

# Paradox of title insurance

## *A quick overview of what's what*



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A great paradox has come about in the area of title insurance. It should not have been difficult to foresee. The Real Estate Regulation & Development Act, 2016 (RERA) makes it obligatory for promoters to obtain insurance against any defect in their title/ownership rights to their projects. Yet, there are no takers for title insurance. At the time of

enactment of RERA, there was much hue and cry, simply because, back then, not a single insurance company offered such an insurance product. Three years thence, both public and private sector insurers have come up with title insurance. These include industry pundits such as New India Assurance, HDFC Ergo, Tata AIG General Insurance, National Insurance Company.

The Report Card, however, is far from impressive. As per recent media news, only HDFC Ergo has managed to sell title insurance to just about two developers. Perhaps there is a need to examine the causes of non-performance of title insurance and then fix them. Some of the most obvious reasons for the non-performance are discussed below.

### Costly Product

The premium of title insurance is based on the gross developed value (which includes value of land, cost of construction, and profit margin of the developer) and ranges from 0.5 pc to 3 per cent. Such a high premium is payable for a policy which typically covers a period of seven to 12 years. Existing promoters are wary of passing on the premium burden to their customers for the fear of breaching their contractual relationships; this may also impact the competitiveness of the prices of their flats.

It shall be unreasonable to expect a reduction in the insurance premium for various reasons:

- There is no credible manner of verifying the true owner of any property in India and the defects attached to his ownership;
- Government records are not properly maintained;
- The plot owners/sellers have a vested interest in not coming out clean;
- Revenue records have little evidentiary value for the purpose of proving ownership to any property is concerned and
- Property litigation and land disputes go undetected.

The Land Titling Bill which seeks to do away with most of these issues enumerated above has been languishing for years. The Bill adopts Torrens System of Title. Under Torrens System, the Government Register is the ultimate proof of ownership of land, and it is the Government which guarantees title of a party whose name appears in its Register. However, Rajasthan is the only state that has attempted to introduce Land Titling Bill that too without Government Guarantee, on a voluntary basis, and only in municipal areas. Since land is a state subject under the Constitution of India, the Bill may largely be ignored.

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- Rajasthan is the only state that has attempted to introduce Land Titling Bill that too without Government Guarantee, on a voluntary basis, and only in municipal areas.
- Title Insurance only covers past defects. One of the major concerns of landowners is future encroachment of their plot, which is excluded from title insurance.
- The principal issue that title insurance seeks to cover is litigation costs springing from past defects. However, there is no clarity as to when the costs shall be reimbursed.



Also, unlike scrips, there is no reliable source or data bank for property valuations. In these circumstances, even the re-insurers are not able to backup the insurance companies at feasible rates.

### Vital Exclusions

In spite of the high premium, title insurance, in its current form, does not cover two vital risks:

- (i) Title Insurance only covers past defects. One of the major concerns of landowners is future encroachment of their plot, which is excluded from title insurance;
- (ii) Title insurance also excludes stoppage of work on account of Government approvals.

### Ambiguity about risks

The principal issue that title insurance seeks to cover is litigation costs (including out-of-court settlement) springing from past defects. However, there is no clarity as to when the costs shall be reimbursed. Given the prolonged nature of our litigation, if the amounts are proposed to be reimbursed when the matter has reached finality, it shall be meaningless.

Although a committee has been set up for standardisation of title insurance policies, it may be a while before the product takes off. Till then, real estate shall continue to be high-risk sector. 🏠