

Sustainable Public Private Partnership (PPP) model for the Real Estate Approval System in India

Sunil S. Ailani, Dr. Deepa A. Joshi

Abstract— Even though the real estate and housing in India contribute significantly to India's economic growth, in the present scenario the sector has peculiar complexities which arise because of the uncertainties, interdependencies and inefficiency in operations of various process workflows. Many construction projects suffer inordinate delay and cost overruns because of flood of procedures, paperwork, inconsistent processes, lack of transparency in building approval system and inter-dependencies on approvals/NOCs (No Objection Certificates) affecting individual builder and large promoters alike. One of the main long overdue reform of the real estate sector across the country is to facilitate simplified, fast-track, transparent system of building approval procedures without compromising the regulatory framework, quality control and safety of a structure. Study attempts to demystify in detail various parts of the existing Building Clearance processes including its problems, limitations and accordingly proposing Public Private Partnership (PPP) model in building regulatory space and its role in streamlining and mapping various building approval processes, leverage technology to expedite approvals for all critical procedures during the entire project life cycle of project.. This research also tries to explore the challenges and gaps in the implementation of enforcement, monitoring and compliance of the regulations with this new PPP model and proposed remedies thereof.

Index Terms— Real Estate (RE) Approval Process, Public Private Partnership (PPP) Model, World Bank Report, Certified Professionals, The Special Development and Planning Authority (SDPA). Privatisation and Streamlining of building Approval processes.

1 INTRODUCTION

The World Bank report highlights that India has one of the most cumbersome and lengthy processes for seeking construction permits. The country ranks at 182 in the ranking of 185 economies for the ease of dealing with construction permits. On an average there are 34 procedures involved and 196 days are spent before obtaining permission for undertaking construction. [1].

It indicates that the procedure for obtaining clearances is time consuming and projects often get delayed due to delay in obtaining clearances from various agencies. These approvals cost as much as 1528% of income per capita (whereas across sectors, the average cost of doing business in India is only 49.8% of income per capita [2].

The enormous cost linked with this process is consequently passed on to customers and has implications for the sector at large. The countries with the highest rank on the ease of doing business therefore are not those with no regulation but are those whose governments have managed to create a regulatory system that facilitates interactions in the marketplace, protects important public interests without unnecessarily hinder-

ing the development of the private sector. Having the right business regulations and related institutions is therefore essential for the health of an economy. Among the world a business takes 7 procedures, 25 days and 32% of income per capita in fees while it takes as little as 1 procedure, half a day and almost nothing in fees in New Zealand, an entrepreneur has to wait 144 days in República Bolivariana de Venezuela. [3].

Despite real estate and construction being one of the key contributors of economic growth, with secondary and tertiary linkages in terms of employment, GDP (Gross Domestic Product) growth, there is no well defined regulatory regime for this sector in India. One of the biggest complaints against the sector is delay in delivery of committed projects. As developers face problems with lack of clarity and uncertainty in building approvals, the impact on consumers is significant. If the sector builds on trust, the current perception in the minds of regulators, investors, lenders and consumers will change and larger number of stakeholders will come back and do business in the sector.

Different methods of development control can be zoning regulations, developments plans, land use plans and building bye laws or building codes. All building approvals have an equal contribution to serve community but as far as public safety and aesthetic is concerned building bye laws are sighted at the top of list. The main underlying principle of building bye laws is to exercise control over city development for ensuring planned development, for conserving architecture, for ensuring safety and protecting public health.

Efficient regulation of construction helps protect the public from faulty building practices. In case of complicated and costly procedures, builders tend to proceed without a permit. It is estimated that around 60 to 80% of time in building projects in

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developing economies are undertaken for seeking the proper permits and approvals and because the construction permitting process generally requires licensing from several different agencies, those using the process are exposed to different bureaucracies, which creates opportunities for rent seeking. In many areas in the world in recent years, Doing Business data show that there has been remarkable progress in removing some of the biggest bureaucratic obstacles to private sector activity. [3].

