

REGULATORY FRAMEWORK FOR FRACTIONAL OWNERSHIP OF PROPERTY: EVALUATING SEBI'S RECENT AMENDMENT AND COMPLIANCE REQUIREMENT

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ABSTRACT

In recent years, the concept of fractional ownership has gained significant traction as an alternative approach to property ownership or real estate investment. Fractional ownership allows individual investors to *co-own commercial or residential properties* as an alternative investment route. According to this concept, Properties are acquired through Special Purpose Vehicles (SPVs) or Fractional Ownership Platforms (FOPs), with investments typically directed towards pre-leased assets, ensuring monthly rental returns for investors. However, in India the concept of fractional ownership is regulated by various SEBI regulations and different legal frameworks. The Real Estate (Regulation and Development) Act, 2016 (RERA) had provided a regulatory framework for Real Estate Investment Trusts (REITs). It aims to *protect the interests of buyers* by ensuring transparency, fair practices, and timely delivery of projects. However, the focus of the regulatory framework always revolved around large REITs with minimum real estate assets of at least 500 Crore Rupees. Therefore, in order to regulate small enterprises offering FOPs, recently, SEBI has notified amendments to the REIT Regulations to introduce a framework for *small and medium Real Estate Investment Trusts (SM REITs)* on March 8, 2024. This research paper therefore, aims to explore the legal implications revolving around the concept of fractional ownership, and how does the recent SEBI amendments address the specific challenges faced by fractional ownership platforms along with the compliance requirements for SPVs and FOPs under the SEBI regulations and other relevant laws, lastly, whether these regulatory frameworks ensure investor protection and transparency in fractional ownership schemes?

KEY WORDS: Fractional Ownership, SEBI (Real Estate Investment Trusts) Regulations, 2014 (2024 Amendment Regulations).

INTRODUCTION

The concept of fractional ownership is rapidly gaining huge popularity in the realm of real estate sector. Fractional ownership is an innovative model wherein the property is jointly owned by a group of individuals, and each individual is the co-owner of the property as all of them have ownership over a fraction of the property. It can also be termed co-ownership or shared ownership. This concept is gaining importance because it allows diversification,

and accessibility to high-value properties to the small and medium investors who does not possess high capital and risk appetite to deal with the fluctuating value of properties. This model enables these investors to diversify their portfolios and gain access to lucrative real estate opportunities.

The Fractional ownership Platforms (herein after referred to as FOPs) plays a pivotal role in this process. Normally, the FOPs provide fractional ownership opportunity through their web-based

platforms. They identify the real estate opportunity and list it on their web-based platforms. The users can give their *expression of interest* on the listed property based on their acumen, and once the FOP receives full expression of interest over their property, they circulate a private placement offer to the users who specified their expression of interest, to subscribe to the securities to be issued for the property. The FOPs in this case, acts as a manager or the operator and thus, charges their management fees. However, this structure also possesses a lot of irregularities, raising concerns about transparency, investor protection, grievance redressal of the investors, maintenance costs and management fees charged by the FOPs.

Pursuant to these irregularities, the Securities and Exchange Board of India (herein after referred to as SEBI) amended the existing regulations and thus enacted, SEBI (Real Estate Investment Trusts) Regulations, 2014 (2024 Amendment Regulations). Therefore, this article aims to evaluate the recent SEBI (Real Estate Investment Trusts) Regulations, 2014 (2024 Amendment Regulations) in relation to safeguarding investors into fractional ownership, and different mechanisms available to protect the rights and interests of fractional property owners, along with a comparison of global standards practices in major markets like USA, UK and among others. This article will also delve into the future trends that are likely to emerge in the fractional ownership space.

EVALUATION OF SEBI'S RECENT AMENDMENT

The recent Amendment Regulations has introduced a new chapter in the REIT Regulations which will now regulate the formation and governance of REITS and has increased its scope and ambit to include small and medium nature of REITS (SM REITS). Therefore, REIT is now defined as a person that pools INR 50 crore or more for the purpose of issuing units to a minimum of 200 investors in order to acquire and manage real estate

assets.²⁴³⁹ This amendment was intended to make commercial real estate more *accessible* for retail investors and provide *institutional support* to invest in fractional real estate.

