

2019

# OPINION

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# ISSUES IN THE REAL ESTATE SECTOR OF PAKISTAN

**COMPETITION COMMISSION OF PAKISTAN**  
**GOVERNMENT OF PAKISTAN**

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The Competition Commission of Pakistan (the ‘**Commission**’) is mandated under the Competition Act, 2010 (the ‘**Act**’) to ensure free and fair competition in all spheres of commercial and economic activity. Under Section 29(c) of the Act the Commission is empowered to hold open hearing on any matter effecting the state of competition in Pakistan or effecting the country’s commercial activities and expressing publicly an opinion with respect to the issues.

The Commission after receiving number of concerns relating to the Real Estate Sector decided to hold Open Hearing in three major cities of Pakistan, i.e., Islamabad, Lahore and Karachi. The open hearings were attended by various stakeholders including customers, builders and relevant associations, property agents and their associations, Provincial Governments and Development Authorities of different cities.

This Opinion will provide a detailed insight into the issues raised by different stakeholders and the recommendation that the Commission has proposed for the Real Estate Sector in Pakistan.

## A. BACKGROUND

Significance of the real estate sector is a well-recognized phenomenon due to its crucial role in the development and growth of a country. The real estate market refers to all transactions carried out to attain rights or access to portions of land and buildings. Main segments of the real estate sector are residential real estate, commercial real estate and industrial real estate. The residential sector focuses on buying and selling of properties used as homes or for non-professional purposes. A well-organized real estate sector facilitates rapid and legitimate transfer and development of land, while ensuring that this process is also environmentally sound. Forbes,<sup>1</sup> in the year 2018 has listed Real Estate Sector as the one of the most profitable industry across the globe and Pakistan is no different than the rest of the world. The profitability quoted by Forbes in various fields of Real Estate Sector ranges from 10.08% to 14.1%.

1. While its importance is recognized globally, the real estate sector also holds an eminent status in Pakistan. It is linked with around 250 ancillary industries, including cement, brick, steel, timber and other building materials.<sup>2</sup> The construction sector particularly is considered a sub sector of the overall industrial sector of Pakistan, wherein its contribution currently amounts to 13.13 percent. Moreover, its share in the overall GDP of Pakistan was 2.74 percent in the FY16/17. The construction industry is playing a vital role in the socio-economic development of Pakistan. Additionally, it also employed 7.31 percent of the Pakistani workforce in the FY16/17.<sup>3</sup>
2. According to BMI Research's report, cited by Bloomberg deficit of housing units in Pakistan will boost construction activity due to urban population predicted to rise by 30 million till 2027. The construction sector was among the biggest beneficiaries of foreign direct investment (FDI) during first seven months of FY 2017-18, attracting over \$380 million as per data available from the State Bank of Pakistan.
3. Construction activities across Pakistan have provided employment opportunities to a large number of unskilled and skilled labor including certified civil, electrical and mechanical engineers and diploma holders. Other blue-collar skilled labor employed in related activities include steel fixers, plumbers, electricians, carpenters, and masons.
4. Pakistan construction industry is expanding rapidly, especially due to development of the China-Pakistan Economic Corridor (CPEC) and the rising trend of urbanization.<sup>4</sup> The construction sector observed a growth of 9.13 percent in FY17/18 and it also contributed considerably to the overall exports of Pakistan.<sup>5</sup> There is a shortage of housing and suitable

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<sup>1</sup> <https://www.forbes.com/pictures/feki45efjgh/no-13-activities-related/#3886875e69fb>  
<https://www.forbes.com/pictures/feki45efjgh/no-8-offices-of-real-est/#37f8c31d4ae3>  
<https://www.forbes.com/pictures/feki45efjgh/no-6-lessors-of-real-est/#17a9648d69a3>

<sup>2</sup> [http://www.commerce.gov.pk/Downloads/Real\\_Estate\\_Study.pdf](http://www.commerce.gov.pk/Downloads/Real_Estate_Study.pdf), page 03, para 03.

<sup>3</sup> Pakistan Economic Survey 2016-17, 'Overview of the Economy', page ix.

<sup>4</sup> Pakistan Real Estate Report (2017) – Executive Summary by Fitch Solutions

<sup>5</sup> Pakistan Economic Survey 2017-18, Chapter 01 – Growth and Investment, Page 04.

living space for most of the residents in urban areas like Karachi, Lahore, Faisalabad, Peshawar, Rawalpindi, etc. Therefore, numerous private, semi-government and public builders, developers and construction firms have undertaken several housing schemes, mixed-use high-rise buildings and so on to not only absorb the rising number of skilled and unskilled work force but also to provide suitable living conditions for them. This surge in demand has also caused a spike in sale prices as well as rents of the real estate property.

5. Planning Division of Pakistan believes that it will trigger a boom in real estate and the property market is likely to experience multi-fold increase in the existing volume of commercial and residential projects in the forthcoming years. Due to unregulated nature of the sector, official figures are hard to be found but real estate experts estimate the existing monetary value of real estate assets to be anywhere between \$300 to \$700 billion. In the last five years, there has been a growth of around 118% due to launch of numerous high end real estate projects.
6. Importance of this sector in Pakistan is evident, however, a number of issues have been observed, primarily due to its dynamic nature and absence of an effective legal and regulatory framework.
7. The Commission has also been receiving number of complaints from various stakeholders regarding the real estate sector. The complaints have not only been relevant to competition issues, but they are extended to various issues relating to other segments of the economy and government.
8. Recognizing the economic impact and significance of this sector along with the significant inflow of concerns raised with the Commission pertinent to this sector, the Commission deemed it appropriate to hold hearings across the country to explore and identify various issues faced by different stakeholders in the real estate sector and devise a suitable way forward.
9. The Real Estate Sector, not limited to, essentially includes:
  - Buying and selling of property, including new build market (primary market) and secondary market.
  - Development of plots (Commercial and Residential).
  - Construction of buildings (Commercial Residential, Government offices, trading places)
  - Rental management of buildings.
10. This sector directly and indirectly effects various segments of the economy. Key stakeholders of this sector include, *inter alia*, the following entities:
  - a) Customers
  - b) Investors

- c) Builders
- d) Property Developers
- e) Real Estate Agents
- f) Skilled and Unskilled Labour
- g) Marketers
- h) Housing Societies
- i) Financial Sponsors
- j) Environmentalist
- k) Development Authorities
- l) Tax Authorities
- m) Tehsil/ Municipal Corporations

## **Pakistan's Real Estate Market Structure**

### **I. Public Sector**

#### *Development Authorities*

11. The Government of Pakistan established development authorities in major cities of Pakistan, such as Islamabad, Karachi, Lahore, etc., namely Capital Development Authority (CDA), Lahore Development Authority (LDA), Karachi Development Authority, (KDA), and so on. The objective of establishing these authorities was to provide quality public services and to preserve cultural and heritage dynamics of these major cities. The Tehsil Municipal Administrations (TMA) are performing the regulatory and development role in other smaller cities of Pakistan. The authorities, in addition to their development role, are also performing the regulatory role in their jurisdictions.

#### *Housing Foundations*

12. Federal Government Employees Housing Foundation have been established as a non-profit company registered under the Company Law and is working under the administrative control of the Federal Government. Main responsibility of the Foundation is to provide housing facilities to the federal government employees, but now it has been extended to the judicial officers and the media persons including few others.
13. Similarly Provincial Governments Housing Foundations have also been established by the respective provinces which are also operating to provide plots and constructed houses to the provincial government employees.
- Federal Government Employees Housing Foundation
  - Pakistan Housing Authority Foundation (PHAF)

### *Housing Authorities*

14. Defense Housing Authority (DHA), established as a statutory body, is engaged in providing plots and houses to the serving and retired armed forces employees and a small quota is also sometimes offered to the general public.

### *Semi Government Sector*

15. The semi government sector is comprised of cooperative housing societies formed under the Cooperative Societies Act by certain statutory authorities/organizations, like WAPDA, PIA, Ministry of Interior, Fazaia and few others. National Engineering Services Pakistan (NESPAK), a public sector company, has also launched and completed housing schemes in various major cities of Pakistan. Army Welfare Trust (AWT) also provides developed plots to its members and their schemes are usually registered under the Trust Act.

## **II. Private Sector**

16. Private sector is also involved in the development of real estate at a large scale. Some of the promoters have formed cooperative societies under the Cooperative Societies Act, whereas few private companies have been registered under the Companies Act, 2017, which have announced and launched various projects at a massive scale in different major cities of the country, like Karachi, Lahore, Islamabad, Peshawar, Multan, etc. List of some of the major real estate developers in Pakistan is given as under:

- Bahria Town (Pvt.) Limited
- Lake City Holdings
- Nishat Group
- Emaar Properties
- Eighteen Islamabad
- Noman Group of Companies
- Paragon City (Pvt.) Limited
- Eden Developers
- Park View City
- Others

## **B. SUMMARY OF SUBMISSIONS OF THE STAKEHOLDERS**

17. Public hearings were conducted in Islamabad, Lahore and Karachi on April 11, 17 and 19, 2019, respectively. Submissions of the various stakeholders made during the hearings are summarized as under.

