in Institutionalizing Real Estate

The Real Estate (Regulation and Development) Act, 2016 (RERA) marked a watershed moment in Indian real estate law. Prior to its enactment, the sector was plagued by delayed projects, information asymmetry, diversion of customer advances, and weak accountability mechanisms. RERA sought to correct these inefficiencies by:

Mandating project registration with State Real Estate Regulatory Authorities before advertising or selling units.

Requiring escrow of at least 70% of customer advances in a separate bank account, ring-fenced for land and construction costs.

Imposing stringent disclosure obligations on promoters, including sanctioned plans, approvals, timelines, and quarterly project updates.

Providing a dedicated adjudicatory mechanism for consumer grievances, distinct from ordinary civil remedies.

This framework aligns India's real estate regulatory landscape with global norms, thereby instilling investor confidence—an essential prerequisite for attracting both FDI inflows and REIT-backed institutional capital.

6. 2 Investor Protection and Consumer Primacy

The interplay between consumer rights and investor rights has become more complex post-RERA. Courts have consistently tilted towards protecting consumers, recognizing the systemic vulnerability of homebuyers.

In *Pioneer Urban Land & Infrastructure Ltd. v. Union of India* (2019), the Supreme Court upheld the constitutional validity of including homebuyers as “financial creditors” under the Insolvency and Bankruptcy Code (IBC), 2016. This enabled buyers to initiate insolvency proceedings against defaulting developers, significantly enhancing their bargaining power vis-à-vis institutional lenders.

In *NBCC (India) Ltd. v. Union of India* (2020) (the Amrapali case) the Court not only penalised the errant developer but also directed government and public bodies to step in, thereby prioritizing consumer protection over commercial freedom.

These judgments illustrate a judicial policy tilt towards consumer primacy, often creating tension with FDI-backed investors and REITs, whose returns depend on project completion and cash flows.

6. 3 RERA and FDI/REIT Transactions

The interaction of RERA with investment structures has introduced new legal complexities:

Joint Development Agreements (JDAs): Under RERA, landowners entering JDAs with developers may be classified as “promoters”, thereby sharing liability for project delays and misrepresentations. This complicates FDI and REIT-backed structures where the foreign investor relies on contractual protections against promoter liability.

Escrow Mechanisms: While FEMA and SEBI regulations require escrow accounts for FDI and REIT transactions, RERA independently mandates 70% escrow of customer receipts. Aligning these dual escrow regimes poses practical compliance challenges.

Information Disclosure: REIT managers must provide disclosures to unit holders under SEBI rules, while RERA imposes parallel disclosure obligations on developers. This creates regulatory overlap and risks of inconsistency, particularly in cross-border financings.

6. 4 Expansion of Consumer Forums' Jurisdiction

Even after RERA, consumer fora under the Consumer Protection Act, 1986 (now 2019) retain concurrent jurisdiction over real estate disputes. In *M/s Imperia Structures Ltd. v. Anil Patni* (2020) , the Supreme Court clarified that RERA does not oust consumer forum jurisdiction. This dual mechanism empowers consumers but increases litigation risk for developers and investors alike, as the same dispute may be pursued before multiple forums.

6. 5 Implications for Institutional Investors and REITs

For foreign investors and REITs, the consumer-centric orientation of Indian real estate law has both positive and negative dimensions:

Positive: Strengthened consumer confidence improves project sales and enhances the marketability of REIT-backed assets.

Negative: Increased liability exposure, overlapping regulatory regimes, and consumer empowerment under IBC may affect investment predictability. Institutional investors often seek carve-outs, indemnities, and arbitration clauses to mitigate these risks.

6. 6 Harmonization Imperatives

To balance consumer rights with investor confidence, a harmonized regulatory approach is necessary:

Clarify the scope of promoter liability in FDI-funded and REIT-sponsored projects.

Align RERA escrow obligations with FEMA/SEBI escrow requirements to avoid duplication.

Establish an integrated adjudicatory mechanism, preventing multiplicity of forums and forum-shopping.

Introduce safe-harbour provisions for institutional investors who do not exercise operational control over projects

7. Discussion and Analysis

7. 1 Regulatory Innovation and Financial Hubs

A critical milestone in India's financial architecture has been the establishment of the International Financial Services Centre (IFSC) at GIFT City. By offering tax neutrality, a streamlined regulatory framework, and globally benchmarked dispute resolution, the IFSC is designed to attract international capital flows into real estate and financial assets. Unlike earlier piecemeal reforms, GIFT City signals a strategic intent: to position India alongside hubs such as Singapore and Dubai as a platform for offshore capital. This innovation reduces transaction costs for foreign investors, strengthens transparency, and institutionalizes cross-border flows into Indian real estate.