1. CHANGES IN THE REGISTRATION PROCESS
SEBI has now provided a structured application process to obtain registration as a SM REITS. In this process SEBI will review the application²⁴⁴⁰ to ensure the applicant meets all eligibility criteria²⁴⁴¹ which will also involve verifying the financial stability, management capabilities, and adherence to legal requirements of the SM REIT. This stringent registration process, *according to the author*, will ensure that only credible and financially stable entities can qualify as SM REITS. This vetting process by SEBI will act as a safeguard against fraudulent or incompetent operators entering the market. *Additionally*, the detailed application and eligibility criteria will promote transparency in the operations of SM REITS. Investors can trust that registered SM REITS have undergone thorough scrutiny and are compliant with regulatory standards. Therefore, it will enhance investors' confidence, promote market transparency, and maintain the integrity of the real estate investment sector.

2. CONDITIONS PERTAINING TO INITIAL OFFER OF SCHEME BY SM REIT

The Amendment Regulations prescribe several conditions for the initial offer of a scheme by an SM REIT. It mandated the minimum price of each unit of the SM REIT to be INR 10 lakhs²⁴⁴² or an amount prescribed by SEBI and the value of the real estate assets proposed to be acquired in each scheme to be at least INR 50 crore.²⁴⁴³ Furthermore, the investment manager needs to file the draft scheme with SEBI through a

²⁴³⁹ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 2 (1) (zm) (effective Mar. 8, 2024).

²⁴⁴⁰ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024 § 26(I) (effective Mar. 8, 2024).

²⁴⁴¹ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26(J) (effective Mar. 8, 2024).

²⁴⁴² Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 (R)(3) (effective Mar. 8, 2024).

²⁴⁴³ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 R (5) (effective Mar. 8, 2024).

merchant banker.²⁴⁴⁴ It also prescribed that the draft scheme filed with SEBI must be made public for inviting comments by hosting it on the websites of SEBI, designated stock exchanges, and merchant bankers for not less than 21 days.²⁴⁴⁵ Therefore, by involving SEBI and merchant bankers, and addressing public and regulatory comments, the scheme has incorporated multiple layers of review and scrutiny, thus protecting investors from potential fraud and mismanagement. Additionally, by demonstrating a rigorous and transparent process, the scheme promotes confidence among investors and stakeholders in the market, potentially leading to higher participation and investment inflows. Overall, the prescribed conditions provide a stringent framework that promotes transparency, regulatory compliance, and investor protection, thereby enhancing the credibility of SM REITs in the market.

3. INVESTMENT CONDITIONS

SEBI has also detailed strict regulatory conditions for SPVs²⁴⁴⁶ and FOPs for investing in the assets. The **SPV** of the SM REIT must exclusively own all assets acquired or proposed to be acquired by the SM REIT's scheme of which the SPV is the wholly owned subsidiary.²⁴⁴⁷ The SM REIT's scheme is mandated to invest at least 95% of the value of its assets in completed and revenue-generating properties, it is prohibited from investing in under-construction or non-revenue-generating real estate assets.²⁴⁴⁸ However, up to five per cent in value of the scheme's assets can be invested in unencumbered liquid assets such as investment in mutual fund, fixed deposit etc. Additionally, the SM REIT's scheme is restricted from lending to entities other than its SPV, while the SPV itself is prohibited from lending to any

entity.²⁴⁴⁹ These requirements will ensure a clear and uncontested ownership of assets, and potential disputes over asset ownership. This exclusivity of ownership over assets will help in maintaining the integrity and independence of the SM REIT's asset portfolio. Furthermore, the lending restrictions will prevent the diversion of funds and will ensure that the investments remain within the core business of real estate. This focus on asset ownership and management rather than lending activities reduces the risk of default and financial mismanagement. However, it limits the financial flexibility of the SM REIT and its SPV, which could be a disadvantage in scenarios where strategic lending could provide financial or operational benefits.

It could be concluded that the proposed amendments would benefit the retail investors who primarily invest through FOPs as these amendments provide a more transparent and accountable framework, through a strong institutional support of SEBI through its thorough registration and stringent due diligence procedure. However, the recent regulations and the operating framework of FOPs also raises certain concerns that might affect the rights of stakeholders in the real estate sector.

DRAWBACKS OF THE RECENT AMENDMENTS

The regulations mandating a three to four year of lock-in period²⁴⁵⁰ for the investment manager's minimum unitholding in SM REITs can have several implications for *liquidity and transferability* in the real estate market. Fractional ownership receives traction because it gives investors an opportunity to invest in real estate with less capital and high liquidity in comparison to traditional investments. Long lock-in periods can potentially discourage investors who are looking for investments with higher liquidity. This could limit the attractiveness of SM REITs as an alternative investment platform. *Additionally, Regulation*

²⁴⁴⁴ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 Q (effective Mar. 8, 2024).

