In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.


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How will the grant of infrastructure status to affordable housing impact the housing sector?

Pradhan Mantri Awas Yojna (PMAY) was launched in June 2015 to build 20 million houses for individuals who fall under Economically Weaker Section and Low Income Group categories. In order to accomplish the mission of providing affordable housing to all by 2022, the Government has granted infrastructure status to affordable housing. The grant of infrastructure status will enable the developers of the housing projects to explore more funding avenues and avail the associated benefits linked to it. This will result in boom in the construction of affordable housing projects over the next few years and also increase in the demand in this segment. The companies engaged in affordable housing loans such as HDFC, LIC Housing Finance, Indiabulls Housing Finance are expected to receive more business from the new home buyers. The Government has also announced a subsidy scheme for first time home buyers. It is expected that besides various incentives, the first time home buyers will also be able to borrow at lower rates of interest. This will have a ripple effect on other industries like cement, iron, construction equipment and other material industries will derive benefit due to the boom in the construction of affordable housing projects. All these put together will provide impetus to job creation and provide employment opportunities.

What measures are introduced to support the mission of the Government to provide housing for all by 2022?

The Government has introduced several measures to incentivize the housing projects under PMAY.

To begin with, the allocation under the PMAY has been enhanced from ₹ 15,000 crores to ₹ 23,000 crores, bringing the country closer to realize the objective to provide housing for all by 2022. The Government has tweaked the definition of affordable housing projects under the PMAY. Now there are various incentives provided to the builders and the developers. Through this amendment the builders will get tax holiday, which means that they will not have to pay tax on the profits earned from these projects. The developers will now get a longer duration of 5 years instead of a period of 3 years which were earlier given to them to complete the project. Due to these concessions, more builders and developers are expected to undertake affordable housing projects. More projects have been brought within the ambit of the PMAY by changing the earlier criteria built-up area of 30 square meters in 4 metro cities and up to 60 square meters in other cities to carpet area. Further, the 30 square meter carpet area limit is applicable only within the municipal corporation limits of the four major metros. Few other measures, such as the Real Estate (Regulation and Development) Act, 2016 (RERA), Real Estate Investment Trusts (REITs), the Benami Transactions (Prohibition) Amendment Act 2016, the Goods and Services Tax (GST), land related reforms, rationalizing of the stamp duty and registration charges, digitalization have also been introduced by the Government to boost and promote real estate sector.

What are the financial opportunities provided to the affordable by the grant of infrastructure status?

In India, the infrastructure sector enjoys several advantages when it comes to exploring funding options. With the infrastructure status granted to the affordable housing, these advantages will also be available to the entities undertaking these projects. The exchange control regulations dealing with the External Commercial Borrowing (ECB) provided for raising of commercial loans by eligible borrows from the recognised non-resident entities (subject to the fulfilment of certain conditions as set out in the regulations prescribed in this regard by the Reserve Bank of India). The infrastructure status granted to the affordable housing sector will make the Companies in this sector as eligible borrower and will have access to funds as ECB. Besides external borrowings, the Companies will also be able to explore options under the Foreign Direct Investment route. The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEM (TISPRO)) (as amended) provides for investment by Foreign Portfolio Investors in unlisted debt securities issued by Companies engaged in infrastructure sector. As per the FEM (TISPRO), Foreign Venture Capital Investor can also invest in capital instrument or debt instrument issued by an Indian Company engaged in the infrastructure sector under automatic route. It will also make the Companies eligible to borrow funds from India Infrastructure Financing Company Limited (IIFCL), raise long-term credit from Banks and other financial institutions at lower rates, compared to other sectors. The affordable housing sector will also be eligible for priority sector lending from the Scheduled Commercial Banks. The Government has notified infrastructure sectors as eligible for credit facility extended by financial institutions (like NABARD, NHB and SIDBI). With the affordable housing sector getting the status of infrastructure companies, it is expected that these companies will be eligible to raise funds from these institutions. By bringing affordable housing sector at par with railways, roads and airports in term of its status, the Government has provided a major push to the real estate sector. Going forward this will help the housing sector to be more competitive and bring in a lot more players with integrated approach to invest.

What are REITs?

REIT is an acronym for Real Estate Investment Trust. REITs are a type of professionally managed collective investment scheme with its primary business being acquiring, owning and financing of income generating real estate. Simply put, REITs are Companies that buy and manage assets such as offices and retail outlets, which can generate revenue. REIT structure is modelled on the line of mutual funds in order to provide investment structure for the investor to get a stake in real estate. It is a type of security that provides the investors, an avenue for regular income, portfolio diversification, and long-term capital appreciation. REITs originated in the US to give investors an opportunity to invest in income-generating real estate assets. Besides the US, several other countries such as Singapore, Australia and Hong Kong have implemented REITs. In India, the REITs were initially introduced by the Securities and Exchange Board of India (SEBI) in the year 2007. Although, the draft regulations were released, the same were rejected due to certain limitations. Later, the SEBI through its notification dated September 26, 2014 notified the SEBI (Real Estate Investment Trusts) Regulations, 2014 (REITs Regulations) towards regulating investments in REITS. The REITs Regulations, inter alia, set out the registration requirements, procedure of registration, and eligibility requirements of REITs.

What are the types of REITs?

Essentially there are 2 types of REITs, which being equity and mortgage. Equity REITs typically own large commercial buildings, retail stores or buildings, hotels or other properties in the hospitality industry, care facilities or other properties in the medical industry. The returns are earned by giving these buildings on lease and subsequently dividends are paid to the investors. Under the Mortgage REITs, the Companies do not own the properties themselves, but the debt on the properties. They own mortgages against the properties and collect payments.

What is the objective of REITs?

As far as real estate sector is concerned, REITs aim to provide a platform to the real estate developers and investors with core assets to monetize these assets; provide an alternative platform to the investors to invest in the real estate; and bring higher standards of transparency and governance in the way real estate developers managed their assets.

How does a REIT work?

REITs raise funds from a large number of investors and directly invest that sum in income-generating real estate properties (which being offices, residential apartments, shopping centres, hotels, etc). The trusts are listed on stock exchanges so that investors can buy units in the trusts and earn dividend.

Which are the parties involved in REIT structure?

The major parties involved in the REIT structure are the trustees, the manager, and the sponsor. The trustee holds the assets of the REIT in the name of the REIT for the benefit of the investors and is responsible to manage the assets. The assets are held by the trustees as per the provisions of the Trust Deed (which Trust Deed will be prepared as per the REIT Regulations and registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993). All the operational responsibilities in relation to the REIT shall be assumed by the manager. The roles and responsibilities of the manager shall be specified in the agreement entered into between the trustee and the manager. The sponsor shall be responsible to set up the REIT and also appoint the trustee. The sponsor shall also be obligated to maintain a certain percentage holding in the REIT, which will ensure his involvement in the management of REIT. In the event, the sponsor intends to sell its units, the REIT Regulations require the outgoing sponsor to appoint another person or entity to act as the sponsor. As far as the managers and sponsors are concerned there are also certain net worth, experience and qualification requirements to be fulfilled by them. EPC World