## I. The General Public:

18. There are significant and constant issues faced in the real estate sector all over Pakistan, especially frauds and scams which are rampant in this sector. Various big market players are involved in these scams. Their fraudulent practices are highly prominent, yet little or no action is taken against them by the government.
19. The undertakings frequently fail to fulfil various commitments made by them such as;
  - a. **Illegal Housing Societies:** Various illegal schemes are launched and heavily advertised without attainment of No Objection Certificate (NOC). The regulatory authorities take action against such schemes after substantial investments have already been made into such schemes. Parties responsible for such frauds either become absconders or simply do not have the funds available to repay the investors. Either way, it is the investor, often an ordinary member of the general public, who bears all the (monetary and non-monetary) loss.
  - b. **Deceptive Claims:** Advertisers and developers make high sounding claims regarding various features of a project, like residential plots, commercial plots, houses, offices, apartments, rental spaces, etc., such as available facilities, quality of the end projects, available open area, location, precinct details, etc. Against such claims, high number of investors are attracted and high prices are charged for those projects. However, the claims made in the advertisements are not fulfilled and the projects are of low quality compared to what has been advertised. Failure to fulfil such commitments cause major distress to the members of the general public. Any terms made by the developers should be fulfilled, otherwise proceedings should be initiated by the Commission under Section 10 of the Act and precedents should be set.
  - c. **Deceptive Claims Made on Online Forums:** The same practices are now faced online via online deceptive practices as well, that are even more difficult to trace. It is also duty of the consumers that they investigate details of a project carefully before making an investment. However, a check and balance mechanism should be established to monitor whether the builder has backtracked from its initial claims or not. Such practices are now generally followed by Agents/dealers of different projects as well.
  - d. **Availability of Basic Utilities:** It has been observed that a number of schemes lack basic facilities, such as electricity, water supply, roads, sewerage, and drainage. However, despite non-availability of these facilities, such housing scheme often claim their availability in the marketing campaigns.
  - e. Not only many of such schemes lack additional advertised facilities like 24 hour constant supply of electricity, but they even lack provision of basic facilities, such as

water supply, gas connections, roads, etc., often due to their illegality and/or disputes with the utility services providers. In such cases as well, it is the consumers who suffer.

- f. Fraudulent/False claims are made pertinent to pricing of a project, such as residential plots, commercial plots, houses, offices, apartments, rental spaces, etc. The advertisement and initial information available prior to signing of the agreements display reasonable rates and convenient payment schedules. However, later into the contracts, various payments of substantial amounts under various banners such as development charges are demanded. Such demands are made at a stage when the consumer finds it extremely infeasible to retract from the contract. At the same time, it puts undue and unaffordable monetary burden on the consumers as well. In such a case, due to unaffordability of a project, if the investor decides to withdraw from the contract, no mechanism is available to terminate the contract without causing losses to the investing party, such as timely refunds.
  - g. Delay in completion of projects is a major concern. It is a widespread practice that even after all the payments are made, the final product, for example a house, is not handed over on time. In certain cases, development of a house and the housing scheme where it is located have been overdue for more than 10 years.
  - h. There are frequent cases of reselling of one property to multiple buyers. As per one of the participants ('**Party No. 1**'), even after payment of all the dues by him, the property was simultaneously sold to someone else ('**Party No. 2**'), where the latter had already constructed a house on the said plot. Additionally, upon raising concerns, Party No. 1 was asked by the developer for additional payments for grant of an alternate plot.
  - i. In all such cases, information regarding grant of NOC, details of payment schedules, including development charges, time for possession, and all other factors should be provided clearly and conspicuously in the initial advertisement.
20. Development authorities should keep a check on illegal schemes prior to their development. Action is taken after all the investments have been made and structures have been erected. Timely action must be taken on such issues to minimize inconvenience for investors.
21. It is admitted that the general public should conduct extensive research before making such major commitments. However, it should be noted that even the aware buyers who take all necessary actions to ensure safe buying are also continuously facing such issues.
22. In certain jurisdictions, the authorities require the consumer to adhere to a model agreement which must be made with the builder in coordination with Association of Builders and Development (ABAD). This model agreement must be adhered to by the builder and not the consumer, as the builder is in a position of power to enforce such agreements. There

are several issues even with this arrangement. Moreover, an efficient mechanism must be available for refund to buyers in case the seller defaults on its obligations.

23. Information must be provided to consumers effectively and awareness must be given to them through the propagation of informative websites, so that consumers cannot be tricked by the builders or real estate agents.
24. The real estate agents are also a major stakeholder in this sector. Not only are the actual landowners/developers engaged in deceptive practices, but in some instances, the property dealers are equally involved in providing assistance in sale of fraudulent projects which do not have an NOC, land details, etc. Real estate agents are also engaged in making deceptive marketing claims to maximize their sales and commission. Such real estate agents should also be held accountable for duping consumers along with the original sellers.
25. Therefore, real estate agents should also be strictly regulated. They should be licensed through some specified criteria. They should also go through the process of proper certification and registration to enable their monitoring.
26. Multiple sale of one property is a frequent practice. Negligible efforts are made by the regulatory authorities for control of such malpractices. Even when the authorities do take an action, the response is often delayed which bears little or no impact on minimizing the losses incurred by the consumers. Inefficiency of relevant authorities is also a reason behind widespread fraudulent practices in this sector.
27. Most housing schemes are involved in provision of mere allotment letters after sale of a certain property instead of providing actual registry to its customers. It should be noted that allotment letters have no legal value and they do not provide actual ownership/possession of the property, even if all the payments have been made by the investor. Such practices cause further ownership disputes amongst multiple parties in the future for the buyers.
28. Builders and developers sell more files compared to available plots which is a fraudulent practice and must be curtailed.
29. Encroachment of land is a common practice with little action taken on it by the relevant authorities. Moreover, developers also initiate development and sale of projects like housing schemes on such lands. Several serious issues arise due to these actions. Due to delayed response by the relevant authorities, disputes arise amongst the relevant stakeholders. Either the development of such projects is curtailed or provision of essential utilities is barred. Eventually, it is the general public that suffers the most.
30. Maps of housing societies should be linked with Google Maps to enable investors to have accurate information regarding relevant details of a project.

31. There are gigantic projects being developed in the market that comprise upon enormous investments. Measures should be taken to protect investment of investors such as converting a huge project like Bahria Town into a public limited company. Such measures are necessary to minimize uncertainty and loss to investors in case of death of a major partner of the entity. Certain administrative control should be given to the residents of the societies as well.
32. High rise buildings are being constructed without any checks and balances. Construction of various high-rise buildings have been halted due to the orders of the Supreme Court. Hence it is the duty of the relevant regulating authorities to hold the builders accountable at the right time so as to save the money invested by the general public. Once the building has been constructed and it is declared illegal, there is no mechanism to refund the amount initially invested by the general public.
33. At the time of construction of high rise buildings, measures must be taken to address the issues related to the environment, sewage, electricity, roads and water which are affiliated with the construction of such buildings. When these issues start to cause problems, at that time the builders are absent and at the end of the day the general public suffers.
34. There is a nexus between developers and dealers who are involved in price fixing of various properties. Developers direct the dealers to charge a certain price for their relevant properties. Price of files is fixed artificially that are floated in the market at that price. The prices of the same files are also raised artificially.
35. In most of the cases, the land owner, builder/developer and the marketing agency are three different parties. Eventually, none of the parties takes responsibility for problems encountered by the buyers and consequently, it becomes extremely difficult to trace the actual perpetrator and hold it accountable for its fraudulent practices.
36. There are numerous government agencies involved in the real estate sector with no streamlined framework. This makes it very difficult for buyers, developers, etc., to undergo all the processes required to conduct their transaction, undertake any project with ease and avoid legal and procedural issues in the future.
37. The real estate sector should be declared a formal industry, in accordance with international practices. Various relevant laws may be there, but they are not being enforced effectively. The building control authorities, town planning committees, city development authorities, etc., have all failed to act in a timely manner and protect rights of the general public and investors. All these illegal schemes are a result of negligence of these authorities. Absence of an effective legal framework has also resulted in creation and growth of black and informal economy in the real estate sector.
38. The general consumers must be provided with a general checklist in order to provide them with a road map regarding how to go about things when investing their hard-earned money.

This would help in controlling the illegal tariffs being charged from the unaware consumers.