²⁴⁴⁵ *Id.*

²⁴⁴⁶ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 (H) (F) (effective Mar. 8, 2024).

²⁴⁴⁷ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 T (1) (effective Mar. 8, 2024).

²⁴⁴⁸ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 T (2) (effective Mar. 8, 2024).

²⁴⁴⁹ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 T (3) (effective Mar. 8, 2024).

²⁴⁵⁰ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 ZB (effective Mar. 8, 2024).

26ZB (6) mandates that the investment manager holds a certain percentage of units unencumbered and locked-in for extended periods.²⁴⁵¹ This restriction could hamper the transferability of these units, as they cannot be sold or pledged during the lock-in period. It reduces the flexibility of the investment manager to manage their portfolio dynamically based on market conditions.

Furthermore, the clause that the scheme offer shall not provide for any guaranteed returns to investors²⁴⁵² can also raise several concerns among the investors. Investors often seek some level of assurance on their returns, especially in a relatively new or complex investment mechanism such as the one offered through SM REITS. The absence of providing any kind of guaranteed returns at the initial stages might deter investors especially those unfamiliar with real estate investments or fractional ownership models, and to build a kind of trust and confidence among the investors.

Additionally, the concept of fractional ownership in itself involves numerous concerns and issues that can significantly cause an impact on its viability and profitability, especially in India, involving different land laws in each state, huge number of pending litigation suits concerning property.

CONCERNS OVER FRACTIONAL OWNERSHIP MODEL IN INDIA

One of the primary issues raising concerns surrounding fractional ownership is the shared decision-making process. When multiple parties own a single property, reaching an agreement on essential matters can be challenging. Additionally, selling fractional shares involves more complex legal and administrative processes compared to selling an entire property. Therefore, it can deter potential buyers due to the risk of being involved in a complex legal procedure. Along

with that, determining the value of fractional shares will become a more complicated task than valuing a whole property, as it depends on various factors including the share size, property value, and the terms of the ownership agreement. Thus, uncertainty in valuation can lead to prolonged negotiations and potential disputes, making the selling process more cumbersome and tedious.

Moreover, the legal landscape in India adds another layer of complexity to fractional ownership. India's real estate market is governed by huge number of laws and regulations, which also varies significantly across different states. These diverse regulations can create legal ambiguities and increase the risk of litigation, making the process of managing and selling fractional ownership shares more challenging. The high number of pending litigation suits concerning property disputes in India exacerbates this issue, adding to the uncertainty and risk for investors.

The lack of standardized regulations for fractional ownership also contributes to the problem. While SEBI's recent amendments aim to address some of these concerns by providing a more structured regulatory framework for SM REITs, the broader issue of regulatory inconsistency across different states remains unresolved. This regulatory fragmentation can create a challenging environment for investors, who must navigate not only the complexities of fractional ownership but also the varying legal requirements across different jurisdictions.

Therefore, while fractional ownership offers an innovative approach to real estate investment, providing access to high-value properties for smaller investors, the model is currently hindered by significant challenges. These include the complexities of shared decision-making, legal and administrative hurdles in selling fractional shares, difficulties in valuation, and the intricate legal landscape in India. Addressing these issues through standardized regulations and enhanced investor education

²⁴⁵¹ Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26 ZB (6) (effective Mar. 8, 2024).

²⁴⁵² Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, § 26S (4) (effective Mar. 8, 2024)

will be crucial for the model's success and wider adoption in the Indian real estate market.

COMPARISON WITH THE FRAMEWORKS IN OTHER JURISDICTIONS

A comparative examination of jurisdictions where fractional real estate investment is already institutionalised reveals that while India's SM-REIT framework is a significant regulatory step, other markets provide clearer investor safeguards, deeper disclosure regimes, and more mature jurisprudence governing collective real estate investment structures. These jurisdictions demonstrate that the effectiveness of fractional investment systems depends not merely on statutory recognition, but on the integration of securities regulation, fiduciary governance, valuation supervision, and enforceable investor remedies.

