REAL ESTATE LAW UPDATES AND INSIGHTS

WELCOME TO THE REAL ESTATE NEWSLETTER

We are pleased to share our latest insights on the growing role of Foreign Direct Investment (FDI) in India's real estate sector.

Backed by progressive reforms, regulatory clarity, and a rising demand for urban infrastructure, India is fast becoming a preferred destination for global real estate investors.

This edition explores the legal framework, key policy shifts, and strategic considerations shaping FDI in the sector.

UNLOCKING INDIA'S REAL ESTATE POTENTIAL: NAVIGATING FDI IN THE SECTOR

I. Introduction

India's real estate sector is not just contributing to economic growth, it is increasingly defining it. With Foreign Direct Investment ("**FDI**"), emerging as a key catalyst, this sector represents one of the most compelling long-term investment narratives in the global South. With a rapidly growing population and accelerating urbanisation, India offers an attractive and dynamic landscape for foreign investors in the real estate sector. The liberalisation of FDI policies by the Indian government, along with a series of reforms aimed at improving the ease of doing business, has significantly boosted foreign capital inflows into the sector. This article delves into the evolving framework of FDI in Indian real estate, examining its legal and commercial implications, key challenges, and the potential it holds for sustainable growth and long-term development.

II. Evolution of FDI in Indian real estate sector

The journey of FDI in Indian real estate began with the liberalization of the Indian economy in the early 1990s. However, it wasn't until the early 2000s that significant policy shifts opened up the real estate sector to foreign investors. In 2005, the Indian government allowed FDI in townships, housing, built-up infrastructure, and construction-development projects with specific conditions. This marked a turning point and a defining moment, attracting global real estate players and institutional investors to the Indian market.

The period from 2005 to 2015 witnessed substantial growth in FDI inflows into Indian real estate. Foreign investors were drawn by the country's increasing urban population, rising disposable incomes, and the expanding middle class. Concurrently, FDI was primarily channelled into residential and commercial projects in metropolitan cities such as Mumbai, Delhi, Bengaluru, and Chennai. The sector also saw diversification with investments flowing into hospitality, retail, and industrial real estate.

III. Surge in FDI in Indian real estate sector

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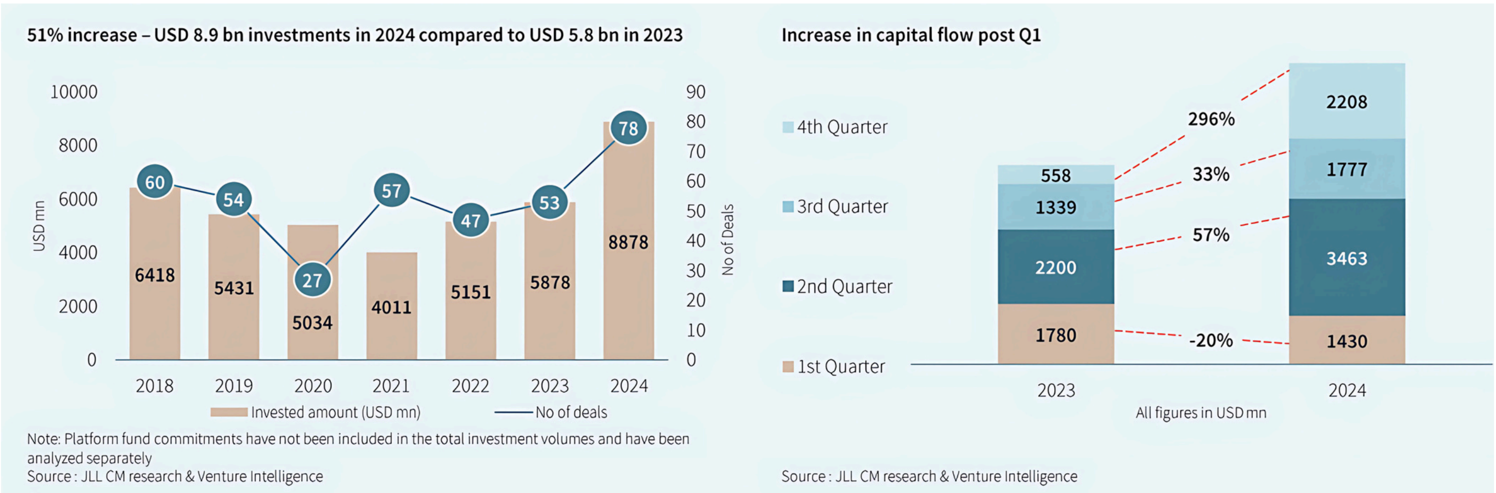
According to a data from JLL Research & Venture Intelligence, institutional investments in India's real estate sector soared to a historic high of USD 8.9 billion across 78 deals in 2024, marking a 51% increase over 2023 and surpassing the previous 2007 peak (See figure below)[1].