2 CURRENT BUILDING REGULATORY SCENARIO IN INDIA:-

From anecdotal evidence, it is believed that housing projects need more than 50 approvals involving statutory authorities of Central Government, State Government and Local Municipalities. Major NOCs conditions are listed below: [4]

- Non-Agriculture (NA) permission
- Tree Authority
- Storm Water and Drainage Department
- Sewerage Department
- Hydraulic Department
- Environmental Department (concerned with debris management)
- Consent to Establish & Operate
- Ancient Monument Approval
- Airports Authority of India
- Traffic and Coordination Department
- CFO (fire clearance)
- Structural Plan Approval

The entire process takes about 6 months to 2 years depending upon the type, size and nature of real estate project. Environment clearance is mandatory for projects of size above 20,000 sq.m. and is a pre-requisite for Building Plan approval. Most of the clearances needed are at state level like land, water, electricity, environment, town and country planning and a whole lot of clearances are needed of which some are sequential get stuck in 'snake and ladder' kind of a situation, where after some clearances because of a new factor, the whole sequence had to be followed de-novo. If the current system is allowed to continue it will have a serious effect on the overall economic competitiveness. It is essential to evaluate which regulations are necessary and which need simplification and to see that the cost of compliance of those regulations commensurate with the benefits are in line with the objectives initially stipulated.

Municipalities and local governments are faced with increasing demand for permitting services and are under pressure to improve the quality and speed of permit reviews, as well as citizen service delivery but due to resource constraint did not succeed to achieve their objectives. A well-functioning, centralised building-control regulatory system with efficient monitoring mechanism is an important component of a modern society. Where they do not work well, and society fails to meet these objectives, costs and predatory rent-seeking will increase.[5].

3 PRESENT CONSTRAINTS AND CHALLENGES:

Discussions with different community groups like Architects, Civil Engineers, Environmental consultants, liaison officers etc suggest that there are some serious concerns about the complexity, consistency and efficiency of development application and building approval processes due to confusing number and variety of laws, regulations, guidelines and government policy requirements that often apply to a project making it difficult for developers and the general public to understand and assess the viability of projects and to prepare sound design concepts and applications. After discussion with various delegates the main problem areas and challenges in the approval system found are as listed below:

- Lack of capacity, information, transparency, process standardisation, professional knowledge in terms of fast track process
- Timelines are not adhered to.
- Minimal use of Information Technology (IT) to reduce personal interface with public authorities..
- Process requires various NOCs like Electricity, water, sewage, Airport Authority, Archaeological Survey of India (ASI) for Ancient Monuments and Environment clearance. NOCs take much longer than required and even in many cases it is not at all required
- Measuring against simple criteria such as size or location rather than a risk category of project.
- Cumulative Impact of development activities leading to impact on the neighbourhood and overall environment is ignored.
- The nodal agency is not equipped to monitor the implementation across the country as they lack the competent resources for such monitoring.

4 NEED OF PRIVATISATION:

Building approval system is much more than just ensuring that buildings are built safe and sound. It is also a homeowner's dream, therefore, to obtain a building permit with minimal time period is vital. The enforcement of construction permits continues to be complex the world over, In most developing countries, the percentage of buildings that do not go through any form of controls is generally estimated to be between 60 and 80 percent and lead to poor compliance with standards and increased risks for the community. [1].

A simple and efficient building approval process is essential in aiding the provision of appropriate property, especially in a country like India with huge deficit of housing and infrastructural facilities. More importantly, delivery of affordable housing in India requires participation by the private sector i.e. the Real Estate developers. However private players need some incentives and mainly a business friendly environment to enter into the not so profitable endeavour of providing affordable housing for the low income group.

During December 2014, at the "Make In India" workshop and Ease of Doing Business in India initiative State governments

agreed to a series of recommendations targeted at increasing transparency and improving the effectiveness and efficiency of various government regulatory functions and services in India.