United States

The United States represents the most sophisticated and jurisprudentially developed market for pooled real estate investment. Fractional ownership arrangements function primarily through REITs, private real estate syndications, and tenancy-in-common investment vehicles, all of which are governed by the combined operation of tax law and securities regulation. The REIT regime is anchored in the Internal Revenue Code §§ 856–860, which confers tax pass-through status subject to strict requirements relating to asset composition, income sources, and mandatory distribution of at least ninety per cent of taxable income. This tax structure incentivises income transparency and prevents profit retention that could obscure investor returns.

Parallely, securities regulation under the Securities Act of 1933 and the Securities Exchange Act of 1934 ensures that REIT units and similar fractional real estate instruments are treated as securities. Registration requirements, periodic reporting, and anti-fraud provisions create a continuous disclosure ecosystem rather than a one-time compliance obligation. Public REITs must disclose asset valuations,

rental income streams, leverage exposure, and management risks through ongoing filings, allowing investors to assess the economic substance of the investment beyond the initial offering stage.

Judicial doctrine plays a foundational role in preventing regulatory avoidance. In *SEC v. W.J. Howey Co.*, the Supreme Court established that any investment scheme involving pooled capital and expectation of profits derived from managerial efforts constitutes a security. This principle has allowed courts and regulators to treat innovative real estate ownership arrangements as securities irrespective of their contractual form. Subsequent securities litigation, including *In re Washington Mutual Securities Litigation*, reaffirmed that misstatements regarding asset valuation, rental projections, or risk exposure in pooled property vehicles may amount to securities fraud. The American framework therefore demonstrates how definitional clarity, continuous disclosure, and enforceable liability collectively sustain investor trust and market depth in fractional real estate investments.

United Kingdom

The United Kingdom regulates collective real estate investment through a hybrid framework combining securities oversight, trust-law supervision, and prudential governance requirements. The Financial Services and Markets Act 2000 forms the core statutory basis, while the REIT regime introduced by the Finance Act 2006 provides tax neutrality and structural requirements for listed property investment vehicles. Oversight by the Financial Conduct Authority ensures that real estate funds comply with conduct of business rules, disclosure norms, and governance expectations tailored to retail investor protection.

A distinctive feature of the UK system is the institutionalisation of independent oversight mechanisms. Property investment funds must appoint depositaries responsible for monitoring asset custody, ensuring compliance with investment restrictions, and supervising

valuation procedures. Independent valuation requirements prevent conflicts of interest between managers and investors, thereby addressing one of the central risks of fractional ownership—asset mispricing. This governance model embeds accountability directly into the structure of the investment vehicle rather than relying solely on post-factum enforcement.

Judicial interpretation reinforces these regulatory safeguards by emphasising disclosure and advisory responsibility. In *JP Morgan Chase Bank v. Springwell Navigation Corp.*²⁴⁵³ the Court of Appeal highlighted that financial intermediaries marketing structured investment products must provide adequate risk disclosure, particularly where the investor relies on the intermediary's expertise. Although the case concerned complex financial instruments rather than property funds alone, its doctrinal influence extends to collective investment schemes, shaping FCA expectations regarding investor communication and fiduciary standards. The UK approach thus illustrates how layered supervision, combining regulatory oversight, independent asset monitoring, and judicially recognised disclosure duties, creates a more robust environment for pooled real estate investment than frameworks focused primarily on entry thresholds.

Singapore

Singapore offers one of the most tightly regulated and investor-confidence-oriented REIT regimes in Asia. Real estate investment vehicles operate under the Securities and Futures Act and the Code on Collective Investment Schemes, administered by the Monetary Authority of Singapore. The regulatory philosophy underlying Singapore's system prioritises structural prudence and investor protection through enforceable governance norms rather than reliance on market discipline alone.

Singapore REITs are subject to leverage caps, mandatory income distribution rules, and strict

valuation procedures requiring independent professional appraisals. Additionally, each REIT must appoint an independent trustee responsible for safeguarding investor interests, monitoring compliance with investment mandates, and ensuring proper custody of assets. This trustee-centric model addresses the agency risks inherent in fractional ownership by creating a legally accountable intermediary whose role is specifically to protect unit holders.

Judicial enforcement in Singapore complements this regulatory framework by emphasising transparency and accountability in investment arrangements. In *Re Lippo Marina Collection Pte Ltd*, the High Court stressed the importance of accurate valuation and disclosure in structured investment schemes, reinforcing the expectation that investment vehicles must present a truthful economic picture to investors. Singapore's experience demonstrates that combining prudential regulation, trustee oversight, and judicial insistence on valuation integrity can produce a high-trust market environment where retail participation in real estate investment becomes viable and sustainable.