39. Numerous necessary safety and environment laws are either absent, outdated, or simply ignored and not implemented. All existing laws should be frequently revised to cater to the dynamic nature of the sector. There is no regulatory authority on national level regarding the real estate sector. A national level authority should be formed, which should be extended to formation of provincial and local authorities as well. The regulator must be responsible for registration of marketing companies, housing societies, property dealers and all relevant stakeholders in the real estate sector.
40. There should also be coordination and linkage between utility and other essential facility providers with the sector regulator. Such factors should be taken into account by the sector regulator in coordination with the utility providers before granting NOCs to various developers as the end consumer bears frequent issues of lack of provision of essential facilities in their relevant investment schemes.
41. Innumerable cases are pending in courts related to disputes in the real estate sector. Some of them are pending adjudication for more than a decade. Efforts must be made for their prompt resolution.

## **II. Builders and Developers, Through its Representatives, Association of Builders and Developers of Pakistan (ABAD)**

42. Complaints were registered against CDA stating that plots are auctioned and sold by it, however, the possession of such plots is not given to customers. Despite High Court's ban on construction of "Creative Plots", CDA is issuing NOC for their construction.
43. There are various competition related issues to be highlighted in this sector. Demand of houses is 60000 houses/year in Pakistan. To cater to this demand, 20000 houses are being supplied by the government and semi-government entities like DHA, whereas the remaining 40000 are being supplied by the private sector. Prices of property need to be reduced, however, this should not be done by government intervention, rather than by increasing the supply of houses and other properties.
44. Bankruptcies are a part of all sectors including the real estate sector. Developers also encounter genuine issues in the sector due to various economic reasons. Therefore, instead of merely blaming them for malpractices, there is a need to investigate why the builders are facing defaults. In this regard, following concerns were presented;
  - a. Development authorities like LDA, CDA, KDA, etc., do not give possession of land to the builders.
  - b. With reference to Gulistan – e – Jauhar in Lahore, LDA has failed to set its record straight to confirm how many times one plot has been sold. LDA itself has

- acknowledged that one plot has been sold multiple times. However, LDA alone cannot be blamed for this either as many of the issues have been stuck in litigations.
- c. Keeping this in consideration, private sector developers are facing this problem in higher magnitude. Additionally, they also have to face various institutions like NAB, LDA, and now THE COMMISSION for such problems. Hence, it is absolutely necessary that before holding the private sector accountable for such practices, necessary and appropriate actions are taken to establish a strong legal framework and a healthy business environment which would benefit all stakeholders including the private sector builders and developers.
  - d. There is lack of proper real estate financing institutions.
  - e. When private sector enterprises opt for such development projects, they have to go through numerous procedures for approval and initiation of such projects, which take over a year. Whereas LDA itself is also involved in such projects and exempted from all the strenuous requirements. In such cases, institutions like LDA bear lower costs as they can acquire lands at lower costs, do not have to bear various other hefty expenses, and so on. How can private sector enterprises compete with a public project? There is a major distortion in the market due to such exemptions.
45. In order to maintain level playing field, similar rules should apply and costs be incurred by both, public as well as private, parties.
- a. LDA is a Government Department constituted under the Lahore Development Authority Act, 1975 (LDA Act). The objects of the authority were given in Section 4 of the LDA Act. As per the objects, the authority has to promote and secure the development of Lahore according to plan and for that purpose the Authority has the power to acquire, hold, manage and dispose off land and other property; to carry out building, engineering and other operations; to execute work in connection with supply of water and electricity, disposal of sewage and other services and amenities, etc.
  - b. The Competition Act, 2010 ensures that all restraints, private or public, that are detrimental to competition should be curtailed to ensure an environment of fair competition. Special treatments granted to LDA are discriminatory in nature and create a barrier to entry. Certain practices of LDA were brought to attention by ABAD which the latter considered anti-competitive. It was submitted that LDA was established for planning and development of Lahore and to develop policies of improvement.
    - LDA also has the mandate to prepare, establish and develop housing schemes under the LDA Act.
    - In addition, LDA has been made responsible for processing, approval and monitoring of private housing schemes within its geographical area of jurisdiction under the Lahore Development Authority Private Housing Schemes Rules 2014 (“Rules”).
    - LDA, therefore, is performing the dual functions of a developer and a regulator which is a clear situation of conflict of interest. It may be noted that the LDA Act does not contemplate LDA in the role of regulator of private housing schemes.

- LDA, therefore, clearly has a vested interest to create stringent and unreasonable standards to undermine the housing schemes of private developers, using its capacity as a regulator, thereby eliminating competition to ensure that LDA housing schemes flourish. The inherent absurdity and illegality of a regulator being a competitor of its subjects is obvious.
- c. It was submitted that the private housing developers are required to comply with a number of onerous requirements, which LDA, in the capacity of a developer, is not fulfilling. Since LDA is a government body, it is in a prime position to ensure the promulgation of rules and regulations (such as the Rules) which place LDA in an unfairly favorable position vis à vis private developers. The private housing developers not only have to comply with the hereafter mentioned burdensome prerequisites, but also have to seek permissions and approvals from its own competitor, i.e., LDA.
- d. Private developers have to first acquire land, then get the master plan approved, followed by newspaper ads, development of infrastructure, etc. After fulfilling all such requirements, a private developer is allowed to start selling the property. Whereas, LDA planned a scheme in 2012 and it started selling the files right away. How did this amount to be a level playing field?
- e. The private sector has to incur all such major expenses from their own funds. There are very limited real estate financing facilities available in Pakistan. Whereas public organizations like LDA make a decision, encircle that area under Section 4 of the LDA Act, and then launch the scheme. Acquisition of land for the commercial purposes like housing schemes for sale, being profit making ventures, should not be allowed under Section 4. It is against the Constitution of Pakistan.
- f. The Constitution of Pakistan gives private sector the right of having an opportunity to do business and enjoy a level playing field. By such actions, that right is being extorted.
- g. As for procurement of land for such projects, LDA nominates 5-10 names and creates a monopoly. Within the encircled area, it sells the land only to the nominated entities with whom prices have been fixed. A plot for which we have to pay Rs. 3 crore/acre, those nominated entities are getting it for Rs. 1 crore/acre. The Commission must take action against such anti-competitive players.
- h. The nominated names then also fix the resale price of those acquired land amongst themselves, which also falls under the category of anti-competitive behavior.

#### **Recommendations Proposed by ABAD:**

46. Regulators have become competitors. LDA, CDA, are also developing housing schemes. This is absolutely against the spirit of competition and hence, should be addressed.
47. In Sindh/Karachi, SCBA and KDA have different portfolios. Discussions are held in Lahore too. This should be adopted in Punjab and the rest of the Pakistan as well.

48. ABAD is a representative of real estate agents and developers. Regulators should have an institutional coordination with us as well as other business representatives around the country.
49. Members of ABAD also suffer at the hands of illegal schemes as ABAD represents the compliant sector. We can assist the regulators against such illegal entities.

### III. Real Estate Agents

50. The real estate sector is not being treated as a proper industry, whereas it has been given a status of proper industry in most countries. There is no proper ministry for the real estate sector in Pakistan. There is a dire need for establishment of a sector specific regulator who can streamline all procedures, stakeholders, authorities, etc., and organize this sector. Immediate measures should be taken by the government in this regard.
51. The litigation processes pertaining to the real estate sector take extremely long and are highly strenuous. The courts should decide the matter expeditiously.
52. This profession is one of the largest job providing sector in Pakistan. At the moment 100,000 Real Estate agents are registered in Pakistan with the Real Estate Associations. No education criteria, character certificate is required to enter the real estate sector. Therefore, there must be a formal process of certification and registration for real estate agents. Real estate agents must be qualified through proper licensing procedure so that they can provide better guidance to investors.
53. Various Development Authorities including KDA, LDA, CDA declares housing schemes/multi story buildings illegal after investments are made by general public. Such efforts should be made timely. There are areas where provisions of utilities are banned in Sector E-11 Islamabad, but people are continuously investing their hard earned money due to lack of knowledge and enforcement actions by the development authorities. No physical inspection is carried out by the development authorities before granting NOC. Approval process is also very difficult.
54. Development authorities must ensure that the real estate agents are not able to book more plots than the available space.
55. Conversion of residential plots into commercial plots by different housing societies/ developers should be prohibited.
56. All national, provincial and local level real estate agents associations should be taken on board and the sector should be organized. List of approved societies should be shared with them, while barring them from selling unregistered/approved ones. They should be held responsible if they violate this rule.

57. Role of middleman (real estate agents) is important, but safeguard of our interests in the form of commission is also imperative. There should be no ad hoc taxation.
58. There are numerous housing schemes that are making exaggerated claims like their projects would be like those in Dubai. The Commission should take strict actions against such false and misleading claims. All marketing material should be approved by the Commission prior to its launch.
59. KDA regulates real estate in Karachi. The general public does not have any checklist when it goes to the KDA. Checklist acts as a pathway for a person who does not have knowledge about the real estate sector. The real estate sector is the backbone of the economy, hence, a checklist for the guidance of the general public is very important.
60. Transfer of plots are pending because of the delaying tactics of developers owing to which millions of rupees of investors are stuck in this complex processes.
61. Tax policies of the government are unfair. Stakeholders are willing to pay taxes, however, the tax policy should be formulated in collaboration with the key stakeholders to maximize its effectiveness and assist in widening of the tax net. It should be levied gradually and uniformly as millions of people are associated with it.

