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Real Estate Crowdfunding in India: Investigating an Investment Innovation

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The ever-dynamic sphere of real estate investment options is witnessing yet another development that operators call crowdfunding. It is a product of the internet boom, a contemporary solution for investors with modestly-sized pockets, which is continuing to thrive upon online private platforms. Crowdfunding in real estate involves investments from multiple individuals to fund various projects or ventures, enabling access to investments with smaller amounts of money. Hence, this article drives through the less understood legal implications of real estate crowdfunding, its real impact on participants, the scope of its movement in the public domain and the subsequent effect of government intervention. Crowdfunding has already taken shape in other financial spectrums. While it is relatively neoteric in real estate, it invites an understanding of its precedence to produce an idea of its maturity and reliability. This paper also seeks to explain its anticipated edge over, or under, comparatively established investment techniques, which depends on how beneficial it proves to be for both the operators and the stakeholders. Prima facie, crowdfunding strictly remains in the private domain, but the rationale behind such regulation remains unanswered. Hence, this article elaborates on why real estate crowdfunding in India has yet to be raised publicly. Behind their opaque screens, private networks speak a subtle language of risks. This paper unravels the risks involved in real estate crowdfunding, being one such network; for example, reasoning why assets cannot be easily transferred or unloaded, rendering the process illiquid. This research also opens space for analyzing the effects of government intervention on crowdfunding. The Indian government has already impacted through initiatives such as Real estate investment trusts, whose magnitude is an answer in progress. How the Centre's push for Foreign Direct Investment in the *country shall catalyze crowdfunding is another aspect that this paper shall attend to. With the advent of a growing graph of stakeholders, crowdfunding emerges as a contemporary solution catering to investors with modest resources. This invites research on its inception within the online sphere, assessing its credibility against established investment methods, exploring regulatory constraints and inherent risks, and contemplating the impact of government interventions such as Real Estate Investment Trusts and Foreign Direct Investment promotion on the burgeoning landscape of real estate crowdfunding in India. Conclusively, this article comprehensively understands and analyses how crowdfunding suits the Indian context.*

Keywords: *investment, crowdfunding, innovation.*

INTRODUCTION TO CROWDFUNDING

Crowdfunding has been a longstanding practice in the realm of capital acquisition. Crowdfunding is the act of raising funds from a substantial number of individuals to support diverse initiatives or ventures.[1] This method has the benefit of enabling anybody to invest, even little amounts of money, which lowers the risk attached to their investments and enables businesses and organizations to acquire capital more swiftly and affordably. [2]The rise in popularity of crowdfunding has been accelerated by the emergence of the Internet. Currently, the process of obtaining funds through crowdsourcing is predominantly conducted online.

There are various models of crowdfunding, like equity crowdfunding, debt crowdfunding, litigation crowdfunding, and many more. The main focus of this paper will be around the model of crowdfunding, which deals with collecting funds for investing in a property, Real Estate Crowdfunding. Investing in real estate has always been a keen interest of people, but there is a requirement of a hefty amount of money to invest in even a small prospect of real estate; that is where crowdfunding comes into the picture. Through Real Estate Crowdfunding, now people can invest even a small amount of their savings in the previously seen privileged investment

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[1] Randolph E Brynner, *Raising Capital for Real Estate Investing: An in-depth look at 5 methods to raise the money you need to start your new business using personal or business loans, grants, crowdfunding, and angel investors* (REB Global Publishing 2023)

[2] *Ibid*

venture. The process works when various individuals are approached to pool their money together to invest in a real estate project.

Real estate investing has always been recognized as a prominent avenue for financial investment. However, the practice of aggregating funds from a selected batch of individuals to acquire a real estate property is a relatively recent phenomenon. The origins of crowdfunding may be traced back to the 19th century, while the term 'Crowdfunding' was first recorded on August 12, 2006, by Michael Sullivan, an American author.[3] The initial instance of an equity-based crowdfunding platform designed for startups was introduced as a private beta in June 2009. On the other hand, the first platform dedicated to real estate crowdfunding was established after the enactment of the Jumpstart Our Business Startups (JOBS) Act in the United States in 2012.[4] This legislation facilitated a more transparent approach to capital raising.

The adoption of real estate crowdfunding had a significant surge following the implementation of the JOBS Act in the United States. Subsequently, other nations established their distinct frameworks and regulations to oversee this investment approach. The draft legislation for Regulation on European Crowdfunding Service Providers for Business was accepted by the European Parliament on October 5th, 2020. This regulation imposed a new need for crowdfunding platform operators to get a license. Also, the Securities and Exchange Board of India (SEBI) in India made amendments to its Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 on January 25, 2022. These amendments aim to facilitate the transfer of Alternative Investment Funds (AIFs) from their conventional physical certificates to an electronic format.

Irrespective of these technical advancements, several fundamental aspects remain to be considered. One such subject is analysing the rights and liabilities of an operator for crowdfunding, as it may or may not be viewed under the purview of a promoter – a position that has better formalised roles. Hence, the veil over clarity regarding crowdfunding in India is flimsier than popularly predicted.

