
IDEAL VS REAL: A LEGAL ANALYSIS OF ENTRY BARRIERS IN INDIAN REAL ESTATE

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ABSTRACT

"Barriers to Entry" are specific barriers that operate as a wall for new rivals entering the real estate sector. To overcome these barriers, it is important to understand and identify those barriers. Government regulations, land mafias, zamindari system, the threat of cartelization, availability of resources, lack of transparency and accountability are some factors that affect the real estate market. These entry barriers can either facilitate or restrict the competition in the real estate market which in turn leads to accumulation. This notion of accumulation can either be beneficial or detrimental to the real estate market.

This study aims to bridge the gap between the law and the entry barriers in the real estate sector. This essay will help the reader understand how legislation and judicial interpretations shape the legal landscape of entry barriers. This is accomplished by analyzing various laws such as RERA and Competition Law to determine their impact on market concentration. The objective of the essay is also met by analyzing different case laws.

Introduction:

Barriers to Entry exist in all markets. This essay focuses on the entry barriers that exist in the real estate business. These entry barriers benefit existing enterprises while restricting competition in the market economy. The purpose of this paper is to identify and analyze the entry barriers that exist in the real estate sector, as well as examine how these entry barriers interface with the Competition Act of 2002, RERA (Real Estate Regulatory Authority), TOPA (Transfer of Property Act), and other regulations. The article is structured based on the following four questions.

1. What are the entry barriers and potential threats present in the real estate sector?
2. How do these barriers affect the real estate market?
3. How do RERA, the Competition Act, and TOPA interact with these barriers?
4. What additional regulations and policies affect the real estate market, and what is their impact?

The answer to the question of whether all barriers may be eliminated by law is not entirely conclusive. While legal frameworks such as RERA, Competition Law, and TOPA seek to lower entry barriers in the real estate market, legislation alone cannot solve all barriers. Some barriers, such as market dynamics and social shifts are context-specific and demand case-by-case solutions that normal legal frameworks cannot offer. The central argument of this paper is that even though the statutory and regulatory frameworks seek to combat the formal entry barriers, they are still ineffective when addressing the informal and social structures.

Entry Barriers present in the real estate market:

While there are lot of entry barriers that are present in this industry this paper focuses on identifying the following entry barriers,

- Land Mafias
- Zamindari System
- Threat of Cartelization

- Lack of availability of resources
- Government regulations

Analyzing the entry barriers:

1. Land Mafias:

Readers may be wondering if the Land Mafia still exists. Yes, they most certainly do. Land mafias in India are known as "Mafia Raj". The first mention of the land mafia was in the Times of India during the Bombay Floor Space Index Scandal of the mid-1980s.¹ In various cases, like *Suparas Chand vs The District Collector 2018*, judges have stated that the discussion of land mafias is becoming more prevalent. The Times of India first mentioned land mafias in the 1980s, and their references to them increased significantly in subsequent years. Land mafias perform illegal encroachment of both private and public lands. Land mafias use strategies such as forced encroachment, using family conflicts, forgeries, and exploiting the gray areas present in law to take over private agricultural lands.

For example: They often manipulate one of the co-owners into selling their share, then use coercion, threats, or spread rumors about the land being disputed to pressure other co-owners to sell at a low price.² Land mafias additionally engage in bribery and corruption to ensure that the authorities in that area turn

a blind eye to their illicit activities. When it comes to encroaching the public lands, Land Mafias follow similar procedures as discussed before. The mere presence of land mafias creates an unsettling environment for prospective investors to enter the real estate market. They also work closely with the local authorities which in turn makes it more difficult for the new investors. There is also always a threat of land mafias monopolizing the local real estate market.

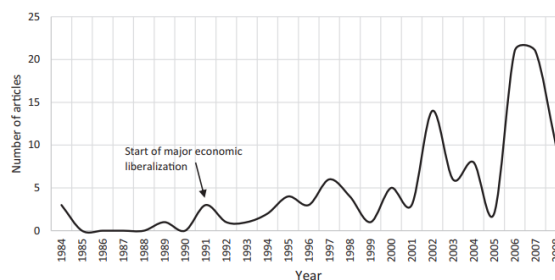


FIGURE 1. Articles mentioning "land mafia" in the *Times of India* historical database

¹ Michael Levien, *Coercive Rentier Networks: "Land Mafias" in Neoliberal India*, 7 *Soc. Dev.* 159 (2021), University of California Press, <https://online.ucpress.edu/socdev/article-abstract/7/2/159/117612/Coercive-Rentier-Networks-Land-Mafias-in> (last visited Apr. 4, 2026).

² *Id.*

2. Zamindari System:

This system was completely abolished in India by the constitutional amendment and through acts like the Zamindari Abolition Act. Even though no such individual as a Zamindar exists, powerful landlords operate as Zamindars in rural/local populations. These landlords may also be land mafias, politicians, or government officials. Most of the time, these landlords maintain power in the same way that land mafias do. It can be accomplished by maintaining customary control over land resources and having close alliance with the local politics.