#### **IV. Environmental Organizations**

62. Safety features of buildings have now become a secondary issues for builders and authorities.
63. Weak laws that are passed by legislators benefit certain stakeholders in real estate sector and hence the Commission must take action so that such weak laws are re-visited.

#### **V. Others Participants**

##### **a. Lahore Chamber of Commerce and Industry (LCCI)**

64. Pakistan is a democratic country where democratic institutions should undertake the responsibility of development. This responsibility used to be with Municipal Corporations which was later given to development authorities. This decision should be averted.
65. The developers who acquire a land at Rs. 100, 000/acre, sell one kanal for Rs. 1 crore. Renowned housing schemes like Bahria Town, Lake City, DHA, etc., are all involved.
66. Workers working overseas for up to 20 years want to build a house in Pakistan, but they are unable to afford it. Most of the remittances are wasted in fraudulent property schemes.
67. In Muscat, all necessary information is available regarding who owns a property, since when it is owned by them, who was it purchased from, etc. In Oman, market value of all

lands/properties is available at all times. No such necessary information available in Pakistan. High amounts of money is charged just to gain this information.

68. There is a need for a regulatory authority. The regulatory authority should also regulate the buying and selling prices. Keeping in view buying price, a limit should be set on selling price.
69. A plot bought for Rs. 2 crore is registered at Rs. 40 lacs. These false declarations also lead to levy of high tax rates by the government to cover losses.
70. While registering property, details of the agent/real estate agents should be written as well so that all necessary information is available related to the transaction of that property and they can be accordingly held accountable.

#### **b. Online Advertising Platform – OLX**

71. Most of the issues discussed in the open hearing are pertinent to lack of trust, transparency and fair competition. Issues of deceptive marketing also need to be resolved.
72. OLX is willing to offer help in resolution of these issues. OLX will make efforts to improve its platform and minimize frauds conducted through its platform. Aggrieved parties are encouraged to share their complaints with us.
73. User and business verification is very important. Government should take necessary actions for this purpose. .

#### **c. Resolvers & Executors of Dimensional Affairs in Pakistan (REDAP)**

74. For a third world country like Pakistan, it is really encouraging to know that the Competition Commission of Pakistan is striving to create a healthy environment for the business community. Resolvers & Executors of Dimensional Affairs in Pakistan (REDAP) is also endeavoring to do the same in its own way.
75. REDAP is a consultancy concern. It not only provides consultancy services, but also resolves all problems and issues being faced by corporate sector, government organizations and by individuals. REDAP provides a workable solution for issues like obtaining NOCs from the government, licensing, and legal matters and resolve other tasks facing an impasse at government level. Assisting clients with resolution of disputes involved in issues related to the real estate sector is also within the scope of REDAP's mandate.

#### **d. Legal Community**

76. Shopping Mall owners are also engaged in deceptive marketing practices. Various claims are made by them regarding presence of famous brands, space allocated for various facilities like 25% for play area and food court, etc. Investors make their investments

accordingly. However, when the mall becomes operational, the food court and the promised brands are not there. This is a marketing strategy, whereby claiming to have big brands there allow them to charge higher rents from other stores.

77. The mall owners are also involved in abuse of their dominant position. They charge very high rents. Moreover, they are discriminating against various stores by overcharging them. Out of 100, 50 get exemptions on rents, whereas the rest do not.
78. Additionally, maintenance charges are being levied in addition to rent. This is a malpractice. The dominant position is further by the mall owners who also threat the store owners into complying with unfair trade agreements.
79. LDA has a dominant position in the relevant market. It is important to note that a complaint against LDA for litigation can only be forwarded by LDA itself. This cause serious threats to fairness in resolution of complaints.

## **VI. Government Organizations**

80. Submissions of representatives of the various government departments present at the hearing are summarized below:

### **a. Federation of Pakistan Chambers of Commerce & Industry (FPCCI) – Standing Committee on Real Estate Planning and Research**

81. There is no\ National Regulatory Authority for the Real Estate Sector. Real Estate sector must be declared an Industry and a dedicated National Regulatory Authority should be established.

82. Last Housing Policy was made in 2001 and over the years, no new policy has been made.

### **b. Sindh Building Control Authority (SBCA)**

83. NOC's are given to builders on the basis of Sindh Building Control Ordinance, 1979.

84. All the grievances of allottees are heard by the Public Hearing Committees, which also act as a Complaint Cell. Experts are also the part of the Complaint Cell and Public Hearing Committee.

85. Public sale holdings are only issued to the approved members and builders.

86. NOC will not being given to Bahria Town in future as it has only been granted NOC for 1330 acre project. Their land titles are also not clear, which the public is well aware of. Other matters pertinent to Bahria Town are pending in courts.

87. Details of the projects are also present on the website. It is imperative that the investors consult the website before investing.
88. A letter has also been written to PEMRA to ensure that advertisement campaigns related to real estate projects are not aired without prior clarification and clearance from SBCA.
89. Online real estate websites like Zameen.com are running campaigns of all projects on their websites without any confirmation regarding the legal status of any of the projects. This is being done to gain huge profits. There should be check and balance on the real estate advertisements on websites as well.

**c. Housing, Urban Development & Public Health Engineering Department (HUD&PHED) – Government of Punjab**

90. All required rules are present, however, their enforcement is lacking. Computerized land records are also available for all areas. Town Planning Committees have also been set up. As per the rules, 20% of the plots are mortgaged. 5% ownership is given to the builders and developers after completion of infrastructure. Further 5% is given after provision of water facilities, and so on. Mortgaged plots are sold.
91. Details of black listed schemes is also given to facilitate investors and protect them from fraud. It is also the responsibility of purchaser to conduct thorough prior research.

**d. Punjab Housing and Town Planning Agency (PHATA)**

92. There is a need to educate and create awareness amongst consumers. Consumers should know whether a scheme is legal or illegal.
93. Rules and regulations for all public sector housing schemes are present.
94. There are two stages of approvals. First is at planning stage and then the final approval is given after submission of the layout plan. However, developers fraudulently start to use the registration/approval numbers of the first stage approval and declare it as its NOC. The process of obtaining an NOC is a rigorous process after which a quality scheme is developed.
95. When allotment letter is given to an investor, it should have all details of the land, such as, qila, khasra, etc., so that fraud, especially in resale, is avoided.
96. LDA is indulging in public-private partnership (PPP) agreements. LDA has selected developers on its own, set the prices on its own, etc. Furthermore, none of these projects are obtaining licenses from LDA.

**e. Gujranwala Development Authority (GDA)**

97. All government entities should work together. All relevant authorities, such as development authorities, utility providers, etc., should make a decision with joint efforts to facilitate a housing scheme only after it has fulfilled all the required procedures.
98. One authority alone can never curb this problem. All departments have to work together. Electricity should not be provided to a scheme without NOC.
99. Advertisements should not be allowed by PEMRA unless a scheme has obtained an NOC.

**f. Faisalabad Development Authority (FDA)**

100. Submissions of GDA were endorsed. It was submitted that Water and Power Development Authority (WAPDA) cancelled approval of 65 files pertaining to illegal schemes after intimidation by FDA regarding their illegal status.
101. Revenue department has a very crucial role as it is responsible for sale and purchase of land and has all the records. It should also be involved in the combined regulatory efforts.
102. There should be a strict control on advertisements.
103. Investors should also do their research prior to investing such high investments.
104. There is a dire need for a constructive debate and dialogue on the issues in the real estate sector with representation from all government departments. All government agencies should make organized and coordinated efforts to formulate a streamlined policy instead of considering each other as enemies.

**g. Lahore Development Authority (LDA)**

105. Rules and regulations are present since 1975 and are being strictly followed.
106. Following submissions are presented with respect to issues of illegal schemes, non-handing over of plots, advertisement prior to NOCs, etc.
- a. LDA has a consumer based facility which informs consumers directly related to any schemes in the market, their status, etc. LDA website has all updated details regarding status of housing schemes
  - b. There is a department which is dedicated to helping consumers and advising them on legal/illegal schemes.
  - c. People start submitting complaints after they have made the payments. All necessary research should be done before making such payments.
  - d. LDA has been continuously publishing lists of approved and blacklisted schemes. However, the public does not conduct any background check on their projects of

interest before making investments. Such vigilance is carried out even while purchasing a small commodity like a mobile phone. Therefore, a significant portion of the onus is on the buyers as well.

- e. No NOC has ever been given without proper process.
- f. All relevant authorities such as utilities providers are instructed by LDA to not support such schemes.
- g. Proper inquiries are being conducted on various illegal schemes. Multiple cases have been taken to National Accountability Bureau (NAB) against such illegal schemes by LDA. However, the accused parties like developers, real estate agents, etc., go to courts against us and take stay orders.