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[3] *Ibid*

[4] Adam Gower, *Leaders of the Crowd: Conversations with Crowdfunding Visionaries and How Real Estate Stole the Show* (Springer International Publishing 2019)

OPERATION

Real Estate Crowdfunding functions on a familiar fabric of generating profits. This process can be started in two ways: either by way of investing in a project under development or a completed property. The fate of any crowdfunding platform is decided by the operator, who selects the physical piece of real estate on which investments are crowdfunded. He may either select a project that will be further developed with the crowdfunded amount, or he may collect funds for a property that already exists in a finished state. For the former example, we may think of a hotel that he aims to develop personally or through third-party intervention for ease of understanding. In this case, through crowdfunding, when the development of the Hotel is completed and the property starts generating income by providing its services in the market, that income in respective investment proportions would be forwarded to the investors. Whereas, in the latter case, the crowdfunded amount is combined to buy a completed real estate property. This property is then re-sold at a future time when, owing to external factors, its selling price increases to induce profits. These profits are then proportionally distributed to the stakeholders.

The recognition of crowdfunding in the real estate industry started to bloom in the early years of the previous decade. While Mr. Obama's presidency eased regulations in the US through its Jumpstart Our Business Startups (JOBS) Act of 2012, propelling the success of real estate crowdfunding[5], two years later, India synergises with its efforts through SEBI. The Securities and Exchange Board of India forwards efforts in regulating India's real estate crowdfunding through its 2014 consultation paper, which helps to grasp an understanding of the causes and effects of this investment option.[6]

Such developments project the hope of a well-regulated framework for real estate crowdfunding in India. Yet, this proposition follows several other considerations. SEBI's paper, along with the

[5] 'Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings' (*US Securities and Exchange Commission,* 26 March 2024) <https://www.sec.gov/resources-small-businesses/small-business-compliance-guides/eliminating-prohibition-against-general-solicitation-general-advertising-rule-506-rule-144a> accessed 12 April 2024
[6] *Ibid*

Companies Act, 2013[7], only as far as it complements the subject, are presently the most authoritative pieces of regulatory authority on crowdfunding in India.

Real Estate Crowdfunding is still at a very nascent stage of development in the country, with a potential for undiscovered loopholes that can be exploited by private operators. Real Estate is an entity to be held accountable for such a scenario when the investment platform that we put our faith in has a proper structure of public regulation. However, such a privilege is left on a shelf, beyond reach in case of unregulated private networks. Hence, real estate crowdfunding has its platter of risks, which, by its nature, is unconventional but not risky. One of the factors that stir an element of risk is the fact that the rules governing the rights and liabilities of operators and stakeholders are inconsistent from one platform to another. One crowdfunding platform may facilitate a transparent medium of communication and sharing of expenditure schedules. Unlike traditional real estate investment vehicles such as Real Estate Investment Trusts (REITs), one of its features involves keeping the investors actively informed about the particulars of the project that they have invested in, both before and after the money has been staked. They are informed of the operator's credit history, whom they choose to trust for handling the everyday affairs of their investment project. This allows them greater control and awareness. [8]On the other hand, other platforms may choose to not stay as vigilant about the dissemination of essential information and choose opacity.

In the present state of affairs, it boils down to the reliability of one online platform from the other, rather than any generalised understanding of crowdfunding as an investment option, at least in India. Hence, it is the consistency in the basic rights of investors and other stakeholders, who generally come from lower income levels than most investors across other real estate ventures, that seek security.

Any investment option, especially in the real estate sector, advises an extensive study of the risks involved. But real estate crowdfunding in India provided its present legal framework

[7] The Companies Act 2013

[8] Sanjeev Sinha, 'Real Estate Crowdfunding: Revolutionizing Personal Finance with Accessible Investment Opportunities' *The Financial Express* (10 July 2023) <https://www.financialexpress.com/money/real-estate-crowdfunding-revolutionizing-personal-finance-with-accessible-investment-opportunities-3161588/> accessed 15 March 2024

comes off as a rather risky affair when light is shed upon its unregulated environment. Lack of regulation in real estate ventures is not necessarily a new affair, but a concerning one. This reference is better understood through an emphasis on the scam wave of 2010-13, wherein the Saradha Group and the Rose Valley Group, alone, unfairly deprived investors of sums as thick as Rs. 30,000 crores[9], owing essentially to under-regulation. To establish a deeper understanding, this article singularly focuses on the Sardha Realty Scam of 2013 in the following section.

The Sardha Reality Scam had an interstate cut spanning the States of West Bengal, Tripura, Assam, and Odisha. It successfully deprived the public, luring especially weaker economic sections of society. Through their enormous promises, they succeeded in sucking about 10,000 crores from such masses, the beginning and end of which in no terms was lawful.[10] Of Such a scam, against which the SEBI has slammed a 2-crore penalty in addition to ordering a refund[11], owing essentially to the ignorance of regulators.[12] This comes in contrast with stricter and more structured enforcement of regulators that are exercised under foreign jurisdictions, serving as an essential example for India.

TYPES

Being a contemporary avenue of real estate investment, crowdfunding in this context is not strictly classified into fixed numbers of categories. Yet, an understanding of the basis of these classifications helps further clarify choices for investors. Broadly, real estate crowdfunding can be classified based on the immediate use of investments for utilising it in real estate transactions and based on the nature of the project in which the crowdfunded money is invested. There exist several other grounds of classification, but these hold the most authority up till now.