The surge is no coincidence, and it reflects a fundamental shift in how investors perceive India's long-term growth story driven by concrete reforms, not just optimism. The surge can also be attributed to several other key factors that have collectively reinforced India's strong investment trajectory, including the following:

a. <u>Rapid urbanization and smart cities:</u>

India's Smart Cities Mission[2], aimed at developing hundred smart cities across the country, presents significant opportunities for FDI in real estate. The mission focuses on creating sustainable and technologically advanced urban spaces with modern infrastructure. Foreign investors can play a crucial role in financing and developing smart city projects, contributing to urban transformation.

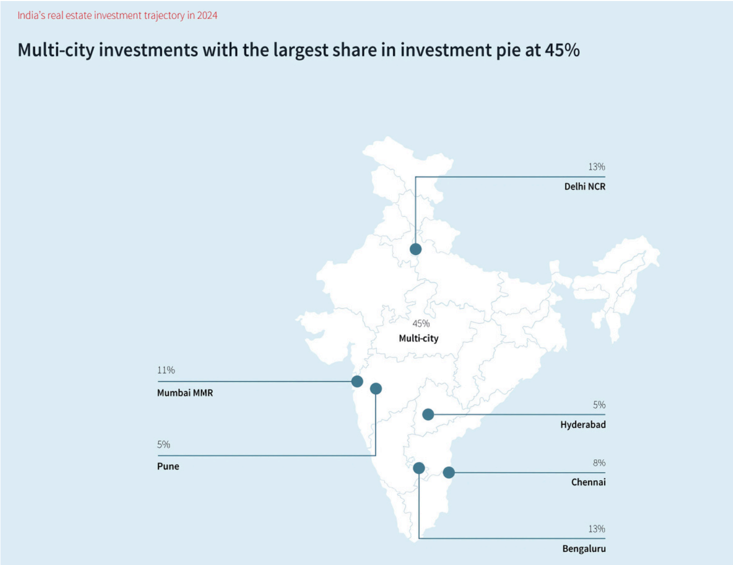
b. <u>Growth in Tier II and III cities:</u>

While metropolitan cities have traditionally attracted the majority of FDI in real estate, there is a growing interest in Tier II and Tier III cities. These cities offer lower land and development costs, untapped markets, and emerging economic hubs. The government's focus on regional development and infrastructure projects is likely to drive FDI in these cities, fostering balanced urban growth. Ignoring India's Tier II and III cities is no longer an option. They represent the next wave of scalable, high-yield investment opportunities in the country's real estate evolution.

As illustrated in the map on the next page, multi-city investments commanded the largest share of the real estate investment pie in 2024, accounting for a significant 45%. This trend highlights a growing investor preference for diversified portfolios spanning multiple high-growth urban markets across India.[3]

c. <u>Indian government's progressive policies:</u>

i. FDI policy: The Indian government has taken decisive and investor focused steps eliminating and signalling that global capital is not just welcome, but essential to India's urban growth. The consolidated FDI policy issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry ("**FDI Policy**")[4] allows up to 100% FDI under the automatic route in construction-development projects, including townships, housing, and built-up infrastructure, subject to certain conditions.



