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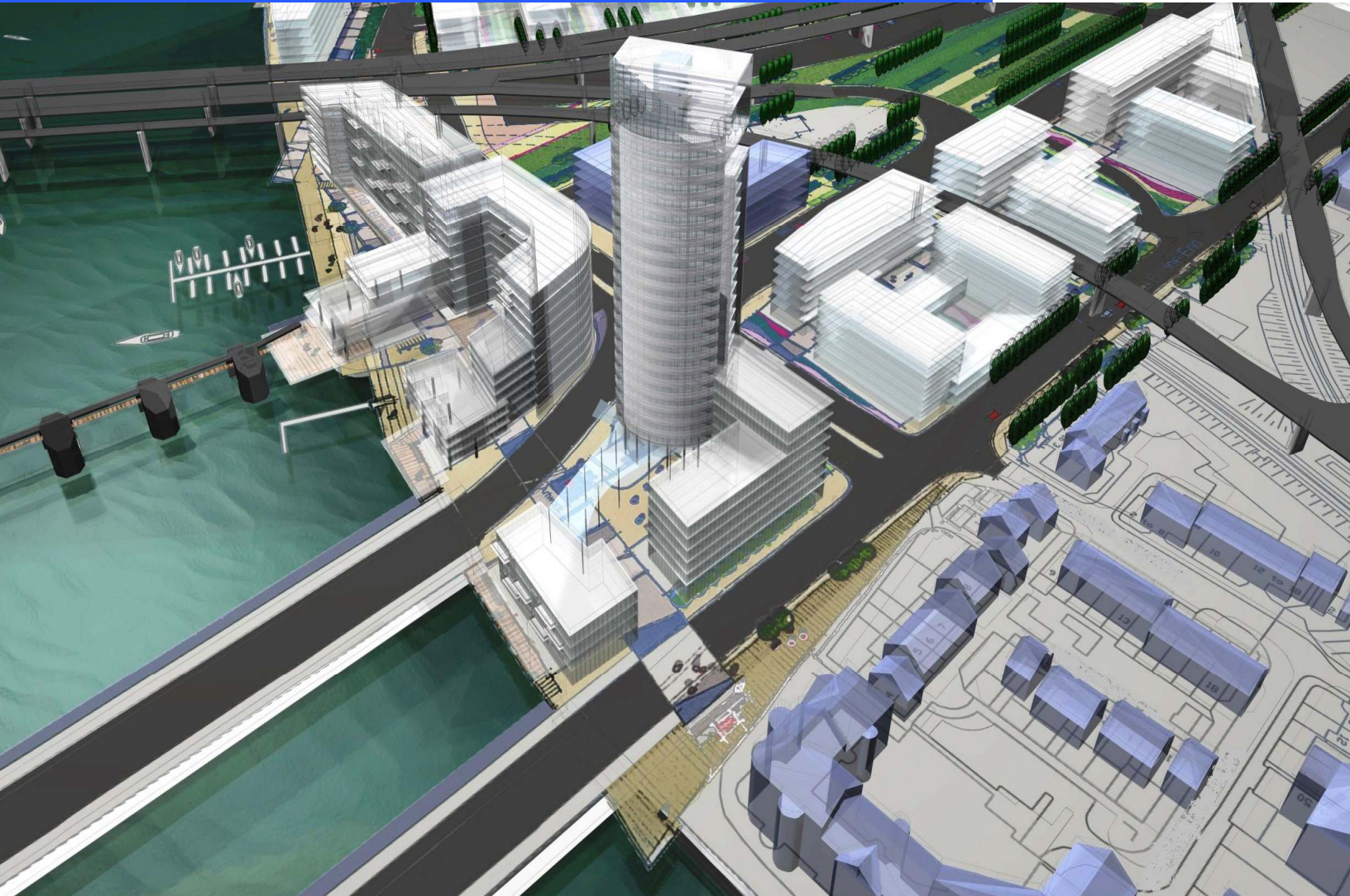


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**INDIA REAL ESTATE UPDATE - APRIL -
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1. Government likely to review ADR/GDR route for realty companies	2
2. RBI restricts Pre-IPO FII allotments in real estate	2
3. Land Ceiling Act repeal may attract investments in Mumbai realty	3
4. Freeze on SEZs lifted - ceiling on size fixed at 5000 hectares	4
5. New national policy on urban housing on the anvil	4

Government likely to review ADR/GDR route for realty companies

The government is likely to bar real estate companies from issuing American depository receipts (ADRs) and global depository receipts (GDRs). The government is of the view that it has become difficult to enforce the conditions attached to Foreign Direct Investment (FDI) in real estate, particularly the one that requires investors to lock in their funds for a minimum of three years.

ADRs and GDRs are fully transferable the possibility of changing hands is very real thus defeating the stipulation of the lock-in present in the FDI guidelines. The government is also contemplating to introduce the three-year lock-in for FIIs that come in through the pre-initial public offer route in bid to check artificial inflation of prices and sudden flight of capital.

The government recently tightened norms for foreign investment in the sector, observing that all foreign funds raised by Indian companies through the issue of partially convertible, non-convertible and optionally convertible preference shares will be treated as debt and will be subject to guidelines applicable for external commercial borrowings.

Despite the impressive quantum of FDI that India now attracts, foreign companies doing business here continue to express frustration about the spider web of laws and regulations. While the policies are forward-looking and liberal, the enduring refrain is that the manner in which these are implemented leaves much to be desired. The FDI policy in the real-estate development sector exemplifies the reasons why foreign businesses continue to maintain that lack of transparency and stability in regulations is the single most-important barrier to greater levels of foreign investment in India.