[9] Joydeep Sarkar, 'A Decade After the West Bengal Chit Fund Scam, Victims Await Justice and Suffer in Silence' *The Wire* (18 December 2023) <https://thewire.in/rights/decade-west-bengal-chit-fund-scam> accessed 10 April 2024
[10] *Manoranjana Sinh Gupta v Central Bureau of Investigation* (2017) 5 SCC 218
[11] 'SEBI Imposes Rs 2-Cr Penalty on Saradha Realty, Executives' *Business Standard* (14 October 2016) <https://www.business-standard.com/article/markets/sebi-imposes-rs-2-cr-penalty-on-saradha-realty-executives-116101401431_1.html> accessed 12 April 2024
[12] *Subrata Chattoraj v Union of India and Ors* (2014) 8 SCC 768

Once the money is crowdfunded from the investors, the operator may treat the collected amount as a loan that he would take up for re-investing into a project that he deems apt, or he may directly invest it into a project that the investors consciously choose to invest in. Hence, in one case, he could appropriate the investments as a 'gathered loan' for a project that he picks to invest in, acting as a bridge between the investors, who here function as lenders and the project.

On the other hand, the investors are aware of the project whose shares they buy directly, and the operator simply acts as a facilitator in this process. The former, wherein he takes up the loan and largely exercises his free will, is popularly called debt crowdfunding, which is also called peer-to-peer lending in a broader sense. In contrast, the latter, where the investors quite literally buy a portion of the real estate property by investing in it, is called equity crowdfunding[13], some examples of whose platforms include Syndicate Room, Crowdcube, and Seedrs. [14] Therefore, whether real estate crowdfunding is debt-based or equity-based is determined by whether the invested amount is treated as a loan or a direct purchase of physical property/project. These two types of crowdfunding are covered under financial return crowdfunding. This stands out differently from community crowdfunding[15], which is more synonymous with fund-based crowdfunding.

Debt-based crowdfunding may be treated as banking in some jurisdictions, while others may perceive it as an intermediary.[16] But for how it essentially functions, the investors may also enjoy a clause that allows them monthly payments of their loan, which in the case of non-payment, can also be retained from the project, which may act as collateral. This significantly reduces the risk involved, especially when compared to equity-based crowdfunding, wherein there ordinarily is no scope for a monthly payment, and the only source of reliability, which is the invested project, also offers no leakproof security.[17] However, this may even be looked upon differently, as the profits may also boom just as big in the case of equities; the greater the risk,

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[13] Sinha (n 8)
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*
[17] Nav Athwal, 'The Investor's Guide to Real Estate Crowdfunding' (*Forbes*, 19 August 2014) <https://www.forbes.com/sites/groupthink/2014/08/19/the-investors-guide-to-real-estate-crowdfunding/?sh=5a4bb45c6d32> accessed 07 April 2024

the greater the reward may be. The operator has a plethora of real estate opportunities that he may want to invest in. It could span anywhere from the personal to the professional spheres of the public. While some may choose to invest in long-term rental properties or vacation homes, others may find office spaces, retail spaces, duplexes, or high-rise apartments more lucrative. Investments in houses for families are called residential real estate. On the other hand, investments in estates involved in business activities (including multi-family projects) are referred to as commercial real estate investments.[18] Therefore, real estate crowdfunding is also categorised based on the nature of the property or project in which one has invested.

Classification may also be done based on the mode of contact of the investors with the crowdfunding platform. Such contact with the platform may be direct or indirect. The pool of investors may directly approach a crowdfunding platform for investing in a common project without the aid of any third-party manager. Herein, the investors take up the rights and liabilities of the operator, who otherwise handles his part of the process by ensuring the physical development of the project that has been invested in. Conversely, indirect contact between investors and the platform may be facilitated by a third-party developer, who has been referred to as the operator throughout this paper. Such a real-estate investment with a developer may be referred to as platform-to-developer crowdfunding, whereas without one, it may be called platform-to-investor crowdfunding.

Hence, crowdfunding may be classified based on the immediate use of funds, the nature of the project, and the nature of contact with the platform, giving rise to terms such as equity and debt-based crowdfunding, residential and commercial crowdfunding, platform-to-developer crowdfunding, and platform-to-investor crowdfunding. Though inexhaustive, these classifications help provide clarity in understanding the several ways in which real estate crowdfunding operates.

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[18] Jean Folger, '6 Types of Real Estate Investments to Know Of' (*TIME*, 31 March 2024) <https://time.com/personal-finance/article/types-of-real-estate-investments/> accessed 12 April 2024

BENEFITS FOR OPERATORS AND STAKEHOLDERS

Having established the significance and dependability of crowdfunding in the real estate sector in the preceding section, this article now examines the diverse advantages that crowdfunding provides to various stakeholders within the real estate industry.

BENEFITS TO SHAREHOLDERS

Crowdfunding gives sufficient benefits to the pool of individuals who are using internet platforms to spend their money in real estate outlets. From the benefit of the smaller amount of investment in a project (sometimes as little as 100 USD) to the resource of investing in numerous properties simultaneously to diversify the assets and lessen the risk, all are offered by the usage of a crowdfunding platform.

Similar to any other online purchase, crowdfunding platforms provide a vast array of investment opportunities. Due to the wide range of choices, anyone may navigate the platform and select the investment option they believe is most advantageous and capable of generating substantial profit while maintaining an acceptable level of risk. As an illustration, a crowdfunding platform offers investors the choice to either aggregate funds for an operator intending to use the funds for the construction of a hotel or invest in an operator seeking to acquire a rental building that will continue to generate passive income. An investor is free to invest in any venture that piques his interest and that he believes will yield the greatest return.