The following are the key conditions which include:

(a) Minimum area to be developed under each project would be as under[5]:
·In case of development of serviced housing plots, a minimum land area of 10 hectares;
·In case of construction-development projects, a minimum built-up area of 50,000 square meters;
·In case of a combination project, any one of the above two conditions would suffice.
(b) Minimum capitalization of USD 10 million for wholly owned subsidiaries and USD 5 million for joint ventures with Indian partners and the funds have to be brought in within 6 months of commencement of business of the company[6].
(c) At least 50% of the project must be developed within 5 years from the date of obtaining all statutory clearances[7].
(d) The investor is not permitted to sell undeveloped plots[8].

ii. Real Estate Regulatory Authority ("**RERA**"): RERA has brought significant transparency and accountability to the real estate sector. RERA necessitates the registration of both real estate projects and agents, thereby guaranteeing that prospective buyers are provided with vital project details, thus safeguarding their interests and ensuring they are well-informed before committing to any investment. This regulatory framework has effectively contributed to boosting investor confidence through its measures aimed at mitigating the risks commonly associated with project delays and defaults, thereby instilling a greater sense of assurance and security among investors.

d. Emergence of Real Estate Investment Trusts ("**REITs**"):

Following recent policy changes, foreign investors now have increased opportunities. This builds on the 2005 decision that first permitted foreign investment in areas such as townships, housing, built-up infrastructure, and a wide range of construction-development projects encompassing housing, commercial buildings, hotels, resorts, hospitals, schools, recreational facilities, and city / regional infrastructure[9]. REITs were introduced in India in 2014 as a mechanism for investors to pool capital and invest in income-generating real estate. They function like real estate-focused mutual funds.

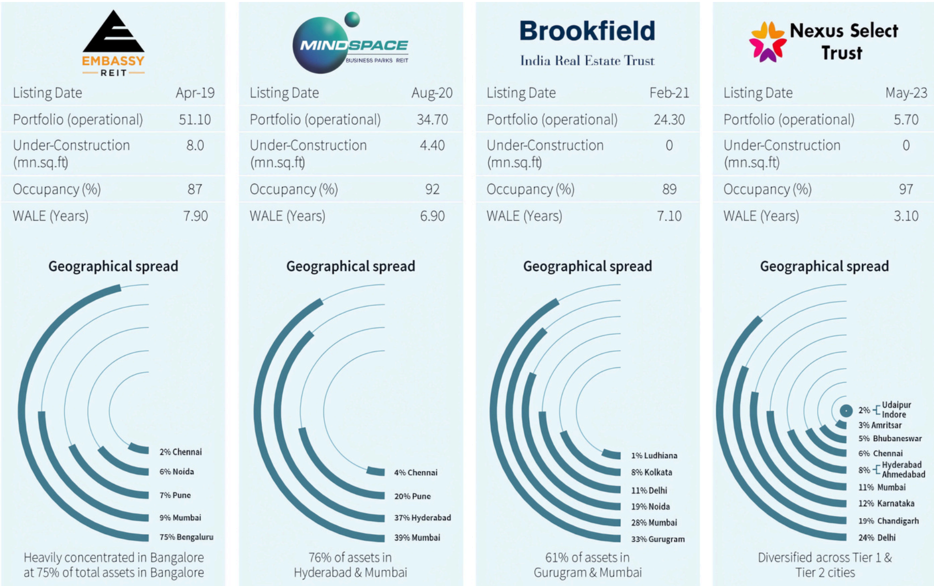
The Securities and Exchange Board of India ("**SEBI**") recently introduced the SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2024, which aim to foster the growth and participation of small and medium real estate investment trusts ("**SM-REIT**") in the Indian real estate market. SM-REIT schemes can raise funds by issuing units to any investor, both Indian and foreign. However, investments made by foreign investors are subject to the guidelines issued periodically by the Reserve Bank of India ("**RBI**") and the Government of India. These amendments reflect SEBI's commitment to enhancing the regulatory framework to facilitate greater flexibility and inclusivity for smaller players in the real estate sector. The followings are the key changes in the aforementioned Regulations:

i. Assets requirements: At least 95%[10] of the assets under SM-REIT schemes must be fully developed and generating revenue, a stricter requirement compared to larger REITs which have an 80% threshold.

ii. Minimum Asset Size and Public Holding: The minimum asset size for SM-REITs has been substantially reduced to INR 50 crores[11] from the previous threshold of INR 500 crores. Additionally, each scheme must offer at least 25% [12] of its units to the public.