RBI restricts Pre-IPO FII allotments in real estate

The Reserve Bank of India (RBI) has stopped clearing applications from several real-estate companies that were hoping to tap overseas investors ahead of their plans to launch domestic initial public offerings (IPOs).

The decision of the RBI is likely to impact several IPO's of real-estate companies who have conceptualized plans to draw in FII investments. Pankaj Srivastava, Real Estate Partner of King Stubb & Kasiva opines that the RBI has acted adversely perhaps to stem the flow of Foreign Direct Investment (FDI) being brought under the FII route. The management rights that come with FDI make it easier to identify the origin of the money.

Current real estate laws do not treat FII and FDI investments the same way. FDI has a lock-in of three years, while FIIs have a lock-in period of one year. The finance ministry has concluded that if FIIs wish to invest in a pre-IPO placement of realty companies, the investment would be classified as foreign direct investment, or FDI, which is subject to a longer lock-in period. RBI has cracked down as it suspects some real-estate companies are classifying foreign direct investors as foreign portfolio investors. Portfolio investors, or FIIs, can sell their stake after a year, while foreign direct investment in a company is locked in for three years, making the FII route an easier one to get foreign investment prior to a domestic IPO. The government is of the view that the present stipulation under the Foreign Exchange Management Act of placing FDI under Schedule I and FII separately under Schedule II should continue.

The RBI rules on FII provide a window that permits real estate companies to undertake a private placement of shares before an IPO. Such private placements bring in definite capital but also help reinforce the subsequent public offering in the minds of domestic retail and institutional investors. Because of the misuse, RBI's contention now is that such private placement investments should be treated as FDI while the industry ministry, the nodal department for FDI policy, feels that RBI should continue to treat them as FIIs.

While treatment as an FII allows the company to lock its capital for only a year, the Press Note 2 (2005), which covers FDI in real estate, lays down that the original investment cannot be repatriated before a period of three years from the date of obtaining all statutory clearances. The Press Note also lays down a minimum capitalization of \$10 million for wholly-owned subsidiaries and \$5 million for joint ventures with Indian partners. Further, the funds have to be brought within six months of the commencement of the business of the company.

Land Ceiling Act repeal may attract investments in Mumbai realty

The Maharashtra Government's decision to repeal the Urban Land Ceiling Act, 1976 (ULCA) is likely to bring in more companies into the Mumbai realty sector. The scrapping of the Act is expected to throw up large tracts of land, which otherwise were locked up by the law. Conservative estimates reveal that about 25,000 acres would be available for development in metropolis alongside Thane and Navi Mumbai.

The ULCA came into force in 1976 during the Emergency with a primary focus on preventing land hoarding and to facilitate implementation of social and welfare projects.

While the Union Government scrapped it in 1999, States were required to follow suit and repeal the law as land came under their purview.

Freeze on SEZs lifted - ceiling on size fixed at 5000 hectares

The Empowered Group of Ministers (EGOM) on Special Economic Zones (SEZs) has decided, inter-alia, to lift the current freeze on SEZs, with tighter rules and prescribed a ceiling on the size of SEZs, which has now been fixed at an upper limit of 5000 hectares.

Shri Kamal Nath, Union Minister of Commerce & Industry, also indicated that a comprehensive rehabilitation policy was being finalised and that it would include employment to at least 1 person from each displaced family.

Upper limit of the area required for multi product SEZs to be fixed at 5000 hectares. However, State Governments may prescribe a lower limit. The minimum processing area limit be fixed uniformly at 50% for multi product SEZs as well as sector specific SEZs. (Earlier, the minimum processing area requirement for multi-product SEZs was 35%, with a provision for relaxation upto 25% by the Board of Approvals; and it was 50% for sector-specific SEZs). In respect of pending applications for SEZs, these may be processed for in principle, formal approval, notifications subject to the condition that the State Governments would not undertake any compulsory acquisition of land for such SEZs.

New national policy on urban housing on the anvil

The Government is finalizing new National Urban Housing and Habitat Policy to tackle housing shortage in the country. The Minister of State (Independent Charge) Housing and Urban Poverty Alleviation, Kumari Selja has observed that the requirement for a new policy for urban housing stems from the feedback from the sectoral developments since 1998. She said that promotion of sustainable cities through adequate provisions of housing and related infrastructure is the need of the hour. Expressing concern over the wide gape in urban housing and infrastructure, the Minister said that over Rs. 4,00,000 crore are needed for housing alone and a large amount is needed for infrastructure also. She said that arrangements of this magnitude of funds were not possible within budgetary allocation of Central and State Governments.

The proposed policy shall recognize the key role which all actors; public, private and the cooperative sectors need to play in meeting the housing shortage. It envisages a facilitative role for the state and a direct and proactive role for the other players. Underlining the importance of real sector in the housing sector, she said there is a great significance of real estate in the housing development and development of the economy. The Indian economy has shown impressive growth rate of GDP over 9%, the real sector in the country is also booming. The rapid urbanization will continue to fuel the real estate boom in India, she added.

King Stubb & Kasiva possess strong local knowledge in the real estate sector combined with a thorough understanding of the international legal environment, ensures we are in an ideal position to assist clients with Indian interests. We have the specialist experience and the depth of resource to advise on the most complex transactions and can help from the outset in high-level decision-making.

King Stubb & Kasiva is able to serve its clients in all aspects of commercial real estate law. The firm represents developers, investor groups, property managers, insurance companies, financial institutions and other lenders. The Firm has been involved in a large number of matters relating to real estate.

We welcome the opportunity to serve as your counsel. For more information, please contact: Ms. Jyotsna Talwar, Director Corporate Relations, Tel: +91 11 41032969 or at jyotsna@ksandk.com

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