Traditionally, the majority of real estate transactions have occurred in private areas, where they were largely obscure to the general public. Consequently, the opportunity for real estate investment was mostly restricted to a specific set of persons. The situation has experienced improvement after the rise in popularity of real estate investment, which saw a notable transformation with the emergence of the Internet and online investment opportunities. Now, since crowdsourcing is happening online, it is open to everybody, and even small-time investors may invest in a major project to gain higher rewards. Crowdfunding brings openness to the real estate industry. One additional benefit of crowdfunding is that it provides investors and operators with transparency over their funds, as the bulk of transactions occur online, so the investors know where their funds are being invested, unlike in the practice of Real estate investment trusts.[19] This measure will safeguard individuals from several fraudulent activities that may transpire in an actual marketplace.

The consideration of transparency may appear almost contradictory in this sense. But it is imperative to note that while the procedure fundamentally, in its functioning, makes it a more transparent option to investors, the leeway of minimal regulation provides a pandora's box that may surprise the investors with an opposite reality. Transparency and risk, hence, become the two sides of the same case, portraying the vast spectrum of an ideal potential and an unprecedented reality.

In contrast to conventional real estate investment approaches, crowdfunding absolves its backers from the responsibility of managing the daily operations of the property that has been crowdsourced. The operator who initially raised funds from the platform is responsible for certain recurring tasks, such as managing the construction of a hotel or gathering rent from a rental building. Therefore, this form of investment enables investors to optimize their time by relieving them of monotonous duties.

Crowdsourcing provides additional advantages to investors and stockholders in addition to those already stated. For instance, the investing process can be expedited compared to the use of traditional methods. Additionally, operators of crowdfunding platforms are more trustworthy than brokers of alternative investment methods. In numerous instances involving conventional real estate investment ventures, investors have fallen victim to deception perpetrated by brokers who assured them of the highest possible return.[20]

BENEFITS TO OPERATORS

The crowdfunding of property offers operators the advantage of accessing a broader base of individuals who are both willing and capable of making investments. As a consequence, capital becomes accessible in ways that were previously unattainable. Since the funds are being raised

[19] Brynner (n 1)
[20] *Subrata Chattoraj v Union of India & Ors* (2014) 8 SCC 768

by numerous individual investors, the operators are relieved of concerns regarding potential equity loss in the project or assuming debt obligations. Securing investment online not only provides financial assurances but also simplifies the process of fundraising and facilitates the efficient tracking of funds. Numerous reputable crowdfunding platforms offer robust security measures to safeguard transacted funds. While the regulatory landscape for crowdfunding in Indian real estate may not be extensive, there are several pertinent regulations established under the Information Technology Act of 2000 (IT Act)[21] and the Consumer Protection Act of 2019[22]. These regulatory frameworks serve to ensure the security and protection of online financial transactions, including those related to crowdfunding activities. In the realm of crowdfunding investments, operators are not encumbered by negotiation concerns. Consequently, they can effectively adhere to their projected costs without compromising the quality of their work. Moreover, they have the flexibility to secure whatever funds are necessary to fulfil their expenses, provided their project exhibits sufficient merit. The accessibility and minimal investment required in crowdfunding are likely to attract a substantial number of new investors, thereby fostering the emergence of an entirely new market segment for operators.[23]

LEGAL RIGHTS AND RESPONSIBILITIES

The sense in which real estate crowdfunding has been discussed within the scope of this paper establishes it as a private company functioning with the rights and within the limits of a private network. While crowdfunding platforms cannot release public advertisements or use media, marketing, distribution channels, or agents to inform the general public about its offers, it has some other advantages as well[24], which have been listed in the Companies Act, 2014[25].

It has been discussed through various judgments that a legal system, among other factors, is often characterized by its balance between rigidity and flexibility of laws governing a state. While rigidity is required for stability in the system, flexibility is to ensure that the laws keep up

[21] Information Technology Act 2000
[22] Consumer Protection Act 2019
[23] *Ibid*
[24] *Ibid*
[25] The Companies Act 2013

with the changing times and circumstances.[26] India serves as an admirable example of this balance. Yet, it is not humanly possible to have specific laws on every little development that mankind witnesses- especially the contemporary ones. Hence, while the legislature and various executive bodies, which have also been vested with law-influencing powers, strive to ensure that the legal system is as comprehensive as it may be, the judiciary, through interpretation of the existent statutes, applies broader laws to specific situations with the aid of deductive reasoning.

Real Estate Crowdfunding is one such relatively new field of Investment that has few specific laws to govern its regulation in India. Yet, there exist laws, which through a broader interpretation can be applied to regulate the current state of affairs in crowdfunding. The most authoritative of these laws stem from the Real Estate (Regulation and Development) Act of 2016[27], the Companies Act of 2013[28], and a 2014 Regulation released by the Securities and Exchange Board of India entitled 'Consultation Paper on Crowdfunding in India'. There are other laws that in very specific terms may apply to situations related to real estate crowdfunding, such as SEBI's Alternative Investment Funds Regulation, 2012[29], SEBI Act, 1992[30], Securities Contracts (Regulation) Act, 1956[31], and Depositories Act, 1996[32], but this paper will largely focus on the formerly mentioned laws.