Contd.

The geographical distribution and portfolio composition of India's listed REITs reflect distinct regional strategies and asset allocations, as shown below, ranging from concentrated exposures in key metros like Bengaluru, Mumbai, and Hyderabad to more diversified footprints across Tier 1 and Tier 2 cities.[13]



e. <u>Advancements in technology and digital platforms:</u>

The real estate sector is undergoing a profound transformation fuelled by rapid technological advancements, which are paving the way for novel investment opportunities. Property technology innovations, encompassing digital platforms facilitating property transactions, smart building technologies, and sophisticated data analytics tools, are revolutionizing operations by augmenting efficiency and transparency across the industry. Foreign investors endowed with proficiency in technology-driven real estate solutions stand poised to capitalize on these transformative developments, leveraging them to not only enhance operational effectiveness but also to attain a distinct competitive advantage in the market.

IV. Eligibility and Restrictions

Non-residents can invest in equity shares, fully convertible debentures, and fully convertible preference shares of an Indian company via the Automatic Route[14] or Government Route[15]. The Automatic Route bypasses the need for government approval, whereas the Government Route necessitates prior consent from the Government of India, which is reviewed by the relevant administrative ministry or department.

a. <u>Eligible Investors as per the FDI Policy[16]:</u>

i. Any non-resident entity can invest in India, subject to the FDI Policy. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors / activities other than defence, space, atomic energy and sectors / activities prohibited for foreign investment.
ii. Non-resident Indians ("**NRIs**") resident in Nepal and Bhutan as well as the citizens of Nepal and Bhutan can invest in Indian companies on a repatriation basis.
iii. Erstwhile overseas corporate body which is incorporated outside India and is not under the adverse notice of RBI can make fresh investments as incorporated non-resident entities in accordance with the FDI Policy and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.

iv. A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs.
v. Foreign portfolio investors ("**FPI**").
vi. Registered FPIs and NRIs can invest / trade through a registered broker in the capital of Indian companies on recognised Indian stock exchanges.
vii. A foreign venture capital investor.

b. Prohibited activities in the real estate sector:

i. Trading in transferable development rights;
ii. Real estate business (defined as dealing in land and immovable property with a view to earning profit) or construction of farmhouses.
[For clarity, 'real estate business' excludes development of townships, construction of residential / commercial premises, roads or bridges and REITs registered and regulated under the Securities and Exchange Board of India (REITs) Regulations, 2014.]

V. Commercial Implications: Strategic Considerations for Foreign Investors

Investing in Indian real estate offers significant potential, but it also demands a carefully calibrated approach to navigate the legal, regulatory, and operational complexities of the market. For foreign investors, several commercial and strategic considerations must be taken into account to ensure successful and sustainable participation in the sector:

a. Comprehensive Due Diligence on Land Titles and Approvals:

India's real estate sector is governed by a patchwork of central, state, and local laws. Land ownership records can often be fragmented or unclear, and the process for obtaining development approvals is multi-layered and jurisdiction specific. Conducting thorough legal due diligence on land titles, encumbrances, zoning regulations, and project approvals is crucial to mitigating future risks and ensuring the legal sanctity of investments. Skipping due diligence in India is not just risky but it is a recipe for regulatory deadlock and without strong local partners, even the most seasoned global investors are at a disadvantage.

b. Strategic Partnerships with Indian Developers:

Forming joint ventures or development partnerships with credible Indian real estate companies can offer significant advantages. Local partners bring invaluable on-ground knowledge, experience in dealing with regulatory authorities, and established networks that can help expedite approvals and streamline execution. Such collaborations also aid in aligning foreign capital with local market dynamics and consumer preferences.

