

Branded Residences: An Overview of the Legal Framework in India

The emergence of branded residences in the real estate sector has been met with a great deal of enthusiasm from real estate developers across India. Branded residences are real estate developments sold under a certain brand, implying luxury and exclusivity, with many such developments including a service element making them more attractive to buyers.

THE CONCEPT OF BRANDED RESIDENCES

Branded residences are typically mixed-use developments where private residential real estate is sold under a luxury brand name, either that of a fashion brand, or more typically that of a hospitality brand. It is the latter type that this note primarily covers. Apart from branding, the hospitality brand also manages the residences broadly consistent with its standards for hotels or resorts across the world. This fusion offers buyers a superior lifestyle experience, combining the exclusivity of private ownership with the luxury amenities and services of a high-end hotel.

KEY FEATURES AND BENEFITS

- 1. Financing:** The attraction of having a well-known brand on board often leads to early sales, which in turn helps the developer in obtaining financing from institutional lenders. Further, given that these are usually mixed developments, hotel construction and development may be financed in part by the sales revenues of the branded residences.
- 2. Licensing and service fees:** The hospitality brand licenses its brand and provides services for fees payable by the developer and the residents/ association of residents, in addition to the fees obtained from the hotel. Where the residences are made a part of the hotel pool (*as discussed later in this note*), there is a direct impact on the hotel revenues and consequently, the revenues of the hotel brand.
- 3. Luxury hospitality brand affiliation:** Often, branded residences are coupled with hotels. One of the key benefits of these mixed developments is the luxury hospitality

brand affiliation, bringing global recognition and reputation. This drives up sales prices and therefore the returns of the developer. From the hospitality brand's perspective, it can also drive up the brand value, recognition and loyalty amongst its customers.

4. **Exclusive amenities** (e.g., spa, fitness center, pool): Exclusive amenities are another feature of branded residences. Residents enjoy access to shared hotel amenities like spas, fitness centers, and pools, as well as private residential amenities such as lounges, libraries, and cinemas. While some of these facilities are integrated with a hotel or a commercial development of the luxury brand, other amenities such as private elevators, reserved corridors, security and certain shared spaces are exclusive to the residents.
5. **Personalized services** (e.g., concierge, room service): Personalized services are often provided to branded residences. Dedicated concierge services, room service, and in-residence dining cater to residents' needs. Additionally, residents can access hotel services like business centers and valet parking, giving an 'everything under one roof' experience.
6. **Premium location and design:** Premium locations, architectural design, and interior finishes contribute to the residences' allure. Often the brand standards of the hotel brands are applied to the design and finishings. Professional property management services maintain the high standards of the residences. Regular maintenance, repairs, and owner services like rental management provide peace of mind.

KEY INCENTIVES

Branded residences are emerging as a significant segment of the luxury real estate market in India, driven by several benefits tied to zoning regulations, property taxes and other charges.

1. Zoning benefits:

The central government's [Smart City initiative](#) and relaxed Floor Space Index (FSI) norms enable developers to create more spacious units. These zoning laws ensure that such developments are built in premium locations, often near commercial hubs, ensuring accessibility, thereby enhancing their appeal to affluent buyers.

Zoning benefits also allow branded residences to incorporate amenities such as rooftop gardens, pools, and fitness centers, enhancing their appeal. These amenities also bring tangible incentives for the development. For instance, [Unified Development Control and Promotion Regulations](#) for Maharashtra State provide

incentives for developments incorporating green spaces. Such zoning benefits in turn enable branded residences to command premium pricing.

2. Tax benefits:

Property tax structures in India can also favor branded residences, especially when local governments seek to attract high-net-worth individuals. In many urban areas, branded residences are subject to higher valuations, which translates into increased property taxes. However, the potential for improved infrastructure and public services—such as better roads, security, and amenities—often accompanies these developments. This creates a situation where residents are willing to pay a premium, knowing that their investment supports both their luxury lifestyle and the overall development of the area, thereby enhancing the property's long-term value. This in turn would make them eligible for tax benefits. For example, [Delhi's Master Plan 2021](#) provides tax incentives for developments meeting specific green building standards. Similar measures are also available under the [Maharashtra green building policy](#). Including modern amenities such as electric vehicle charging facilities in developments could also entitle developments to property tax incentives under the [Maharashtra Electric Vehicle Policy, 2021](#).

Additionally, some states offer stamp duty exemptions or reductions for luxury properties, further reducing ownership costs. As an example, in Goa, as a result of special income tax status from the Government and a sales tax holiday from the [Government of Goa](#), the state economy grew at a quick pace.

3. Electricity charges and utility savings:

Energy efficiency and sustainability practices are gaining traction in the Indian luxury market, with many branded residences incorporating technologies for this. Developers are increasingly investing in solar energy systems, rainwater harvesting, and smart home technologies to reduce operational costs and promote sustainability. Developers can avail themselves of incentives under the Ministry of New and Renewable Energy's programs, such as the [Solar Rooftop Scheme](#). Some states, such as Maharashtra, offer discounted [electricity](#) tariffs for developments incorporating solar power.