The Real Estate (Regulation and Development) Act 2016[33] has within its ambit the definitions of various entities that participate in real estate activities. Among its various clauses, it defines a promoter as an individual who initiates the construction or conversion of independent buildings or apartment complexes to sell some or all of the resulting units to third parties, including their assignees. This could be anyone assuming roles such as builder, colonizer, contractor, developer, or estate developer, or operating under any analogous designation. Additionally, it includes individuals who claim to act under a power of attorney granted by the owner of the land upon

[26] *Janhit Abhiyan v Union of India* (2022) WP (C No 55/2019
[27] Real Estate (Regulation and Development) Act 2016
[28] Companies Act 2013
[29] Securities and Exchange Board of India (Alternative Investment Funds) Regulations 2012
[30] Securities and Exchange Board of India Act 1992
[31] Securities Contracts (Regulation) Act 1956
[32] Depositories Act 1996
[33] Real Estate (Regulation and Development) Act 2016

which the buildings, apartments, or developed plots are situated, specifically for sale.[34][35] The process of crowdfunding has an essential player, referred to as an operator in this paper. An operator finds the responsibility of using the crowdfunded amount that he could gather with the aid of the platform where he uploaded his credit details and investment plans to invest in real estate projects. It can be distinctly observed that the role that an operator assumes fits squarely into the requirements that the RERA Act, 2016 [36] lays in Section 2 (zy)[37] of its Act. Hence, it is sound to conclude that a real estate crowdfunding operator is inclusive of the definition of a real estate promoter, which is to further draw that the rights and liabilities resting on their shoulders are identical.

The functions and duties of a promoter, which fall along the same lines as those of a real estate crowdfunding operator, have been explicitly defined under Chapter III of the RERA Act, 2016[38]. These include responsibilities spanning from creating a webpage on the regulatory authority's website for project details, providing information to allottees at the time of booking, adhering to sanctioned plans and specifications, obtaining necessary insurances, and executing conveyance deeds in favour of allottees, to his obligations regarding agreements for sale, cancellation of allotments, transfer of project rights, and compensation for delays or defects in the project. Interestingly, a few of these sections help ease the anxieties that regulatory bodies reflect regarding real estate crowdfunding in India, concerning transparency and the rights of the stakeholders.

Section 11 of the RERA Act[39] underlines the duties of a promotor, which include creating a webpage for public project details, providing information to allottees, obtaining necessary certificates, maintaining essential services, paying project expenses, and complying with other such regulations specified by the authority. What this means for a real estate operator is that he will have to ensure that he functions transparently. The mandate for publishing the details of the project not only benefits the allottees but also keeps the investors aware. Similarly, Section

[34] Real Estate (Regulation and Development) Act 2016, s 2(zy)(i)
[35] Real Estate (Regulation and Development) Act 2016, s 2(zy)(v)
[36] Real Estate (Regulation and Development) Act 2016
[37] Real Estate (Regulation and Development) Act 2016, s 2(zy)
[38] Real Estate (Regulation and Development) Act 2016, s 8
[39] Real Estate (Regulation and Development) Act 2016, s 11

12 of the RERA Act[40] states that if an individual suffers a loss due to false information in an advertisement or prospectus, the promoter must compensate them. They may even be entitled to a full refund of their investment, including prescribed interest and compensation. Hence, for investors in real estate crowdfunding, this brings security to their hefty investment. This Act, if enforced aptly, clears a doubted screen of accountability on the part of the operator and generates confidence and assurance in the investors, who are the most vulnerable players in this process of investment.

LEGAL INTERPRETATIONS ENCIRCLING CROWDFUNDING PLATFORMS

The next point of contention is comprehending what exactly a crowdfunding platform is in a broader legal sense. Per se, it may too casually be referred to as a company, but the accuracy of such an assertion can only be checked with existent definition clauses. Section 2(o) of the RERA Act 2016,[41] specifies that the essentials that a real estate platform requires are authoritatively derived from the Companies Act, 2013[42]- a quintessential piece of law for our subject.

The Companies Act lays out the three essentials of a private company under Section 2(68)[43]. Setting aside the specifics of a 'One Person Company,' it specifies that a private company must have a minimum paid-up share of Rs. 1 lakh, and it must, by its articles, put restrictions on the entity's rights to transfer shares and prohibit invitation to the public.[44] Such requirements overlap with the fundamental features of crowdfunding platforms.

To solidify the abstract idea of a real estate crowdfunding platform that this paper has been circling to comprehend how it may be a company, we may take an example of a real Indian Real Estate Crowdfunding Platform. Assetmonk Properties Private Limited, one platform based in Hyderabad, has been fresh in the air with its developmental advancements[45] and has been

[40] Real Estate (Regulation and Development) Act 2016, s 12
[41] Real Estate (Regulation and Development) Act 2016, s 2(o)
[42] Companies Act 2013
[43] Real Estate (Regulation and Development) Act 2016, 2(68)
[44] A Ramaiya, *Guide to the Companies Act* (19th edn, Lexis Nexis 2020)
[45] Sobia Khan, 'Assetmonk facilitates the acquisition of a Grade A office space through its new fractional investment opportunity' *The Economic Times* (11 December 2023) <https://economictimes.indiatimes.com/industry/services/property-/-cstruction/assetmonk-acquires-commercial-space-in-brigade-tech-park/articleshow/105841792.cms?from=mdr> accessed 12 April 2024

popularly referred to as a company. It is, indeed, a company, as proven by its CIN (Corporate Identification Number)[46], a distinct identification code allocated by the Registrar of Companies (ROC) to registered Indian companies. Going by the essentials, the four-year-old company has a paid-up share of Rs. 1 lakh and is limited by shares.[47] Similarly, other Indian companies also share the same position, such as Property Share, a Bengaluru-based real estate crowdfunding platform, founded as early as 2015. Hence, a crowdfunding platform, in its essence, is capable of being defined as a company, and several such companies have already been constituted in India.