Australia

Australia regulates pooled property investment through Managed Investment Schemes under the Corporations Act 2001, supervised by the Australian Securities and Investments Commission. This framework integrates licensing requirements, governance duties, disclosure obligations, and enforcement mechanisms within a single statutory structure, thereby reducing regulatory fragmentation.

Every managed property scheme must appoint a responsible entity holding an Australian Financial Services Licence. This entity is legally obligated to act in the best interests of investors, maintain scheme property separately from its own assets, and ensure compliance with statutory disclosure requirements. The requirement of asset segregation and fiduciary responsibility directly addresses risks

²⁴⁵³ *J.P. Morgan Chase Bank v. Springwell Navigation Corp.* [2010] EWCA (Civ) 1221,

associated with commingling of funds and mismanagement concerns often raised in emerging fractional ownership markets.

Australian jurisprudence has actively reinforced the importance of transparency in pooled property investments. In *Australian Securities and Investments Commission v. Westpoint Group*, courts confirmed that complex investment structuring cannot be used to bypass disclosure obligations and that promoters owe strict duties of honesty and completeness in investor communication. The decision strengthened ASIC's enforcement authority and signalled that regulatory compliance must reflect substantive investor protection rather than formal adherence to documentation requirements. Australia's model therefore illustrates how integrated statutory duties, licensing supervision, and judicial enforcement together produce a coherent regulatory environment capable of sustaining large-scale retail participation in fractional real estate investment.

INTEGRATION OF FOREIGN REGULATORY PRINCIPLES INTO THE INDIAN FRACTIONAL OWNERSHIP FRAMEWORK

A comparative analysis of mature real estate securitisation regimes suggests that India's challenge is not the absence of regulation, but the limited depth of supervisory architecture surrounding fractional ownership platforms. While the SM-REIT framework establishes eligibility thresholds, investment conditions, and disclosure requirements, it does not yet embed the structural governance mechanisms or doctrinal clarity that characterise more developed markets. The experiences of the United States, United Kingdom, Singapore, and Australia indicate that meaningful reform in India may lie less in expanding statutory provisions and more in importing certain institutional design principles that enhance enforceability, investor confidence, and market liquidity.

One of the most transferable lessons from the United States is the doctrinal clarity surrounding

what constitutes a security. The Howey principle, which treats any pooled investment expecting profit from managerial efforts as a security, has allowed American regulators to capture innovative real estate schemes within securities regulation irrespective of contractual form. India's regulatory approach to fractional ownership remains largely platform-based and compliance-driven, focusing on whether a structure falls within the SM-REIT category rather than articulating a broader doctrinal test for pooled real estate investment. A statutory clarification either through SEBI regulations or judicial interpretation that fractional property schemes are presumptively securities when investor returns depend on managerial control could significantly reduce regulatory arbitrage. Such a principle would ensure that emerging ownership models cannot evade investor protection norms by adopting hybrid contractual forms.

From the United Kingdom, the most significant lesson lies in institutional supervision rather than definitional expansion. The UK's use of independent depositaries and valuation oversight bodies ensures continuous monitoring of pooled property investments beyond the initial registration stage. India's SM-REIT framework mandates disclosure and asset restrictions but does not yet embed an independent supervisory actor tasked specifically with safeguarding investor interests. Introducing a mandatory trustee or depositary structure similar to UK property funds or Singapore REIT trustees could address concerns regarding asset mispricing, conflicts of interest, and fund diversion. Such an intermediary would function not merely as a custodian, but as a fiduciary watchdog ensuring compliance with investment mandates and protecting minority investors.

Singapore's experience provides a model particularly relevant for India's retail-oriented fractional ownership market. Singapore's REIT regime emphasises prudential limits on leverage, mandatory distribution rules, and independent valuation protocols designed to

produce predictable income streams and transparent asset assessment. India has already adopted distribution requirements within the REIT framework, yet the valuation ecosystem remains comparatively underdeveloped, with limited institutionalisation of periodic independent appraisal mechanisms. Borrowing from Singapore's model, India could strengthen investor protection by mandating recurring third-party valuation certification, enhanced disclosure of rental yield assumptions, and stricter reporting on occupancy and income sustainability. These measures would directly address one of the most persistent risks in fractional ownership platforms: the opacity of projected returns.