107. Upon above submissions, the Chairperson to the Commission inquired the following matter from the LDA representatives:

**Question:** What is the system of regulation of such illegal schemes?

**Response by LDA:** When advertisements come or development starts, notices are sent to the undertakings. Moreover, public notices are published in the newspapers to warn consumers against such schemes. It should be noted that enforcement actions can be taken against fraudulent undertakings only after a violation occurs. An action cannot be taken without proof.

## C. LEGAL FRAMEWORK IN THE REAL ESTATE SECTOR

108. Across the globe, every country has its own set of laws regulating the real estate sector. Pakistan in this case is no different, real estate sector is governed by various laws. However, one common issue being faced by all the consumers is that the laws applicable in the Real Estate Sector are not readily available or accessible to the consumers.

109. Another common issue is that the regulation of trade and profession is to be implemented uniformly throughout Pakistan, however, in the real estate Sector, particularly, for the regulation of the profession of Real Estate Agents different laws are applicable in different regions i.e. for Islamabad Capital Territory the law applicable is Islamabad Real Estate Agents and Motor Vehicle Dealers (Regulation of Business) Ordinance, 1984 and for Punjab it's the Punjab Real Estate Agents and Motor Vehicles Dealers (Regulation of Business) Ordinance, 1980. It needs no emphasis that under the Constitution of Islamic Republic of Pakistan, 1973 (the '**Constitution**') the legislation for the regulation of any profession or trade and the regulatory body falls within the mandate of the Parliament / Majlis-e-Shoora and not the provincial assemblies.

110. Laws for individual business taxation of different lands may vary, for example; capital gains is levied under the Income Tax Ordinance, 2001, whilst the capital value tax on the immoveable property, subsequent to the 18<sup>th</sup> Amendment in the Constitution has been

levied by the Provinces through separate provincial legislations and in the Islamabad Capital Territory by the Finance Act, 2012.

111. In the year 2015, the Securities and Exchange Commission of Pakistan (the ‘SECP’) enforced the Real Estate Investment Trusts Regulations (REITs), 2015, which introduced the concept of real estate investment trusts. Any income from such trust is exempt from tax, subject to the condition that not less than 90 percent of its profits for the year is distributed amongst the unit holders. The REITs Regulations have been amended in December 2018 by the SECP. The amendments include the concept of private investors, details on eligibility criteria to invest in REIT scheme, introduction of grace period for mandatory listing, requirement of valuation from two separate property valuers at the time of transfer of real estate to REIT scheme, enhancing REIT Management Company’s (RMCs) capacity to borrow and issue right units. The amendments also include the requirement of unit holders’ approval in case of major decisions pertaining to REIT in order to protect their interest and enhance their role in the decision making process.
112. The real estate sector operators made their fortune owing to a regulatory vacuum and inefficient revenue machinery. In the process, tens of thousands of gullible individuals lost their life time earnings amid scattered legislation and governing by-laws in municipalities and local governments. No wonder therefore, that the real estate industry suffered from serious credibility challenges — low public confidence, unfair business practices, weak transparency and limited financial inclusion.
113. An ambitious revenue measure launched last year by the Federal Government through capital value tax and revised valuation of properties finally ended in yet another tax amnesty. An overwhelming chunk of the housing schemes continue to be governed under the Cooperatives Societies Act of 1925, or specific acts of parliament for various development authorities like the CDA, KDA, DHA, and so on; with their by-laws governing the likes of Bahria Town.
114. The key regulators — the State Bank of Pakistan (SBP) and the Securities and Exchange Commission of Pakistan (SECP) — have been advising the government to provide an overarching legal framework to bring these fly-by night investors into the formal economy. Taking a step forward, the government decided to regulate “acceptance of advances by real estate companies engaged in real estate projects” and in this regard section 456 was inserted in the Companies Act, 2017.
115. Section 456 of the Companies Act, 2017, binds companies to get clearance from the SECP before inviting or accepting finances from the general public. It says that a company engaged in real estate shall not announce any real estate project, unless it has obtained the approval of the SECP and all necessary approvals, permissions, NOCs etc., of the concerned authorities besides such additional disclosure requirements as may be notified. The approvals are those required as per applicable general, special and local laws, having

jurisdiction over the area under which the real estate project is being undertaken. Such companies would also need prior approval of the SECP before making any publication or advertisement of real estate projects. They would also not be entitled to accept any advances or deposits in any form whatsoever against any booking to sell, offer for sale, give invitation to persons to purchase any land, apartment or building without approval of the SECP and concerned authorities. Under the new law, companies would also not be eligible to accept a sum against purchase of the apartment, plot or building, as the case may be, as an advance payment from a person without first entering into a written agreement for sale with such person.

116. In case of a nominal fee for application — an allowed exception — they would then need to maintain and preserve such books of account, records and documents in the manner as may be specified. They would also be required to deposit any sum obtained from the allottees, from time to time, in a separate escrow account opened in the name of the project, and comply with the SECP directions regarding accounting frameworks. They would not be allowed to start any activity which had not been previously been allowed by the SECP. The law requires that the escrow accounts be dedicated exclusively for carrying out the project and no attachment shall be imposed on the payment of such escrow accounts for the benefit of creditors of the real estate company. The real estate company shall recognize its income in accordance with International Financial Reporting Standards notified by the regulator.
117. The SECP would be bound to provide copies of any returns or information submitted by real estate companies free of cost to the concerned authority (CDA, RDA, KDA etc.,) on request, to enable them to regulate the real estate project under their jurisdiction in accordance with the applicable laws. These conditions will be in addition to, and not in derogation of, the law. The concerned authority under whose jurisdiction the project is being undertaken by the real estate company shall continue to exercise its authority in a manner provided in the relevant law. The violations of this law would be liable to a penalty of level 3 on the standard scale, leading to the project being wind up.
118. It is pertinent to mention that though the new Company Law to be administered by the Securities and Exchange Commission of Pakistan came into force on 30<sup>th</sup> May 2017, yet it was decided that the enforcement of its section 456 pertaining to real estate sector shall be notified later on.
119. In addition to the above, other laws dealing with the sale and purchase of real estate involves implementation of the following laws:
  - a) **The Registration Act, 1908:** This Act extends to the entire Pakistan except a few districts of the country that are excluded by the provincial governments from their operation. The Act has a total of fifteen sections and includes all the details as regards establishment of the registration. The Registration Act 1908 thoroughly explains where

properties can be registered and guides people on all the matters that are related to real estate registration in the country without leaving behind any kind of ambiguity.

- b) **The Stamp Act, 1899:** According to the Stamp Act 1899, the buyers as well as the sellers are required to pay certain amounts to government in lieu of stamp papers that are used for making all the legal agreements or contracts as regards real estate sector across Pakistan. By making use of the Stamp Act 1899, the buyers and sellers can therefore legally validate their buying and selling of properties and stay safe from all unfortunate or fraudulent activities. One should also keep in mind that the cost of stamp papers fluctuates in accordance with economic situation of country.
- c) **The Land Revenue Act, 1967:** This Act lays out the structure and hierarchy of land and revenue department in Pakistan. It offers comprehensive guidance regarding collection of land revenue in the country such as the marking of boundaries, arbitrations, and surveys. These elements are instructed by Land Revenue Act 1967.
- d) **Transfer of Property Act, 1882:** There is no doubt about the fact that property buying and selling has never been a flawless procedure across Pakistan. It has never been considered a safe and risk free procedure, the reason being the primitive land record system, which carries along a lot of loopholes and pitfalls. This is the reason why buyers are required to carefully get the property title of the seller checked before making a payment transaction and signing a contract. The Transfer of Property Act 1882 clarifies about persons who are entitled to transfer the property. It also explains the methods of transferring property and the types of properties that can be transferred.

120. It is also worth mentioning that the federal as well as provincial legislature for the purposes of utilization of land and to evolve policies and programs relating to the improvement of the environment of housing, industrial development, traffic, transportation, health, education, water supply, sewerage, drainage, solid waste disposal have established various Development Authorities under the respective legislation at the division level i.e. Lahore Development Authority under the Lahore Development Authority Act, 1975, Capital Development Authority under the Capital Development Authority Ordinance, 1960, Faisalabad Development Authority under the Punjab Development of Cities Act, 1976, the Karachi Development Authority was established under the Karachi Development Authority Order, 1957 (Presidential Order No. 5.) etc.

121. The issue vis-à-vis the competition in the real estate sector and the development authorities is that the Development Authorities are not just entrusted with the role of a regulator for the area under their jurisdiction but are also empowered under the relevant statutes to venture into real estate sectors to earn profits and income. This is an inherent flaw as the regulator is performing the functions of the regulator as well as regulate at the same time. This issue has also been highlighted by the stakeholders during the public hearings.