Not a single route leads to successful collaboration, but all significant reform experiences worldwide have involved some delegation to private building professionals or some form of joint responsibility at various levels of the permitting process. For example in countries like Colombia, Australia and United Kingdom certified private engineers review and issue permits; carry out private system of inspections to operate. Privatization is important to economy for a healthy competition, better and cheaper public services, better profits, vanishes the monopoly and hence reduces the price. It invents techniques and offer lots of freedom/flexibility to individual to take risk to implement his ideas. [6]

By dealing with Private Building Control in the form of accredited Architects/Planners, there will usually be direct contact with appointed Approved Inspector for better advice, service, communication, saving in time, reduced risks and hence money in the long run. It helps to build an outstanding team of experienced consultants and expertise around the project to ensure effective leadership and, teamwork throughout project life cycle.

5 PROPOSED STREAMLINING OF THE REAL ESTATE APPROVAL PROCESS WITH THE PPP MODEL:

In last 15 years, reformers have been in use of three major strategies to improve compliance by shifting from traditional control and command regulations to better, more effective regulations: [7]

- Seeking new collaboration with private sector building professionals
- Focusing on risk-management
- Leveraging Information and Communications Technology (ICT) solutions.

5.1 Public Private Partnership:

By considering the benefits of this practice many international government have implicated the private sector to implement building by laws effectively and efficiently. Private sector being more responsible governs the implementing authority to successfully implement building code. The isolation of public services from political pressures has also helped to improve performance indicators. Private sector managerial capability and technological development, especially in telecommunications, explain productivity gains. Local Authorities have overlapping functions and have no proper chain of command. International practice of involving private sector with government sector in instigating building regulations can improve city's building regulations.

It is important to first critically analyze the existing byelaws of all Authorities, integrate existing implementation system with international scenario and assess building control practices through community perception and to enlist success and failure practices, to depict lesson and suggest the improvement in the existing system of building control

At the first stage it is proposed to have one centralized Special Development and Planning Authority (SDPA) as a Public Enterprise at the state level (with complete set up of organisation structure for the entire state) responsible for the planning, layouts, land acquisitions, land records, property management, property registration, infrastructure planning, execution and maintenance which will act as special Town planning and development authority (like MIDC/CIDCO etc.) responsible for all approvals at various stages including environmental clearance as a part of commencement certificate, occupancy certificates etc for the entire state. The Special Development and Planning Authority (SDPA) should prepare the "Development Plan" (DP) for the entire state and further bifurcations at district, city, town and village levels. It should define the land use, zoning, development control regulations, road network and transportation, water supply sewerage, drainage, open spaces, environment and pollution control measures with standardisation, streamlining and unification of development controls rules.

SDPA should take up the job of providing public utility services like roads, electricity, drainage, sewerage and water supply. Authority must lay down the civic infrastructure in phased manner on priority and in a timely manner so that construction work is expedited. Not all building projects are associated with the same economic or environmental risks. Construction permitting processes need to be differentiated to treat buildings according to their risk level and location.

In the system, private sector players can be involved in the building regulatory enforcement process like assessment of building plans against applicable law; issuance of building permits; on site monitoring/assessment of construction work, follow up enforcement tasks if the assessment finds non-compliance with regulations; and, issuance of completion permits.

Deemed clearances including commencement certificates must be given for the projects of low risk category like limited size of real estate projects. Accredited Architect/Civil Engineer (know as Certified Professional--CP) Certifying Building as per Development Control Rules (DCR) should be accepted for certain category of low risk projects for the commencement of work without building approval. With Deemed approvals timeline is maintained by authorities. Strict monitoring of the project should be done by the Private Accredited Architects/Certifiers regularly to monitor the construction of the project and ensure it confirms to norms throughout project life cycle under the supervision and control of SDPA, to have the minimum political interference. Final inspection and occupancy certificate would be under the purview of SDPA. In case of violations, rigorous penalties be imposed on both the architect and the property owner. Municipality should regularly monitor the construction of the project and ensure it confirms to norms. Energy efficiency in buildings is becoming an increasing greater component of Building Code. It is the relevant building Private Certified Professional's job to make sure that the proposed works will comply with the Building Regulations including Green Building norms. Once the Private Certified Professional has issued the building permit, there will generally be four stages when the building works need to be inspected by him, being the foundations, steel reinforcement