The operator, which finds its mention under the label of a promotor under the RERA Act, 2016[48], also finds its reference and authority under the Companies Act, 2013[49]. Section 2(69) of the Act[50] defines a promoter as someone who is either named in a prospectus, which may be identified in the company's annual return, or exerts (direct or indirect) control over the company's affairs, or whose advice is routinely followed by the board. This definition is exclusive of those acting in a purely professional capacity. Studying the functions of an operator which have been previously listed, it can be said that an operator has a pivotal influence over the functioning of a company, which indirectly checks its sail. Hence, even under the aegis of the Companies Act 2013, an operator may be defined under the umbrella of a promoter.

In addition to explicitly defining key players in the process of crowdfunding, the Companies Act actively ensures the safety of the stakeholders against any possibility of fraud. According to Section 36 of the Act[51], anyone who knowingly or recklessly makes false, deceptive, or misleading statements, promises, or forecasts, or deliberately conceals material facts to induce others to engage in agreements related to securities, profit generation, or obtaining credit facilities from banks or financial institutions, is subject to action under section 447[52]. The Companies Act, spanning from Section 447 to Section 453,[53] provides all sorts of securities

[46] *Ibid*
[47] *Ibid*
[48] Real Estate (Regulation and Development) Act 2016
[49] Companies Act 2013
[50] Companies Act 2013, s 2(69)
[51] Companies Act 2013, s 36
[52] Companies Act 2013, s 477
[53] Companies Act 2013, s 45

through the appropriation of punishments for any act that falls at an unfair end for the stakeholders. Similarly, Section 75[54] of the act specifies the procedure for allocating damages when a situation of fraud may occur through a deficiency on the company's end. Hence, while Section 36[55] of the act provides security to the investors against fraud, Section 75[56] mentions the damages to be awarded in the case of such fraud.

This paper has discussed the difference between debt-based and equity-based real estate crowdfunding. However, what adds a more practical line of demarcation between these two is that while debt-based crowdfunding is assessed as legal in India, equity-based crowdfunding finds difficulties.[57] What entails such differentiation is rooted in the provisions of the Companies Act, 2013[58], which, while some look at as a protective clause, others may point for re-consideration on the reasoning that it does not accommodate newer developments, for instance, crowdfunding itself. A bird ' s-eye view allows us to decipher that while Section 42 of the Act[59] deals with the private placement of securities by a company in a manner that is syllogistic with equity-based real estate crowdfunding, Section 71[60] of the very act deals with debentures that the company issues, which falls identically with debt-based real estate crowdfunding.

REGULATORY MEASURES

Among these provisions, there are some others as well that indirectly provide further security to the stakeholders. For instance, Section 88[61] of the Companies Act mandates the maintenance of a register of members, debenture-holders, and any other security holders, with separate entries for each class of shares, failing which can result in fines for the company and its officers.

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[54] Companies Act 2013, s 75
[55] Companies Act 2013, s 36
[56] Companies Act 2013, s 75
[57] Chet Jainn, 'Crowdfunding Industry Eyes Clarity on Regulation and Legal Accountability in Budget 2022' *The Economic Times* (07 April 2024) <https://economictimes.indiatimes.com/small-biz/sme-sector/crowdfunding-industry-eyes-clarity-on-regulation-and-legal-accountability-in-budget-2022/articleshow/89194162.cms?from=mdr> accessed 10 April 2024
[58] Companies Act 2013
[59] Companies Act 2013, s 42
[60] Companies Act 2013, s 71
[61] Companies Act 2013, s 88

Indirectly, this provides further clarity on the list of investors and documents the proof of their investment more concretely.

Law is not solely the product of the legislature, provided its practical limitations of time and space in investigating, drafting, etcetera. This power is also channeled to other statutory bodies, like national commissions and tribunals. One such example is found in Section 24 [62]of the Companies Act. This section designates the Securities and Exchange Board of India (SEBI), one such statutory body, to regulate securities issuance and transfers and dividend payments for companies, with its authority aligned with its powers under the Securities and Exchange Board of India Act, 1992[63]. With such powers, SEBI heeded the contemporary emergence of real estate crowdfunding and accordingly released a paper in 2014 entitled 'Consultation Paper on Crowdfunding in India',[64] which is instrumental in our understanding of the subject.

SEBI's involvement in crowdfunding aims to simplify the process to be more cost-effective and efficient. According to its 2014 consultation paper[65], it would start with recognising crowdfunding portals for regulation and oversight in the Indian market. While SEBI plans to refrain from examining the private placement offer letters issued by the companies seeking funding through crowdfunding, it intrinsically intends to focus on issuing guidelines and circulars on the information required to be disclosed in the private placement offer letter, which would outline the requirements for due diligence, screening, and other relevant matters. Additionally, SEBI will conduct periodic inspections or audits of crowdfunding platforms and enforce regulations to ensure compliance with the established framework.

DRAWBACKS

As with any other investment strategy, crowdfunding is not an exception; similar to any other industry, it is not devoid of its share of challenges. Following an analysis of its merits and viable legal applications within the Indian real estate sector, this article shall now enumerate various

[62] Companies Act 2013, s 24
[63] Securities and Exchange Board of India Act 1992
[64] *Ibid*
[65] *Ibid*

drawbacks associated with crowdfunding. The constraints indicated shall solely pertain to the implementation of crowdsourcing within the Indian real estate sector.