c. Staying Aligned with Regulatory Developments:

The Indian regulatory environment continues to evolve, with agencies such as RERA, SEBI, and state-level authorities playing key roles. Compliance with sector-specific laws, including RERA's transparency norms and SEBI's guidelines on capital market participation, is essential. Investors must also stay abreast of state-specific laws governing land acquisition, tenancy, and property taxation, all of which can significantly influence project viability and returns.

d. REITs as an Efficient Entry Strategy:

REITs have emerged as a robust and investor-friendly vehicle for foreign capital to participate in India's income-generating real estate assets. With SEBI's well-defined regulatory framework and the growing maturity of the Indian commercial real estate market, REITs offer transparency, regular income distribution, and relatively lower execution risks. They are particularly attractive to institutional investors seeking long-term, stable returns without direct involvement in development activity.

VI. Looking Ahead: A Sector Poised for Global Integration

India's real estate sector has firmly moved beyond its earlier perception as a fragmented or high-risk asset class. It is now evolving into a mature, structured, and opportunity-rich market that is increasingly drawing the attention of sophisticated global investors. This is no longer an emerging story; it's a compelling investment reality backed by a government committed to infrastructure expansion, urban transformation, digital adoption, and improving the ease of doing business, the sector is witnessing a shift toward greater transparency, accountability, and investor protection.

The regulatory momentum clearly signals a more stable and welcoming environment for foreign capital.

What sets India apart today is not just the scale of opportunity, but the quality of the regulatory ecosystem. Frameworks like RERA and SEBI's REIT regulations have institutionalized transparency and accountability, turning investor protection from a concern into a cornerstone. The message is unmistakable: India offers a stable, rules-based, and future-facing environment for foreign capital.

With a clear legal framework, improving ease of entry and exit, and a host of scalable opportunities across residential, commercial, logistics, and infrastructure segments, the Indian real estate sector is poised for sustained expansion. For foreign investors who approach India with strategic foresight, sound compliance, and credible local alliances, this is more than just a growth market and it is a chance to co-author the future of one of the world's most dynamic urban transformations.

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[1] India's real estate investment trajectory in 2024 by JLL.
[2] Smart Cities Mission was launched on June 25, 2015. The main objective of the mission is to promote cities that provide core infrastructure, clean and sustainable environment and give a decent quality of life to their citizens through the application of 'smart solutions' (https://smartcities.gov.in/about-the-mission).
[3] India's real estate investment trajectory in 2024 by JLL.
[4] Consolidated FDI Policy 2010 effective from April 1, 2010 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry and Consolidated FDI Policy 2020 effective from October 15, 2020 issued by Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry.
[5] Paragraph No. 5.23.1 of Chapter 5 of Consolidated FDI Policy 2010 effective from April 1, 2010 issued by Department of Industrial Policy and Promotion, Ministry of Commerce.
[6] Paragraph No. 5.23.2 of Chapter 5 of Consolidated FDI Policy 2010 effective from April 1, 2010 issued by Department of Industrial Policy and Promotion, Ministry of Commerce.
[7] Paragraph 5.23.3 of Chapter 5 of Consolidated FDI Policy 2010 effective from April 1, 2010 issued by Department of Industrial Policy and Promotion, Ministry of Commerce.
[8] "Undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available.
[9] Press Note 2 (2005) dated March 3, 2005 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.
[10] Regulation 26T, in sub-regulation (2) of Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024.
[11] Regulation 2, in sub-regulation (1), clause (zm) of Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024.
[12] Regulation 26ZF of Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024.
[13] India's real estate investment trajectory in 2024 by JLL.
[14] 'Government Route' means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval (Paragraph No. 2.1.24 of Chapter 2 of Consolidated FDI Policy 2020).
[15] 'Automatic route' means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government (Paragraph No. 2.1.4 of Chapter 2 of Consolidated FDI Policy 2020).
[16] 3.1 of Chapter 3 – Eligible investors of Consolidated FDI Policy 2020.