The other benefit such as capital gain deductions and opportunity tax benefit wherein in specific designated zones offer tax incentives to investors who develop or improve properties within economically distressed communities are also available. Branded residences can also partner with utility providers to offer exclusive plans or promotions. For example, some branded residences offer complimentary or discounted services like water, gas, or internet. Others may include premium services like concierge-driven package delivery or on-site laundry facilities. The Indian government's initiatives, such as the Smart Cities Mission and AMRUT (Atal Mission for Rejuvenation and Urban

Transformation), also enable branded residences to integrate smart city features, enhancing residents' quality of life.

POOLING ARRANGEMENTS

A rental pooling arrangement is a financial strategy that enables developers to unlock capital and optimize financial performance. By selling a unit to a buyer and the buyer simultaneously agreeing to rent the unit to the developer, the developer can access funds tied up in their assets while retaining control and usage. Coupled with a hotel development, the developer includes them in the pool of hotel units managed by the hospitality brand and makes them available to guests through the hotel systems.

This model offers several benefits, including unlocking capital, off-balance-sheet financing, tax benefits, and flexibility. It allows developers to adapt to changing business needs while reducing debt on their balance sheet. For the buyers, it presents an opportunity to earn passive income through the units through having a share of the hotel revenues.

The structure of the rental pooling arrangement requires consideration so as to balance the concerns of the buyers and developers. Leases under Indian law create an interest in property that are enforceable against all third parties. On the other hand, licenses create a more limited personal right to enter upon and use property. The costs involved, including stamp duty and registration charges, would also depend on the nature of the right granted by the unit owner to the developer under the rental arrangement. The structure should also take into account the requirements of the hospitality brand as it would expect the pooled unit to be available for distribution on a consistent basis.

KEY REGULATORY ASPECTS/CONSIDERATION

1. **RERA:** The Real Estate (Regulation and Development) Act, 2016 (**RERA**) primarily governs real estate projects in India and its primary objective is to regulate the real estate industry, resolve the issues faced by buyers and bring transparency into the sector. However, its applicability to hotel developments can vary based on several factors:
 - a. **Nature of the project:** If the hotel development includes residential components (such as serviced apartments), it may fall under RERA. Purely commercial hotel projects typically do not.
 - b. **Registration requirements:** Developers of projects that are covered under RERA must register with the respective state RERA authority. If the hotel development involves selling units or shares in a co-ownership model, it may require registration.

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- c. **Contractual aspects:** Agreements for sale or lease involving hotel units may also bring in RERA provisions if they resemble real estate transactions. Upon review of the Additional [FAQs](#) issued by MahaRERA at question 6, it has been clarified that long term leases fall within the scope of RERA as the term allottee as defined in Section 2(d) of the RERA includes allottees of a plot, apartment or building “*has been sold (whether as freehold or leasehold) or otherwise transferred by the promoter*”.

While RERA is primarily focused on residential projects, certain hotel developments may be subject to its regulations, particularly if they include residential elements. Its applicability to branded residences involving rental pools needs consideration based on local norms and the model and documentation used for creation of the pool.

2. Laws applicable to hospitality

The laws applicable to hospitality sector can be broadly divided into three categories.

- a. The first category pertains to the laws related to the construction and commissioning of hotels, restaurants, guest houses, and similar establishments. This also includes the Foreign Exchange Management Act, industrial licensing policies, land regulations, zoning and various development control orders issued by central, state governments and local governments.
- b. The second category covers the laws for the operation, maintenance, and management of these establishments, along with food and hygiene standards including all licenses required to function the sector such as liquor licenses, eating house licenses etc.
- c. The third category focuses on taxes and employment. This includes laws related to income tax, service tax, property tax, expenditure tax, excise duty, luxury tax, and entertainment tax, as well as employment regulations like the Apprentice Act and the Employees' State Insurance Act.

There may be ambiguities regarding the applicability of such laws for branded residences under pooling arrangements, given that the line between the use of the unit for a residential development and a hospitality development is blurred.

Another critical aspect to consider is the difference of treatment under laws applicable to construction, property taxes and costs of utilities between residential and commercial developments. Especially in developments where the residential units are pooled with the hotel units, determining the actual user of the units and therefore the norms to be followed may prove challenging.

CONCLUSION

Branded residences represent a new frontier in luxury living, where the boundaries between hospitality and real estate are uncertain.

The integration of high-end amenities and services in branded residences enhances the overall living experience. The careful planning of these facilities, supported by favorable zoning laws and other incentives, ensures that residents enjoy a holistic luxurious lifestyle. This approach not only helps branded residences stand out in a competitive market but also fosters a sense of community among residents, ultimately driving demand and maintaining high occupancy rates in an increasingly discerning real estate landscape.

However, regulatory clarity on applicable laws for branded residences in India is crucial for the sector's growth. While RERA along with other laws and regulations provides a broad framework for such developments, ambiguities still exist, especially with pooling arrangements involved. By addressing these challenges, branded residences will foster an attractive investment environment while safeguarding the interests of buyers.

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