When utilizing this method of investing, selecting the appropriate platform is the primary obstacle that many investors encounter. They must select a reliable online platform that offers the highest level of security possible. If the investor commits an error in selecting the appropriate platform, there is a likelihood that the individual who has placed the investment will fall prey to fraudulent activities. As a result of the nascent legal landscape in this emerging market, numerous fraudulent platforms may masquerade as reliable investment sources, or platforms that are deficient in quality or functionality may fail to offer investors the most advantageous investment prospects. In light of this flaw, a variety of solutions can be resorted to, which include public-private partnerships, government-sponsored rating platforms, etc. These have been detailed in the latter part of this paper.

In addition to the challenge of selecting an appropriate platform, both the operator and the investor will encounter another obstacle before making investments or soliciting funds. A concern arises concerning the private placement of funds; as per the prevailing legislation in India, equity crowdfunding opportunities are restricted to a particular circle of acquainted or connected individuals.[66]

Public issuance and advertising of crowdfunded properties are prohibited for a variety of reasons, including the prevention of information asymmetry and the protection of individuals from fraudulent activities. This method of limiting opportunities to a small number of private investors creates significant problems for the operators, as it increases the likelihood that the project will go unfunded or that the funds generated will not even come close to covering the expenses that were anticipated. In addition, as a result of this regulation, investment opportunities will be limited to those with established networks and greater expertise in the real estate sector. Novice investors may not be presented with any or only substandard investment prospects.

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[66] *Ibid*

The limited capabilities of crowdfunding platforms in India restrict the range of opportunities and projects that can be presented to investors, owing to the sector's underdeveloped infrastructure. Even if an operator posts their proposal on an internet platform, the likelihood of obtaining a sufficient amount of cash for the project is relatively low. This is due to a lack of awareness among individuals regarding this emerging investment approach. These problems stand in the way of the real world with little attention and work from the Government of India to spread essential awareness regarding real estate crowdfunding.

In a crowdfunded project, the organization's work is entirely done by the operator(s), regardless of the event that it is a lease assortment, development of an entire structure, or extension of a generally existing work. Everything is taken a gander at by the administrators who started the crowdsourcing process. This may be a positive point for the majority of financial backers that they don't need to invest a critical energy of their day in the monotonous tasks of the property they put resources into and they can simply view the property as a side gig yet a few financial backers might want to be aware in what ways their cash is spent and might want to have something to do with the decision making of their venture. In a crowdfunding plan, the financial backers need to place their blind trust in the operators for their task, which in some cases could misfire because of the unfortunate choice made by the operators.

A significant drawback of crowdfunding as an investment method is the lack of liquidity. This implies that investments made on crowdfunding platforms cannot be readily converted into cash, making it challenging to exchange them as a currency, even when they generate profits. As a result, investing through crowdfunding is considerably riskier.

Due to the low popularity of this type of investment method and the lack of specific regulated laws to govern the transactions involved, the majority of issues pertaining to crowdfunding investment in real estate are caused by the near-zero legal development in this field. This leads to the emergence of more unregulated and unauthorized platforms, as well as numerous incidents of online fraud. There is no explicit regulation in existence, although there are only a few legislations that may be used as a reference to control these transactions.

Another concern linked with crowdsourcing is project abandonment by the operator; while this is a risk that may be encountered in other real estate investment methods, it is more significant in crowdsourcing due to the feature of online funding. Project abandonment occurs when an operator does not start or ceases working on his project after raising all of the funds he needs from a crowdfunding site. As a result, the crowdfunded project is never developed, and no income can be made; this puts investors at risk of not even receiving their original amount returned because they have no direct contact with the operator.

In conclusion, while crowdfunding presents opportunities for investors to participate in real estate projects, it also comes with several challenges, particularly within the Indian market. The primary obstacles include the need to select a trustworthy platform to avoid falling victim to fraud, restrictions on public issuance limiting opportunities to a select group of investors, and the lack of liquidity in crowdfunded investments. Additionally, the underdeveloped legal framework and the risk of project abandonment further contribute to the complexities of crowdfunding in real estate. These challenges highlight the importance of thorough due diligence, regulatory enhancements, and investor education to mitigate risks and foster a more robust crowdfunding environment in the Indian real estate sector.

SUITABILITY IN THE INDIAN CONTEXT

The demography of the country suggests that the country's masses, in proportion to its technological advancements, lead to the direct equation that India is a labour-intensive economy. Furthermore, this economy is driven largely by the middle classes, which is statistically projected to transition into an upper-middle economy by the financial year 2036[67]. This directs a clear signal that any avenue of investment would be deemed to suit such an economy that utilizes the quantity of the population above its quality, wherein the quality refers to the income levels of this population. Real estate crowdfunding, by its nature, as already elaborated upon, happens to tick these boxes and, hence, aptly suits the needs of a state.