122. The consumers owing to a large number of statutes applicable in the Real Estate Sector and non-availability of proper information about them in the public domain creates problems

for the consumers. Further, lack of uniformity vis-à-vis the real estate sector at the federal level is also one of the major issues, which has been highlighted in the Public hearings and is increasing the predicament of the consumers.

123. It is also worth mentioning that the a Bill regarding the Real Estate Regulatory Authority was introduced in the Senate on 21-08-2017, however, the same is yet to be approved by either House of the Parliament.

## **D. ISSUES & ANALYSIS**

### **I. Lack of National Level Sector Regulator:**

124. The stages in development of real estate sector projects is primarily divided into following categories:

- i. Transactions and transfer of land and buildings
- ii. Development of such properties including construction of housing and commercial buildings,
- iii. Provision of utilities and infrastructure;
- iv. Taxation; and so on.

125. At present, various regulations are in place to deal with each category and at different levels of governance. However, there exists no coordination mechanism between all relevant agencies, thereby causing severe instability and issues in the sector. Where development of every property goes through each stage of development, from purchase of land to provision of final product in terms of a housing scheme or a commercial area, etc., the current regulatory framework requires immediate streamlining.

126. The hierarchy of regulators related to this sector has been further divided into Federal, Provincial, District and Tehsil regulators. Some of the Federal and Provincial level regulators include:

- Ministry of Housing & Works
- Federal Government Employees Housing Foundation
- Pakistan Housing Authority Foundation (PHAF), Ministry of Housing & Works
- Ministry of Planning Development & Reforms
- Provincial Housing Ministry
- Securities and Exchange Commission of Pakistan

Similarly, there are a number of development authorities operating in major cities at divisional level. Some of the main authorities are listed below:

- Capital Development Authority (CDA)

- Lahore Development Authority (LDA)
- Karachi Development Authority (KDA)
- Sindh Building Control Authority (SCBA)
- Multan Development Authority (MDA)
- Faisalabad Development Authority (FDA)

127. However, lack of synchronization between each authority, which is involved at different stages of development has created major loopholes in the system, resulting in various undertakings exploiting such lacunae. Resultant issues include, but are not limited to;

- lack of availability of streamlined information to customers related to legal status of the property up for sale, information related to various aspects of that property, the list of legal procedures and requirements necessary to conduct a transaction and any other economic activity on the property and so on. These crucial deficiencies severely hamper the ability of buyers to make informed decisions and avoid deception and fraud;
- land encroachments;
- Scams;
- Multiple selling of same property;
- Non-deliverance of commitments;
- Booking/Sale of more plots compared to the actual plots available; and
- Mismanagement of the whole process.

As a result innocent public is being deceived in the name of providing them roof at a reasonable and affordable price.

## **II. Lack of Enforcement and Revision of Existing Laws**

128. The existing legal framework in the real estate sector has been discussed in Part C of this opinion in detail. Several complaints were raised against lack of implementation of existing laws. Weak system of monitoring and evaluation of the development taking place across the country creates hindrances for the relevant regulatory authorities to ensure smooth development of the real estate sector. It has been frequently observed that action against undertakings is taken after a significant investment is made in the projects.

129. Furthermore, regulatory oversight has been observed as several residential/agriculture plots have been converted into commercial plots.

130. Another serious concern related to this sector is that the existing relevant laws and policies have not been revised even though the sector is of highly dynamic nature. This requires immediate attention as it appears that the existing regulatory framework for the real estate sector does not address the current issues of real estate sector. For example, various large scale projects based on massive investments are undertaken by private parties with no legal backing to ensure investor protection, primarily due to their status of merely being sole proprietorships partnerships and joint ventures.

### **III. Prolonged Litigation and Lack of Alternate Dispute Resolution Mechanism**

131. It was highlighted by various participants that even when a party aims for resolution of a dispute of various issues, such as ownership of land, fraudulent schemes, etc., the general public as well as regulators like development authorities get entangled in strenuous, costly, complex and lengthy process of litigation. The matter becomes even more difficult if one of the parties request for a stay order from the courts.
132. It becomes further difficult for regular consumers to resolve their problems as in case of consumer projects like housing schemes, multiple parties are involved in the sale process, such as the owner, developer, real estate agents and or marketing/advertising agency. In such a situation, in case a dispute arises, none of the parties are willing to take responsibility for the issues raised by the consumer.
133. There are no special courts dedicated to deal with issues related to this sector. Moreover, there is also absence of a reputable forum to facilitate alternate dispute resolution mechanism, whose decisions can be supported or upheld by the courts.

### **IV. Land Record and Mutation System**

134. Another major concern pointed out by various participants is that accurate and systematic records related to various forms of property available for sale and purchase are not maintained. Consequently, various issues arise. Unreliable and insufficient data hinders the mutation or transfer of property, both commercial and residential. Other problems caused by such inadequacies include multiple sale of the same property, over-pricing of property, resultant unfair taxation and tax evasion, fraud, etc.
135. As property rights play a central role in sound, efficient and modern urban planning by lowering the need for costly state interventions and expensive litigation the development of clear and verifiable property rights is the corner stone of development of efficient urban land markets. There is lack of property records that could allow continuous updates and modifications due to which users have no reliable link of land and their property titles.
136. In an increasingly complex society with an abundance of data and information, there are many reasons for developing a system to attain and combine information on land in a systematic, rational and efficient manner. The Governments of Punjab, Khyber Pakhtunkhwa (KP) and Sindh have begun the efforts to computerize the land records. In the absence of authenticated land records, consumers are suffering at the hands of deceitful promoters of housing schemes, who are releasing false and misleading information with ease while launching bogus schemes.

## **V. Missing Role of Urban Planners**

137. There is a growing role of urban planners owing to the increasing rate of urbanization which is being currently experienced by Pakistan. The urban planners have to considerably upgrade their skills to monitor and forecasts use of land and infrastructure in a manner consistent with the anticipated high growth of the cities and their financial capabilities. They have to be trained in modern methods of joint public/private development. In short, they have to be trained for a completely new approach to their job, combining urban planning, real estate finance and legal negotiating skills under both public and private hard budget constraints.
138. Additionally, it has been observed that the rapid unplanned development has resulted in unsuitable use of agricultural land or educational complex for commercial purposes, non-compliance with planning by-laws which obligate developers to allocate certain portion of land for parks, mosques, etc., and so on.

## **VI. Lack of Level Playing Field for All Market Players**

139. Various concerns were highlighted by the private stakeholders against development authorities alleging that there exists no level playing field for different players. Such development authorities, on one hand are the regulators and are responsible for processing of various important requirements such as granting NOCs for development of projects. Additionally, the eligibility for attainment of NOC for a project involves strenuous, time consuming and costly procedures, like purchase of the entire land, certain level of infrastructural development, etc., which are months long processes and cost substantial amounts of investment. Furthermore, a developer can launch a project legally only after attainment of NOC. These requirements also result in substantial strain on the funds of an investor.
140. On the other hand, these development and other government authorities i.e. LDA, CDA are also engaged in commercial activities by launching their own housing schemes, where they have entered in direct competition with the private developers. As a result, the government authorities exempt themselves from all the basic requirements of launching a project that are mandatory for private developers, thereby significantly distorting the level playing field in the market.
141. Another issue highlighted in this regard was that a complaint against development authorities for litigation can only be forwarded by the same development authority itself. This can pose a serious threat to fairness of complaint resolution mechanism of a complaint filed against such an entity.
142. The primary issues associated with this matter are summarized below:

- High entry barriers for private undertakings compared to their public counterparts

- Conflict of interest
- Preferential treatment of public undertakings via exemptions available to them
- Discriminatory complaint resolution mechanism

143. Concerns were also raised with regards to the anti-competitive behavior of shopping mall owners. By naturally enjoying a position of dominance, the mall owners often levy unfair terms and conditions on the incumbents. Moreover, they are also involved in discriminatory practices whereby they give favors to some shop owners at the expense of other store owners, where the latter bear the burden of benefits extended to the former.

144. Additionally, frequent issues of housing scheme developers engaging in exclusive agreements with single Cable, Internet and Telephony (CIT) Service providers have been filed with the Commission through which they restrict right of way for other CIT providers, thereby not only restricting competition in the relevant market, but also restricting the choices available to consumers for relevant CIT services.

## **VII. Failure to Fulfil Commitments**

145. Frequent complaints have also been submitted against failure of various public and private parties to fulfil the commitments made at the time of signing of agreements. Various private entities such developers complained that government authorities delay handing over of possession of properties even after all the payments have been made and other requirements have been fulfilled.

146. Likewise, other buyers (consumers) also raised concerns against private builders and developers who fail to execute, complete and handover projects on time even after all payments and other formalities have been taken care of by the consumers, causing immense distress to the suffering party. It is absolutely imperative that such commitments are fulfilled on time, in absence of which, serious actions are taken against violators of terms of agreements.