3. Is there cartelization present in the real estate sector?

There are notable and major real estate players in India, including Godrej Properties, Lodha Group, Prestige Estates Projects Ltd, DLF, Oberoi Realty Ltd, and Sobha Ltd. According to the data, these companies do not have a dominant position in the Indian real estate sector. However, these companies have advantages such as brand awareness, huge financial resources, and so on. Having the necessary finances will provide these organizations an advantage over other new players in the real estate sector. This acts as an entry barrier to the new investors with respect to premium projects in the real estate. But apart from this, local businesses have their own advantages, such as adapting to region-specific requirements.³ While it is important to focus on these big shot companies, it is also important to look into the possibility of cartelization happening on ground level. Brokers/property dealers at times form cartels with builders to set predetermined prices. The broker handles marketing and client acquisition, artificially inflating property prices by referencing high priced sales or creating false urgency about buyer demand. Consequently, builders adjust their prices upward on paper, allowing brokers to sell at a “discount” to these inflated prices.⁴ This illegal practice is largely unregulated and unorganized.

Market Concentration

Consolidated - Market dominated by 1-5 major players.



← Real Estate Industry In India

Fragmented - Highly competitive market without dominant players.

Source : Mordor Intelligence



³ Mordor Intelligence, *Real Estate Market in India Size & Share Analysis – Growth Trends & Forecasts (2024–2029)*, <https://www.mordorintelligence.com/industry-reports/real-estate-industry-in-india> (last visited Apr. 4, 2026).

⁴ *Id.*

4. Lack of availability of resources:

As previously said, the real estate industry has high start-up expenses, and not all investors and real estate agents can afford to participate. Brands like Godrej and DLF have such strong loyal customers and brand identity that new market entrants must incur significant customer switching costs to compete. Aside from financial constraints, there is also the possibility of insufficient human resources. For example, India generates approximately four lakh civil engineers per year, but only 24,000 architects are produced.⁵

Some researchers also claim that the Covid-19 epidemic has resulted in reverse migration. Aditya Kushwaha, CEO and director of Axis Ecorp say: “Larger cities like Delhi, Gurugram, Mumbai, etc., depend on migrant labor. Most of the migrant labor departed after the second wave of Covid, since they had little or no employment opportunities. While things are beginning to improve, it is still not operating at full capacity. Memories of the abrupt lockdown and the mobility problems are still fresh in laborers’ minds. Plus, better opportunities and/or similar pay available near their hometowns, have added to the woes.”⁶

Another difficulty is that laborers are typically employed or hired by the contractors. These laborers are at the discretion of the contractors, and there is an increased likelihood that these contractors have a monopoly on the laborers. Cities such as Mumbai and Delhi also confront labor shortages due to the high cost of living there. However, in places such as Noida, this problem does not exist. This is another reason why labor shortages are not uniform, but rather vary from city to city.

There is also a shortage of skilled labor. For example, India is not keeping up with technology advancements, which are critical to the modern real estate market.

5. Government regulations acting as entry barriers?

The government has implemented various initiatives to help the real estate sector thrive. However frequent alterations in laws have created an unpredictable atmosphere in the real

⁵ HCG, *Chapter 3: SWOT Analysis of the Indian Real Estate in 2024*, Wright Research, <https://www.wrightresearch.in/encyclopedia/chapter-report/chapter-3-swot-analysis-of-the-indian-real-estate-sector-in-2024/> (last visited Apr. 4, 2026).

⁶ Ravi Sinha, *Labour Shortage in Indian Real Estate: Reasons for It and Possible Solutions*, Housing.com, <https://housing.com/news/labour-shortage-in-indian-real-estate/> (last visited Apr. 4, 2026).

estate market. Furthermore, the inclusion of time-consuming licenses and approval processes such as land use permits, environmental clearances, and construction permits makes it difficult for competitors to succeed in this market. For example, consider the Narmada Bachao Andolan (NBA) case, wherein regulations caused dam construction delays. Even though these clearances and approvals are required, it is vital to know that they can cause delays or lengthen the real estate market process.

Other governmental rules, such as the Nazul Property Bill, function as an impediment to private investment. The Nazul Property Bill, 2024, which was passed in Uttar Pradesh, seeks to govern Nazul land by prohibiting its conversion to private ownership. Nazul Land is government-owned but not directly managed as governmental property. In simple terms, these are lands that the government possesses and utilizes for public reasons, such as building infrastructure and administrative offices.⁷ This bill limits the availability of those lands to the private investors in the state of Uttar Pradesh.

Competition Law interacting with these barriers:

The Competition Act of 2002 monitors anti-competitive practices in India. The competition commission of India (CCI) is the legislative authority. The Competition Act of 2002 regulates three types of activity,

1. Anticompetitive agreements
2. Abuse of dominant position.
3. Combination (mergers, acquisitions, and amalgamations).⁸

Section 3 of the Competition Act specifically forbids anti-competitive agreements that have caused an AAEC (Appreciable Adverse Effect on Competition) in India. To encourage cartel participants to come forward and accept responsibility for their actions, the CCI has proposed a leniency program. The program requires the individuals responsible to accept responsibility for their actions and to provide evidence against their co-cartelists in accordance with the

⁷ *What Is Nazul Property Bill & Why Even BJP MLAs Are Opposing the Controversial Law in UP*, Moneycontrol, <https://www.moneycontrol.com/news/> (last visited Apr. 4, 2026).