Australia's framework offers perhaps the most structurally adaptable model for India because of its integrated statutory approach to managed investment schemes. Australia's requirement that each scheme appoint a licensed responsible entity bound by statutory fiduciary duties ensures that managerial accountability is not merely contractual but legally enforceable. India's SM-REIT structure imposes obligations on investment managers, yet the absence of a statutorily designated fiduciary entity acting exclusively in the interests of investors limits enforcement clarity. Introducing a concept analogous to the Australian "responsible entity" could provide a single legally accountable focal point for compliance, investor grievance redressal, and regulatory oversight. Such an approach would also simplify enforcement by allowing regulators to pursue a clearly defined supervisory entity rather than navigating layered corporate structures.

Another transplantable principle emerging across all examined jurisdictions is the emphasis on continuous disclosure rather than pre-offer transparency alone. In India, much of the regulatory scrutiny is concentrated at the stage of registration, scheme approval, and initial disclosure. By contrast, mature markets treat investor protection as an ongoing obligation requiring periodic reporting on asset

performance, income realisation, debt exposure, and governance risks. SEBI could consider expanding SM-REIT reporting requirements to include more granular periodic disclosures, stress-testing scenarios for asset performance, and clearer reporting on conflicts of interest between platform operators, managers, and associated entities. Such reforms would align India's framework with the disclosure-centric enforcement model that underpins investor trust in developed markets.

However, the adoption of foreign regulatory principles must also be sensitive to India's structural constraints. Fragmented land laws, state-specific registration systems, and prolonged property litigation create uncertainties that are less pronounced in jurisdictions with unified property registries and faster dispute resolution systems. Therefore, while governance mechanisms, disclosure norms, and fiduciary accountability structures are transferable, India must adapt them to account for its federal land regime and judicial delays. Institutional innovations such as specialised real estate dispute resolution mechanisms or mandatory title insurance for SM-REIT assets could complement imported regulatory principles and ensure their effective functioning within the Indian context.

Ultimately, the comparative experience suggests that India does not require a fundamentally new statutory regime for fractional ownership. Instead, it requires deeper institutionalisation of governance safeguards, stronger doctrinal clarity regarding the securities nature of pooled property investments, and enhanced enforcement tools to ensure compliance beyond initial registration. By selectively incorporating supervisory models such as trustee oversight, responsible entity accountability, periodic independent valuation, and continuous disclosure obligations, India can transform its SM-REIT framework from a threshold-based regulatory structure into a mature investor-protection ecosystem capable of sustaining

long-term growth in fractional real estate investment.

REFORM PROPOSALS AND THE FUTURE TRAJECTORY OF FRACTIONAL OWNERSHIP REGULATION IN INDIA

While the introduction of the Small and Medium Real Estate Investment Trust (SM-REIT) framework marks a progressive regulatory shift in formalising fractional ownership within India's capital market ecosystem, the sustainability and credibility of this model will ultimately depend upon deeper structural reforms. The current framework primarily establishes eligibility thresholds, investment restrictions, and disclosure requirements; however, comparative regulatory experience demonstrates that long-term investor confidence in pooled real estate vehicles requires institutionalised fiduciary oversight, doctrinal clarity in securities classification, standardized valuation governance, enhanced liquidity architecture, and efficient dispute resolution mechanisms. Accordingly, strengthening the Indian fractional ownership regime demands a transition from a compliance-centric model to a governance-intensive regulatory architecture.

At the outset, there is a pressing need for doctrinal clarification regarding the securities character of fractional ownership schemes. Although the SM-REIT framework regulates qualifying entities, the broader legal landscape still permits hybrid structures that may attempt to position themselves outside formal securities regulation through contractual drafting innovations. The absence of an explicit statutory or judicial test defining when a pooled real estate arrangement constitutes a "security" creates scope for regulatory arbitrage. Drawing inspiration from the substance-over-form doctrine adopted in mature jurisdictions, SEBI may consider introducing a clarificatory regulatory provision stating that any pooled real estate arrangement in which investors contribute capital with an expectation of profit derived substantially from the managerial

efforts of a platform, sponsor, or investment manager shall be deemed a security. Such recognition would align fractional ownership squarely within the domain of securities regulation and prevent platform operators from circumventing compliance obligations by structuring arrangements as co-ownership agreements or private contractual syndications. Doctrinal clarity would not only enhance enforcement consistency but also strengthen judicial interpretation in cases involving misrepresentation, valuation inflation, or investor grievance claims.