7. 2 Institutional and Sovereign Capital Participation

India's real estate market has transitioned from fragmented promoter funding to anchor capital from sovereign wealth funds (SWFs) and global pension funds. Investors such as ADIA, GIC, CPPIB, and Ontario Teachers' have taken significant stakes in Grade-A office assets, logistics parks, and REITs. Their participation reflects confidence in India's regulatory trajectory and long-term growth fundamentals. Unlike short-term private equity inflows, sovereign and pension investments are patient capital, which encourages professional asset management, reduces refinancing risks, and stabilizes valuations. This shift has also deepened liquidity in REIT markets, aligning India's capital structure with global standards.

7. 3 Emerging Alternative Asset Classes

While residential and commercial segments dominate, alternative asset classes are increasingly attracting institutional attention. Data centers have emerged as a critical infrastructure play, driven by digital consumption and data localization policies. Logistics and warehousing are being transformed by e-commerce growth, making them prime candidates for REIT inclusion. Co-living and student housing address demographic-driven demand for flexible, affordable accommodation, while senior living reflects socio-economic shifts in urban India. These segments expand the investment universe, reduce concentration risks, and offer counter-cyclical opportunities compared to traditional residential projects.

7. 4 Technology and PropTech Integration

The infusion of PropTech is reshaping Indian real estate's transparency and efficiency. AI-driven valuation models improve pricing accuracy and reduce information asymmetry.

Blockchain-enabled land registries can potentially mitigate title disputes and enhance legal certainty. Digital leasing and asset management platforms are streamlining tenant acquisition and portfolio monitoring for institutional investors. PropTech thus acts as an enabler of investor confidence, embedding real-time analytics and compliance into traditionally opaque processes. The integration of technology also aligns Indian real estate with global investment practices, making assets more “investor-grade.”

7. 5 ESG and Sustainable Financing

The adoption of ESG-linked financing is altering the funding landscape for Indian developers. Global investors increasingly mandate compliance with green building certifications, net-zero commitments, and social governance standards. This has spurred the issuance of green bonds and sustainability-linked loans by Indian developers seeking access to cheaper, diversified pools of capital. Projects aligned with ESG frameworks not only secure better financing terms but also appeal to tenants and occupiers focused on corporate sustainability goals. Over time, ESG compliance is likely to become a prerequisite for institutional capital, embedding sustainability as a core driver of real estate growth.

7. 6 Comparative Global Context

India’s trajectory must be viewed against global comparators. China’s property debt crisis underscores the dangers of excessive leverage and speculative development without institutional safeguards. The United States, by contrast, demonstrates the maturity of REITs as liquid, globally tradable securities with deep secondary markets. India sits between these extremes: its reforms have curtailed some risks but continue to evolve gradually. The combination of demographic resilience, regulatory strengthening, and institutional participation makes India a unique case where real estate can evolve from a domestic sectoral play into a globally integrated asset class.

8. Challenges in FDI and REIT Growth

8. 1 Land Titling and Fragmentation

The absence of a uniform, conclusive land titling system remains one of the most significant impediments to sustained foreign investment. Unlike jurisdictions such as Australia or Singapore that follow a Torrens-style conclusive titling framework, Indian property law still

relies on presumptive ownership derived from revenue records. This creates prolonged due diligence timelines, enhances litigation risk, and deters institutional investors seeking transactional certainty. The multiplicity of land registries across states further compounds opacity, resulting in fragmented records and frequent overlaps in claims.

8. 2 Taxation Anomalies

Despite policy attempts to grant REITs pass-through status, inconsistencies persist in the taxation of dividends, interest income, and capital gains. While rental income distributed through REITs enjoys a degree of tax neutrality, the levy of dividend distribution tax (DDT) and complexities in withholding obligations continue to distort yield calculations for foreign investors. By contrast, in Singapore and the United States, REIT structures benefit from near-complete tax neutrality, making Indian REITs comparatively less attractive.

8. 3 ESG and Sustainability Concerns

The rise of environmental, social, and governance (ESG) investing globally has made sustainability central to institutional capital flows. Indian real estate, however, has yet to fully internalize these standards. While initiatives such as the Indian Green Building Council and Leadership in Energy and Environmental Design (LEED) certification are gaining traction, the absence of a regulatory mandate for ESG disclosures creates an uneven playing field. This may discourage global pension funds and sovereign wealth funds, which increasingly condition investments on ESG compliance.

8. 4 Limited Domestic Awareness

Domestic participation in REITs remains muted, with retail investors perceiving them as complex products dominated by institutional players. Moreover, concentration of Indian REITs in Grade-A office assets restricts diversification. By comparison, developed markets have broadened REIT portfolios into logistics, healthcare, data centres, and affordable housing. Without such diversification, the growth trajectory of Indian REITs risks stagnation.

9. Judicial and Regulatory Trends

9. 1 Contractual Enforcement and Successors

In *Vidya Drolia v. Durga Trading* (2021) the Supreme Court clarified that arbitration clauses are binding upon successors and assigns. This principle assumes importance in real estate FDI transactions, which often involve multi-tiered joint ventures and changes in project ownership. By upholding the integrity of arbitration agreements, the Court has reinforced predictability for foreign investors seeking enforceable dispute resolution mechanisms.