[67] Ishaan Gera, 'India to transition to middle-income economy by FY36; hit $15 trillion mark by FY47' *The Economic Times* (11 March 2024) <https://economictimes.indiatimes.com/news/economy/indicators/india-to-transition-to-middle-income-economy-by-fy36-hit-15-trillion-mark-by-fy47/articleshow/108394177.cms?from=mdr> accessed 01 April 2024

Real Estate Crowdfunding is a process that is essentially carried out over an internet-based platform. This has several implications. Now, crowdfunding, unlike traditional means of investments, has the eyes of a much larger audience. And this audience doesn't only constitute the largest chunk of viewership on the internet, including the social media platform, but the bulk of the Indian citizens as well. The youth of India, brimming beyond the mark of 800 million[68], will also happen to be the most influenced by the presence of crowdfunding platforms, provided the exposure of the web world.[69] Assuming this on the same scale of reasoning, it is safe to say that the youth of India is what the policymakers must consider with the most gravity while dealing with the subject of real estate crowdfunding. This comes with its own set of overtones. On one hand, these populations may be used as trendsetters, which would continue to influence the nation's professional appearance towards real estate. Alternatively, a note of caution must be held as the younger investors are not particularly rich with the skills, education or expertise that this field requires. The youth is a double-edged sword that must be wielded with vigilance.

India has persistently remained focused on making India a unicorn economy. The Make in India initiative[70] stands as the decade's testimony for this work. The balance that this aims to strike is the promotion of startups while safeguarding retail investors from the risks associated with startup ventures.[71] Synchronizing the emergence of real estate crowdfunding with the pre-set rhyme of the country by stirring entrepreneurship can prove to be a momentous step for the overall health of the economy. As the 2014 SEBI paper puts it, '*taking the crowd out of crowdfunding*'[72] is not among the wisest options of the nation-state. It is by *democratizing* the evaluation process of what the policymakers deem to adapt for the better of the country that can they do better for the country. An assessment of the demography of India provides us with the understanding that real estate, though its complications, is deemed to be suited for the country's masses. Hence, this calls for even more rigorous attention to its legal framework.

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[68] Ministry of Statistics and Programme Implementation, *Youth In India 2022* (2023)
[69] *Ibid*
[70] Ministry of Commerce and Industry, *Make in India Initiative to Make India a Hub for Manufacturing, Design and Innovation* (2023)
[71] Brynner (n 1)
[72] *Ibid*

CONCLUSION & SUGGESTIONS

This paper delves into crowdfunding's application in real estate, uncovering its nuances. With the advent of online platforms accessible to the masses, investing in real estate has shifted paradigms, potentially challenging traditional methods. Despite originating in the 19th century, it remained largely unexplored in India until recent regulatory developments like the JOBS Act and SEBI consultations. Regulatory easing internationally and domestically has propelled real estate crowdfunding into prominence. However, India's regulatory framework remains in its infancy, creating opportunities for private entities to act swiftly, albeit with risks. Instances like the Saradha Reality Scam highlight the importance of transparency and regulatory safeguards for investors.

Despite uncertainties, real estate crowdfunding has evolved into diverse categories, spanning residential or commercial projects and equity or debt-based approaches. This expansion broadens perceptions for investors and operators alike. India's decision-making necessitates calculated risks, including a closer look at real estate crowdfunding. It offers investors diversification through small investments, transparency under fair regulation, and relief from property management.

Meanwhile, for operators, it widens investor reach, simplifies fundraising, and ensures financial security without equity loss or debt burdens. Embracing real estate crowdfunding as an opportunity demands careful consideration, potentially reshaping investment dynamics for the nation's economic development and beyond.

Real estate crowdfunding in India operates without a specific governing statute but falls under the influence of various laws, like the Real Estate (Regulation and Development) Act of 2016 and the Companies Act of 2013, alongside SEBI regulations. Interpreting these laws reveals the rights, liabilities, and gaps for both operators and investors, notably highlighted in SEBI's 2014 consultation paper aiming to regulate crowdfunding.

Challenges persist due to platform reliability issues, regulatory constraints, liquidity constraints, infrastructure limitations, and transparency deficits, heightening investor apprehensions. However, integrating crowdfunding into initiatives like 'Make in India' could stimulate entrepreneurship and mitigate risks for retail investors, aligning with India's economic goals and emphasizing the urgent need for an enhanced legal framework.

There is no explicit regulation or statute governing crowdfunding in India. Even while crowdfunding is subject to several regulations under the Companies Act of 2013, the Information Technology Act 2000, and SEBI, it is still insufficient to regulate this wide range of investment opportunities. The Indian real estate market of today urgently needs new legislation specifically pertaining to crowdsourcing. Additionally, a committee tasked with overseeing the platforms' proper and equitable operation and offering compensation to harmed operators and/or investors may be incorporated.

The majority of real estate investors who are aware of crowdfunding do not invest in it because they lack sufficient confidence in the platforms that are now displaying crowdsourcing projects. The government can establish its crowdfunding platform to encourage crowdfunding in India, allowing investors to contribute to projects without fearing for the safety of their money. The government can utilize this form of funding to construct a variety of infrastructure projects, such as residence buildings or hospitals, which would guarantee a steady flow of income for the project's backers and contribute to the economic growth of the nation.

Like every other real estate property, a crowdfunded property will also be liable to pay taxes. Adding tax regulations is a brand-new item that is possible with this type of investment. In a crowdfunded property, it is not made explicit anywhere in any legally authorized document who will be responsible for paying the taxes or how much each person would have to pay. This explanation ought to be incorporated into the law that the government plans to propose regarding crowdfunding.

There is no way to determine whether an operator on a crowdfunded platform is trustworthy, and if they are not, there is a chance that the project may be abandoned. A crowdfunding platform may incorporate a rating system to address this shortcoming and increase investor caution over an operator. The greater an operator's rating, the more dependable he is expected to be. To assist the operator in determining whether or not an investor can be trusted for a long-term investment, this rating system may also be made available to investors via crowdfunded platforms.