Further, the regulatory framework would benefit from the institutionalisation of an independent fiduciary oversight mechanism. While the SM-REIT model prescribes obligations for investment managers and mandates structural compliance, it does not embed a statutorily designated supervisory intermediary whose exclusive function is to safeguard investor interests. The inherent agency problem in fractional ownership arises from the separation between ownership (unit holders) and control (investment managers or platform operators). In the absence of continuous monitoring, risks of related-party transactions, inflated acquisition pricing, preferential leasing arrangements, or diversion of funds may persist. Introducing a mandatory independent trustee or depositary structure for SM-REIT schemes could significantly mitigate such risks. This entity, operating under fiduciary duties enforceable by law, would be responsible for supervising compliance with investment mandates, overseeing custody of assets, approving related-party transactions, and ensuring that distribution policies are adhered to in substance and not merely in form. Embedding fiduciary accountability within the structural framework would elevate investor protection from disclosure-based reliance to active oversight.

Another critical reform concerns valuation transparency and standardisation. Fractional ownership platforms frequently market projected rental yields and asset appreciation forecasts, yet the absence of uniform valuation

protocols creates asymmetry between sponsor representations and economic reality. Although regulatory filings require certain disclosures, the establishment of mandatory periodic independent third-party valuation certifications would substantially enhance transparency. Bi-annual or annual valuation audits conducted by accredited professionals, coupled with standardized disclosure templates detailing occupancy rates, lease expiry concentration, tenant creditworthiness, debt exposure ratios, and capital expenditure commitments, would provide investors with a more realistic assessment of asset performance. Standardisation would also reduce the scope for yield inflation or optimistic projections designed to attract retail participation. By institutionalising recurring valuation supervision rather than relying solely on initial offer disclosures, SEBI would align fractional ownership governance with global best practices in collective investment regulation.

Liquidity architecture constitutes another domain requiring careful recalibration. Fractional ownership derives much of its attractiveness from the perception of greater accessibility and flexibility compared to traditional real estate investments. However, mandatory lock-in requirements and the absence of structured exit mechanisms may undermine this advantage. While lock-in provisions are designed to ensure managerial commitment and market stability, excessive rigidity could deter participation and reduce market dynamism. To reconcile stability with flexibility, SEBI, in coordination with recognized stock exchanges, could explore the development of a regulated secondary trading mechanism exclusively for SM-REIT units. Periodic liquidity windows, auction-based trading platforms, or designated market-makers could facilitate orderly exit opportunities without compromising regulatory oversight. Establishing such a structured secondary market would enhance price discovery, improve transparency in unit valuation, and strengthen investor confidence in long-term participation.

Equally significant is the challenge posed by India's fragmented land administration and protracted property litigation landscape. Fractional ownership investments are intrinsically dependent on the integrity of underlying title, enforceability of lease agreements, and absence of encumbrances. Given the high volume of pending property disputes across Indian courts and the variation in state-specific land laws, systemic uncertainty continues to pose a risk to pooled property investments. To mitigate this structural vulnerability, regulatory reform could mandate comprehensive title due diligence certifications and compulsory title insurance for assets acquired under SM-REIT schemes. Additionally, the establishment of specialized commercial benches or fast-track dispute resolution mechanisms for real estate investment disputes would reduce enforcement delays. Incorporating mandatory institutional arbitration clauses supervised by recognized arbitration centers may further expedite resolution and preserve investor confidence. By addressing property law inefficiencies alongside securities regulation, the framework would adopt a holistic approach to risk mitigation.

Finally, investor education and risk communication must be strengthened to complement regulatory safeguards. The prohibition on guaranteed returns, though prudent from a prudential perspective, may generate uncertainty among retail participants unfamiliar with real estate securitisation models. Rather than relaxing prudential safeguards, SEBI could introduce a standardized risk classification framework similar to mutual fund risk-o-meter systems. Each SM-REIT scheme could be assigned a risk category based on leverage levels, tenant concentration, asset type, geographic exposure, and income volatility. Additionally, mandatory stress-testing disclosures illustrating potential downside scenarios would enhance informed consent. Such calibrated disclosure reforms would

empower investors to assess risk objectively while preserving regulatory integrity.

