

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**

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