⁸ Aditi Gopalakrishnan, Gaurav Bansal & Karan Sood, *India: Cartels*, AZB & Partners, <https://www.azbpartners.com/bank/india-cartels/> (last visited Apr. 4, 2026).

Competition Commission of India (Lesser Penalty) Regulations 2009. The person accepting his misbehavior will receive a lower penalty than their co-cartelists.⁹

CCI is also highly dedicated in investigating bid rigging and price fixing. Many cases have also revolved around this act. For example, in the case of Amit Mittal vs DLF Ltd, the CCI penalized the real estate corporation for abusing its dominant position by imposing unreasonable terms on house buyers.¹⁰ This demonstrates that dominating powers, such as DLF, can also be held accountable if they violate the provisions of the Competition Act of 2002. In the case of cartelization, the Competition Act of 2002 applies not only to horizontal agreements (agreements between competitors), but also to vertical agreements (agreements among people of various levels). This serves as a check against the likelihood of brokers forming cartels.

RERA interacting with these barriers:

RERA includes a number of requirements that prevent these barriers. RERA requires real estate projects to be registered with the help of a regulatory body, and developers must also disclose information about the project to the regulatory authority. These details should contain the layout plan, project progress, completion schedule, and the like. RERA also requires a regulatory authority to be appointed in each state of India.¹¹

TOPA interacting with these barriers:

TOPA controls the various methods of property transfer. It could be a sale, lease or gift. The statute also requires the registration of property documentation in order to verify their legal validity. TOPA also establishes the rights and responsibilities of the parties participating in property transfers.¹²

Additional regulations and policies affecting the real estate market:

Other regulations and policies that govern the real estate market are,

⁹ *Id.*

¹⁰ Shiv Jee Shrivatsav, *The Role of Competition Commission of India (CCI) in Curbing Abuse of Dominant Position: Effectiveness and Challenges*, Legal Service India, <https://www.legalserviceindia.com/legal/article-17394-the-role-of-competition-commission-of-india-cci-in-curbing-abuse-of-dominant-position-effectiveness-and-challenges.html> (last visited Apr. 4, 2026).

¹¹ Vivekshukla, *An Overview of Real Estate Laws and Regulations Applicable in India*, Legal Service India, <https://www.legalserviceindia.com/legal/article-16078-an-overview-of-real-estate-laws-and-regulations-applicable-in-india.html> (last visited Apr. 4, 2026).

¹² *Id.*

- The Indian Stamp Act, 1899
- The Registration Act, 1908
- Real Estate Investment Trusts (REITs) Regulations, 2014
- Benami Transactions Act
- Boost to affordable housing construction
- Interest subsidy to home buyers
- Change in arbitration norms
- Service tax exemption
- Dividend Distribution Tax (DDT) exemption
- Goods and Services Tax (GST)
- PR for foreign investors¹³

In order to boost the real estate sector, the RBI has also announced that its interest rate will remain unchanged at 4%. The Ministry of Housing and Urban Affairs has also advised that all states can recognize lowering stamp duty on property sales. Policies such as this have a significant impact on the real estate business.¹⁴

The lack of transparency is addressed by the SM REIT Regulations (Small and Medium REITs). The SM REIT regulations have created an atmosphere conducive to active asset management, with the potential to bring numerous income-generating small and medium-sized real estate assets under the scope of REITs. This not only provides a new source of money for asset owners, but it also has the potential to increase transparency and market efficiency¹⁵.

¹³ *Real Estate Industry Report (2024)*, India Brand Equity Foundation, https://www.ibef.org/download/1728466613_Real_Estate_August_2024.pdf (last visited Apr. 4, 2026).

¹⁴ *Id.*

¹⁵ Ankit Bhartiya, Rohan Sharma, Samantak Das & Rahul Arora, *Fractional Ownership Platforms: Small and Medium REITs Foster Growth and Transparency in India* (2024), JLL, https://www.propertyshare.in/pdf/Fractional_20240529114004_6656c6bcaa37b.pdf (last visited Apr. 4, 2026).

Conclusion:

Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.

- Jonathan Swift

Laws regulating the real estate sector cannot remove all barriers. While they do eliminate a few entry barriers, some require case-by-case evaluations. For example, irregular labor shortages in cities, reverse migration during the pandemic, and specific instances of land mafia addressed in this essay differ from case to case. This raises the question of whether regulatory bodies in the real estate sector should be granted more authority to deal with these situations. Along with regulatory authorities, the government bears additional responsibility for dealing with the changing environment in this sector. This is often accomplished by the government implementing new policies. While this essay addressed some of the major entry barriers, it is also important to note that there are other limitations such as volatile markets and geographical constraints.