## **VIII. Lack of Market Information**

147. Establishing a system to collect and offer information related to real estate can help in planning and market development as well as benefit the consumer to a great extent while ensuring transparency. In developing investment products related to real estate, such as real estate investment trusts or scrutinized real estate instruments, the accumulation of information related to real estate like rental prices in different zones or the vacancy rates of buildings is essential. In order to meet this end, it will be necessary to establish a data center which collect and analyze data related to real estate, along with a system, where individual real estate companies and financial institutions can accurately calculate the yield and risk involved in real estate investments. To encourage collection, research, analysis, and dissemination of real estate sector data, a data and research center should be established

which accumulates all data related to real estate, plans, major schemes, prices and rental values in different zones, vacancy rate of buildings, etc.

## **IX. Unorganized Real Estate Agents**

148. Real estate agents are one of the most important stakeholders in the market who provide a linkage between the buyers and sellers. Where the end consumer may be unaware of details of a project, the real estate agents often have most or all information of such projects. However, even though they have such a significant role to play in this sector, no efforts have been invested into regulating them and bringing them under an organized banner in Pakistan. The real estate agents often operate independently or under small-scale, voluntarily formed associations with no streamlined efforts undertaken across the country. Internationally, significant efforts have been taken to bring all real estate agents on one platform where they are governed by various laws and fulfil stringent requirements.
149. Internationally, real estate agents can operate only after obtaining a license from relevant local/national authorities. In order to do so, they are often required to obtain a certain level of education, general as well as specialized, and gain relevant experience, followed by which they can acquire a license to practice in the field.
150. They are also governed by a well-defined code of conduct according to which, *inter alia*, a real estate agent may also lose its membership/license if involved in malpractices. Where such agents provide great ease to the public in allowing them to buy and sell property in line with their demand, they have also been identified as one of the main players responsible for massive fraudulent practices. Unless there is a proper certification and registration system of these agents, on the basis of some specified qualifications, chances of their involvement in fraudulent practices cannot be eliminated.

## **X. Absence of Professional Support Services**

151. Participants in real estate markets require access to real estate professionals services, such as valuation, investment advice and property management. Although the property dealer profession has thrived in the past decade or so, there exists a need for competent professionals who can be relied upon by all parties. Ways must be found for enforcing adherence to technical, educational and ethical professional standards, through the setting up of licenses or self-regulation by a credible professional body.

## **XI. False and Misleading Marketing Practices**

152. It has been observed that various undertakings on the launch of housing schemes, have indulged in deceptive marketing practices in the real estate sector of Pakistan. One of the major and most frequent issues pertinent to deceptive marketing practices in this sector is that of rampant advertisement campaigns by unapproved schemes. Builders and developers start advertising their schemes prior to attaining NOCs from relevant authorities. The consumers, upon viewing such ads, invest significant amount of funds in such schemes.

However, these schemes either prove to be completely nonexistent or due to absence of NOCs, get cancelled by the relevant authorities. Either way, it is the end consumer that incurs huge losses – often life time savings – due to instances of such deceptive marketing practices.

153. Even when a housing scheme is legal, undertakings are involved in making deceptive claims related to payment details, such as development charges, frequency of installments, etc. Additionally, such housing schemes are often involved in making fraudulent claims regarding properties and characteristics of housing schemes like percentage of open area, infrastructure related claims, hidden development charges, provision of uninterrupted utilities and so on. Other deceptive practices include fraudulent claims pertinent to location, precinct details, etc., as well as failure to fulfil commitments related to delivery date. Such deceptive conduct has also been observed by mall operators wherein they claim to have major brands in their malls as well as entertainment facilities in order to attract investors. However, upon renting shops, shopkeepers discover deception in such claims.

## **XII. Vulnerable Consumers**

154. Generally speaking, the consumers in underdeveloped countries like Pakistan are less aware of their rights. Unlike the developed countries where strong consumer associations have been consistently supported, both by the government and the private sector, there are no such forums in Pakistan, where consumers can raise their voice for protection of their rights.

155. Due to the absence of a strict regulatory oversight and surveillance over the fraudulent and inefficient Real Estate Developers and intermediaries, the consumers are recurrently exposed to risk of frauds and delayed completion of commercial projects and housing societies. Moreover, the conventional land record registration and title transfer systems have remained complex for consumers. In order to protect the rights of consumers, there is a need to encourage formation of consumer protection associations at different levels.

## **XIII. Failure of Investors to Conduct Market Research**

156. Most of the issues experienced by the investors in this sector could be avoided if due diligence is practiced by them prior to investing in such costly projects. As rightly pointed out by various stakeholders, most of the investors, especially the general public buying residential plots and houses, rarely conduct thorough research before purchasing property. It is after they have been cheated that such victims approach regulatory authorities for help. Hence, the onus of scams taking place at such a massive level is also on the members of the general public. Most of the frauds can be curtailed if the buyers themselves also make an effort and research before making such major commitments as expected by any rational being in making purchases of any kind.

## **XIV. Obstructive and Unfavorable Business Environment**

157. Several concerns were also raised by the business community. They highlighted that not all defaulters are felons, rather there are often genuine reasons of such reported bankruptcies. As already discussed, there are multiple issues in the real estate sector as it is highly unorganized. Various disruptions are faced by the builders and developers due to stringent regulatory framework, inconsistencies in implementation of laws, lack of cooperation by government agencies like in timely handing over of purchased lands, provision of utilities, granting of NOCs, and so on.
158. Moreover, there is lack of a strong network of financial facility providers at public and private levels. There are very few financial facility providers like House Building Finance Corporation Limited (HBFCL). In addition, unsuitable tax policies are also damaging the business community. All these factors hamper ability of private entities to execute their projects and fulfil their commitments, eventually hurting the general public. Therefore, serious efforts must be dedicated to formulating policies which would make the business environment in the real estate sector more conducive.

## **E. PRACTICE IN INTERNATIONAL JURISDICTIONS**

### **I. DUBAI – Real Estate Regulatory Authority (RERA)**

159. Real Estate Regulatory Authority (RERA) is a government agency and is formed in 2007 as a part of Dubai Land Resources Department. It's a head agency which forms, regulates and authorizes the real estate sector in Dubai while providing the transparency and effectiveness of legal framework. The agency has its own financial and administrative independence with full legal authority to regulate the real estate sector in Dubai. It provides many services to clients in Dubai extending to its role in planning, organizing and evaluating operations related to real estate licenses, and the organization and development of real estate activities, as well as a commitment to monitor projects financially and technically, in order to protect investors.<sup>6</sup>
160. RERA Responsibilities includes:
- Licensing all real estate activities
  - Managing real estate developers' trust account
  - Licensing real estate agents
  - Regulating and registering rental agreements
  - Regulating and supervising the owners associations
  - Regulating real estate advertisements in the mass media
  - Regulating and licensing real estate exhibitions

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<sup>6</sup> <https://www.dubailand.gov.ae/English/Pages/RERA/AboutRERA.aspx>

- Publishing studies for the sector

161. RERA also informs people on regulatory acts when buying and renting the real estate in Dubai. Land resources can be in security until the building up is finished. The land can be divided but only after a certain approval according local planning. The land given cannot be neither bought nor sold until the written direction of His Highness Sheikh Mohammed Bin Rashed Al Maktoum is received. According to the policy of confidentiality the Dubai Land Department doesn't publish any information about its clients. Information about the land conditions can be given when the Dubai Land Department studies the condition of Land relations

162. In November 2013, Dubai Land Department launched an online real estate portal designed for sale, rental and auctions of properties, as well as for exchanging private and public real estate information.<sup>7</sup>

## II. INDIA - Real Estate Regulatory Authority (RERA)

163. Real Estate (Regulation and Development) Act, 2016 was passed in India with the aim to promote planned and healthy real estate development of colonies and apartments in India. The act was made in order to protect the consumer's interest on one hand and to facilitate smooth and speedy urban construction on the other hand.

The Act establishes Real Estate Regulatory Authority in each state and union territory. It include protection of the interests of the stakeholders, accumulating data at a designated repository and creating a robust grievance redressal system. To prevent time lags, the authority has been mandated to dispose applications within a maximum period of 60 days; and the same may be extended only if a reason is recorded for the delay. Further, the Real Estate Appellate Authority (REAT) shall be the appropriate forum for appeals.

164. As on July 31, 2017, 23 states and Union Territories (UTs) have either established their permanent or interim regulatory authorities.

165. Under the RERA, every state and UT must have its own regulator. **Developers will not be able to market their ongoing or upcoming projects, till they register either with the permanent or interim regulator in states.** For ongoing projects, where completion or occupancy certificate has not been given, the deadline for registration ended on July 31, 2017.

Only four states – Gujarat, Maharashtra, Madhya Pradesh and Punjab – have established their permanent Real Estate Regulatory Authority, while 19 states/UTs have established interim authorities, an official with the Housing and Urban Affairs Ministry said.