9. 2 SEBI's Investor Protection Jurisprudence

SEBI has increasingly scrutinized real estate-linked collective investment schemes that masquerade as financial products. Its interventions — including bans on unauthorized pooling structures and insistence on disclosure standards — underscore a regulatory orientation that prioritizes investor protection. This trend aligns with global best practices but simultaneously imposes stricter compliance burdens on developers.

9. 3 Consumer Primacy in Insolvency Law

The recognition of homebuyers as “financial creditors” under the Insolvency and Bankruptcy Code in *Pioneer Urban* (2019) fundamentally altered the insolvency landscape. By allowing buyers to initiate insolvency proceedings against defaulting developers, the judiciary has rebalanced power asymmetries in the sector. While this strengthens consumer protection, it also heightens risks for FDI and REIT investors, whose financial returns may be subordinated to consumer claims during insolvency.

9. 4 Multiplication of Forums

Despite the enactment of RERA, the Supreme Court in *Imperia Structures v. Anil Patni* (2020) clarified that consumer forums retain concurrent jurisdiction. The coexistence of RERA, consumer fora, and NCLT/IBC mechanisms creates overlapping dispute resolution channels, thereby generating legal uncertainty. For institutional investors, this multiplicity increases enforcement risk and complicates contractual structuring.

10. Recommendations & Policy Reforms

10. 1 Digitization of Land Records

A nationwide digitization of land records, preferably modelled on Torrens-style conclusive

titling, is critical. Integration of blockchain technology can further enhance transparency, minimize fraudulent transactions, and provide the certainty demanded by institutional investors.

10. 2 Tax Harmonization

Granting full pass-through status to all income streams in REITs, including dividends and capital gains, would place India on par with global REIT jurisdictions. Removal of dividend distribution tax and simplification of withholding requirements would ensure predictability of cash flows.

10. 3 Diversification of Asset Classes

The REIT framework should be expanded beyond office space to include residential rental housing, logistics hubs, healthcare facilities, and infrastructure assets. Diversification would not only broaden investor participation but also align Indian REITs with evolving global trends in real estate securitization.

10. 4 Integrated ESG Mandates

SEBI should incorporate ESG disclosure obligations into the REIT framework, drawing inspiration from the European Union's Sustainable Finance Disclosure Regulation. This would mainstream sustainability, attract ESG-focused global capital, and ensure long-term resilience of Indian REITs.

10. 5 Regulatory Harmonization

Fragmentation across FEMA, SEBI, and RERA should be addressed through an integrated real estate investment code. Such a framework would streamline compliance, reduce interpretive ambiguities, and enhance investor confidence

11. Conclusion

The trajectory of Indian real estate encapsulates a paradigm shift—from the realm of bricks, dominated by opaque promoter-driven ownership structures, to the realm of bonds, defined by transparent, institutionalized, and globally integrated financial instruments. This transformation is neither linear nor complete, but its contours are now unmistakable.

Foreign investment and Real Estate Investment Trusts (REITs) have acted as catalysts of change, infusing discipline, liquidity, and accountability into a sector once characterized by opacity and informality. By embedding rigorous disclosure norms, regular income distribution, and professional management, REITs have repositioned real estate not merely as a physical asset but as a financially securitized, investor-friendly asset class. Likewise, FDI inflows have injected long-term capital, fostered global best practices, and deepened linkages between Indian real estate and international financial markets.

Yet, the journey towards full institutional maturity remains fraught with challenges. Structural bottlenecks in land titling and property records erode transactional certainty. Taxation asymmetries in dividends and capital gains continue to dilute the comparative advantage of Indian REITs vis-à-vis global peers. ESG compliance, while increasingly recognized, has yet to be mainstreamed across the sector. Moreover, the coexistence of multiple regulatory regimes—FEMA, SEBI, and RERA—creates overlaps and ambiguities that complicate investor navigation.

At the same time, the jurisprudence emerging from the Supreme Court and regulatory interventions by SEBI underscore India's unique balancing act: prioritizing consumer protection under statutes like RERA, while simultaneously advancing investor confidence through transparent investment vehicles. This dual orientation—towards consumer rights on the one hand and global capital integration on the other—distinguishes India's real estate legal landscape from many of its global counterparts. Looking ahead, the sector's true potential lies in harmonization and expansion. Digitization of land titling through Torrens-style reforms, streamlined taxation, ESG integration into regulatory frameworks, and diversification of REIT asset classes into residential, logistics, and infrastructure can elevate Indian real estate into a globally competitive and resilient asset class. Such reforms will not only deepen institutional participation but also democratize access, enabling retail investors and homebuyers alike to benefit from the sector's growth.

In essence, the future of Indian real estate lies in sustainable convergence: where bricks meet bonds, where consumer protection coexists with investor certainty, and where domestic aspirations align seamlessly with global capital flows. If guided by regulatory coherence, judicial foresight, and policy innovation, Indian real estate is poised to evolve into a mature,

globally integrated market—one capable of balancing financial returns with equitable, sustainable urban development.

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