for the slab or footing, framework, and a final inspection. The number of inspections required could vary from one for a verandah or to a dozen on a large commercial project. As applied to the building inspection function, privatization is a desirable alternative to the current municipal system which have a monopoly on the inspection function and insufficient funding and staffing. In case of negligence, courts can impose liability on the private inspection firm.

The profit incentive and the threat of liability would motivate private inspectors to conduct responsible inspections. Moreover, private firms would have access to levels of expertise to detect latent faults and defects in construction generally unavailable to governments. Thus, a building inspection would be more than a superficial review of plans and structures. Computers and GIS systems need to be employed information to be brought into standardized formats/database and presented in the form of maps for easy visualisation and interpretation. [5].

6 PROBLMES IN IMPLEMENTATION OF PPP MODEL FOR STREAMLINING OF OF THE REAL ESTATE APPROVAL PROCESS :

Every system has positive as well as negative impacts hence analysis has been carried out to understand problems in implementation of PPP model and few measures are suggested to overcome these limitations.

Overall PPP model deliver an increase in effectiveness and efficiency but competitive, rather than a complementary relationship between the private and public sectors in a privatised regime is also found to be more likely to generate problems related to the equity of the service being provided. [8].

It is agreed that level of professionalism amongst the CPs have improved dramatically but problem could exist with unscrupulous CPs passing sub standard work. . Private sector actors might become subject to potential conflicts of interest. Hence many feel that semi privatized planning system might be more feasible with final inspection role by local authority.

Hence privatisation should be performed with the utmost careful measures like:

providing private sector inspectors with the opportunity to specialize,

confining CPs to assessment tasks, and ensuring that a complementary relationship exists between the private and public sectors within the privatised regime.

For effective implementation of reforms require all parties to have a shared vision

As building poses significant risks to public health and safety therefore, the liability of the parties must be clearly established. As a outcome, mechanism that penalize violations by the third party certifier e.g. disbarment, revocation of testimonial, initiation of legal proceedings etc. must be clearly defined.

A complex role of the state in city development and planning has emerged in recent times. Where, on the one hand, it is considered that state has receded and given way to the private entrepreneur in development of cities, on the other hand, the state is accused of devious with the private sector in forcible

land acquisition and preying of environmental resources. Affordable housing built with the the public private partnership model is facing restricted success in achieving its purpose. Generally private certifiers were said to be subject to commercial pressure due to the client-contractor relationship they enter into. Resource and revenue loss may, in the long term, corrode the quality of the public regulatory enforcement authorities, which might endanger their ability to secure the public interest and serve the public.

7 CONCLUSION

Effective regulation is central in ensuring effective privatisation of natural monopolies in developing countries. With sound appraisal, design, and implementation, privatisation programs can be beneficial in countries like India. Positive indicators for success would include strong government ownership of the process, well-designed and sequenced reforms, the implementation of complementary policies and good corporate governance structures.

Based on the entire study it has been explored that third-party certification for the low risk project reduces the burden on the inspectors and the technical staff at the municipalities and greatly aid in streamlining their work.

However risks of privatization should be recognized and assessed in any decision to privatise, and where possible, such risks should be mitigated. Overall, the studies on developing economies show that private ownership alone rarely generates economic gains. The success of privatisation depend on the regulatory framework which in turns depend on the institutional and political environment. Effective competition is also the key to bringing about performance improvements. Privatisation should not be looked at in isolation. Success depend on suitable deregulation and reregulation of private firms.

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