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<sup>7</sup> <http://www.dubaichronicle.com/2013/11/04/dubai-land-department-launches-emark/>

166. Only 23 States/UTs have notified the rules under the Act, while six states have drafted the rules but have not yet notified. A total of nine states/UTs have appointed interim Appellate Tribunals under the Real Estate Act, while only seven states have started the online registration under the Act.<sup>8</sup>

#### **Core Functions of RERA (India)**

- Establishment of the regulatory authority
- Compulsory registration
- Reserve account
- Continual disclosures by promoters
- Title representation
- Standardization of sale agreements
- Penalty

### **III. UNITED KINGDOM (UK) – HM Land Registry**

167. The HM Land Registry is a government department created in 1862. It operates as an executive agency and a trading fund. The running costs are covered by the fees paid by the users of its services.

168. Within England and Wales, the HM Land Registry is responsible:

- To provide a reliable record of information about ownership of and interests affecting land and property.
- To provide owners with a land title, guaranteed by the government.
- To provide a title plan that indicates general boundaries.

169. Some of the main tools available on the HM Land Registry Website are:

- Search house prices
- Search property ownership information
- Boundary questions
- Title deeds
- Joint property ownership
- Searches, fees and forms
- Data
- Practice guides
- Business services and portal login
- Search for local land charges<sup>9</sup>

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<sup>8</sup> <https://housing.com/news/rera-will-impact-real-estate-industry/>

<sup>9</sup> <https://www.gov.uk/government/organisations/land-registry>

#### IV. UNITED STATES OF AMERICA (USA)

170. United States of America has 52 Real Estate Regulatory Authorities, in all of their states, Washington D.C and the attached commonwealth. . Most of these authorities under local state laws supervise the Registration, Surveillance and Monitoring, Inspections, Consumer Complaint Handling, Setting Licensing/ Registration eligibility standards for industry professionals and intermediaries, promoting certification and training opportunities with different industry supported associations or real training institutes.

#### F. RECOMMENDATIONS

171. The Commission in one of its Order in the matter of Show Cause Notice issued to Eden Builders (Private) Limited and reported as 2018 CLD 482, stressed on the importance of regulation in the Real Estate Sector, and observed that

*“...The real estate market plays a very vital role in the development of any country’s economy as a number of other associated sectors have close links with this sector. At the same time, the degree of regulation remains inadequate to the extent that bogus housing schemes and deceptive marketing practices continue to harm growth in this sector, ultimately causing a loss to the overall sustainability of Pakistan’s economy. The Commission, at the outset, also bears in mind the specific circumstances of consumers that often fall victim to misleading claims in relation to real estate investments they may make. For the majority of the population in this country, it almost takes a lifetime of savings or obtaining credit or loans from banks to make an investment such as the acquisition of a plot to secure a more stable future. Such a transactional decision is a much more complicated and difficult one as against buying a household or shelved product from a supermarket...”*

In light of the constraints discussed in preceding parts of this Opinion, and the practices observed in the international jurisdictions, it is suggested that a Real Estate Regulatory Authority be established in Pakistan which would play a critical role in development of the real estate sector and help grow the national economy. The role of such a regulatory body will not only be to develop laws and regulations, but also to develop and employ mechanisms to effectively and transparently supervise the existing and developing areas in the real estate sector of Pakistan. It will also have the task to introduce role of technology in this sector. The Real Estate Sector in Pakistan suffers from the issues of transparency, lack of mutual confidence and the protection of consumers’ confidence. In addition, to enact and support the functions of Real Estate Regulatory Authority, a law of the parliament must be passed envisaging the empowering provisions of the proposed authority as well as to support its functions. Accordingly, the recommendations which are critical for safeguarding the interests of the consumers as well as enhancing the competitiveness and creating the level playing field, are as follows:

## **I. Establishment of a Real Estate Regulatory Authority**

172. To act as a Real Estate Regulatory body to coordinate and advise all efforts of the government, regarding the development of real estate sector. The relevant authority should have the following functions and powers:

### **1. Registration and Regulation**

- a. Preregistration/licensing, renewal of license of developers, promoters, project managers, Real Estate agents/brokers/dealers.
- b. Defining and issue eligibility criteria and qualification for market professionals and intermediaries and code of conduct;
- c. Standard setting body and issuance of uniform standards, code of practice, regulations for smooth and transparent conduct of real estate sector;
- d. Issuing of advertisements and regulation of deposit/trust money.

### **2. Powers and Enforcement Actions**

- a. Real Estate Sector specific consumer complaint handling system.
- b. Inspections, enquiries, investigations and subsequent enforcement actions including, penalties and restrictions.

### **3. Powers of a Quasi-Judicial Body**

173. The proposed authority shall have the same powers as are vested under the Code of Civil Procedure, 1908 for the resolution of land/property disputes. In order to facilitate the abovementioned functions, it is imperative that it is also given the powers of acting as a quasi-judicial body.

### **4. Training and Certifications of Brokers and Agents**

174. Promoting the technical education of brokers and dealers and training and certification of Real Estate market professionals including Appraisers and Valuers.

### **5. Establishment of Database and its Management**

175. A national level computerized database should be developed which should contain all information regarding a property including;

- a. Exact location comprised upon khasra, aks-e-shajra, etc., details,
- b. Details of owners of the property like fard-e-malkiat, etc.
- c. Details of the real estate agent who was involved in facilitation of the transaction, who should also be held responsible in case of a dispute.
- d. Publish and maintain a website/database of all records of real estate sector, with an updated status on Registration, Title, Regulatory NOC, etc.
- e. Conversion of conventional land record system on modern day's information technology based systems.

## II. Reviewing the Existing Laws and Appropriate Amendments:

176. As has been discussed in detail about the legal framework in in Part C of this opinion, the lack of uniformity in the Real Estate Sector regarding the applicable laws is a critical issue affecting the consumers. Further, there is an inherent conflict in the laws governing the Development Authorities with special reference to competition issues as the Regulators such as, LDA, CDA, FDA, GDA, etc., are not only performing the functions of a regulator, but they are also undertaking economic activities by launching their own housing schemes. Consequently, the Regulators, i.e., the respective development authority becomes the competitor of those undertakings it has the mandate to regulate. In addition to the foregoing, the complaint resolution mechanism is also discriminatory in a way that a complaint against the housing scheme or project launched by the development authority is to be processed and forwarded by the development authority against whom the complaint is launched.
177. Furthermore, the laws with reference to the registration of the Real Estate Agents are too outdated and contain minimal penalty. A complaint against the non-compliant Real Estate Agent can only be filed by the registering authority and no remedy is available to the consumers. This makes the applicable laws purposeless and ineffective. Hence, the laws vis-à-vis the registration of Real Estate Agents and the complaint resolution mechanism and penalties must be revised. Further, as has been highlighted above, it will be prudent to entrust the proposed Regulator the function of registering the Real Estate Agent with the penal consequences in case of non-registration.
178. Similarly, the Laws regarding the Land Acquisition and Transfer of Property i.e. the Land Acquisition Act, 1894 and Transfer of Property Act, 1882. These laws are outdated laws which were aimed at enforcing the British Rule in pre-independence era. The laws must be revised owing to the changed market conditions and evolution of rights of the consumers, particularly, keeping in view the fundamental rights guaranteed under Article 23 & 24 of the Constitution read with Article 38 thereof.
179. Another issue raised during the public hearing was the inordinate delay in resolution of disputes regarding the real estate sector. It takes years and years for any land dispute to resolve. Although through National Judicial Policy certain recommendations were made for the expeditious disposal of the cases. However, to-date it remained ineffective and has increased the agony of the consumers. Hence, it is important that appropriate amendments be made in the respective laws to provide for expeditious disposal of cases in the real estate sector treating it as a special subject, preferably a time limit of six (6) months to one (1) year be prescribed for expeditious disposal of cases, be it by the special tribunals/courts or by the Court of ordinary jurisdiction.

## CONCLUSION

The discussion above puts light on the dynamics of the real estate sector in Pakistan. In this backdrop, it may be observed that the entire sector comprises of various transactions which include acquisition of land, its development and conversion of the properties into commercial buildings. Furthermore, to provide utilities and to develop relevant infrastructure particularly in remote areas is a challenging job.

In Pakistan, development of the real estate and providing houses to general public is divided among federal and provincial governments. Although certain regulatory authorities have been established at federal and divisional level of provinces, yet in the absence of a focused national policy and lack of regulatory frame work, there is a mushroom growth of various projects which are being launched at massive level in almost every town and city of the country.

However, the existing legal framework has failed to maintain a vigilant and a system of proper check and balance in this sector, which results in the general public as well as commercial investors losing their hard earned money at the hands of felons and other factors, causing instability in the sector and further disrupting the ease of doing business. Therefore, in order to enhance the productivity of this sector, realize its full potential and protect the rights of all stakeholders, it is imperative that immediate attention is given to this sector by the government and necessary measures are undertaken to organize, formalize and regularize it.