In sum, the future trajectory of fractional ownership regulation in India must move beyond threshold compliance towards institutional maturity. Doctrinal clarification of securities classification, fiduciary trustee oversight, periodic independent valuation mandates, structured liquidity mechanisms, strengthened dispute resolution architecture, and standardized risk communication collectively form the foundation of a resilient governance ecosystem. By integrating these reforms within the existing SM-REIT framework, India can transform fractional ownership from an emergent financial innovation into a structurally sound, investor-centric investment model capable of sustaining long-term retail participation and deepening capital market development.

CONCLUSION

In conclusion, the recent amendments introduced by SEBI to regulate small and medium Real Estate Investment Trusts (SM REITs) represent a significant step towards enhancing transparency, investor protection, and the overall credibility of the fractional ownership model in India. By imposing stringent registration processes, detailed disclosure requirements, and rigorous investment conditions, SEBI aims to create a more secure and trustworthy environment for retail investors. These measures are designed to mitigate the risks associated with fractional ownership, such as mismanagement, fraudulent activities, and lack of transparency, thereby fostering greater confidence among investors. These safeguards collectively enhance transparency and reduce the probability of fraudulent or opportunistic platform behaviour. In doing so, SEBI has successfully shifted fractional ownership from an informal digital aggregation model to a regulated capital market instrument.

The introduction of the Small and Medium REIT (SM-REIT) framework by SEBI represents not merely an incremental regulatory amendment,

but a structural acknowledgment of the growing securitisation of real estate assets. By extending institutional oversight to smaller pooled property vehicles, SEBI has attempted to formalize a rapidly expanding investment ecosystem that previously operated in regulatory grey zones.

However, despite these regulatory advancements, several challenges and concerns persist. The mandated lock-in periods for investment managers, although intended to ensure stability and commitment, could potentially reduce liquidity and transferability, which are key attractions of fractional ownership. The prohibition on guaranteeing returns might also deter cautious investors seeking some level of assurance, thereby impacting the initial uptake of SM REITs. Moreover, the intrinsic complexities of the fractional ownership model, such as shared decision-making, valuation difficulties, and the intricacies of navigating India's diverse land laws, pose additional hurdles to its widespread adoption and profitability. And regulatory recognition alone does not ensure systemic stability. The SM-REIT regime, while commendable, remains threshold-based rather than governance-intensive. Its focus is primarily on entry conditions and structural compliance, whereas mature jurisdictions embed deeper fiduciary supervision, independent valuation oversight, continuous disclosure obligations, and enforceable investor remedies. Without these layered protections, India's framework risks remaining procedurally compliant but substantively under-protected.

The principal tension within fractional ownership lies in its dual identity: it is simultaneously a property arrangement and a securities instrument. Indian regulation has historically treated property law and securities law as distinct domains. Yet fractional platforms collapse this distinction by transforming immovable property into tradeable investment units dependent on managerial effort. Recognizing this hybrid nature is essential for doctrinal clarity and enforcement coherence.

Moreover, the long-term viability of fractional ownership in India depends not only on securities regulation but also on addressing structural inefficiencies in land administration, title verification, and property dispute resolution. Regulatory reforms must therefore operate at the intersection of capital markets governance and property law modernization.

To address these issues, it is crucial for regulatory bodies to continually refine the framework, incorporating feedback from stakeholders and adapting to the evolving market dynamics. Furthermore, building investor education and awareness about the benefits and risks of fractional ownership can help in fostering a more informed and confident investment community. Overall, while the regulatory framework for fractional ownership in India shows promise, ongoing efforts and adjustments are essential to fully realize its potential as a viable and attractive investment option. If strengthened through institutional innovations such as mandatory trustee oversight, periodic independent valuation mandates, enhanced continuous disclosure norms, secondary market liquidity mechanisms, and specialized dispute resolution pathways the SM-REIT regime can evolve into a globally competitive regulatory model. Such reforms would shift the framework from reactive compliance to proactive investor protection.

Fractional ownership, when properly regulated, has the potential to democratize access to commercial real estate, deepen capital markets, and channel retail savings into productive asset classes. However, democratization without governance risks financial fragility. The true success of India's fractional ownership model will therefore depend not merely on expanding participation, but on embedding structural safeguards that ensure transparency, accountability, and enforceable rights.

In essence, SEBI's 2024 amendments mark the beginning of institutionalization—not its culmination. The next phase of reform must

focus on transforming fractional real estate from an innovative financial product into a resilient, trust-based investment ecosystem capable of sustaining long-term retail participation and systemic stability.