Detail

# NIGERIAN REAL ESTATE INVESTMENT TOOLKIT GUIDE 2024

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Part 1:

# Overview of the Nigerian Real Estate Sector

# REAL ESTATE SECTOR IN NIGERIA

The real estate sector is one of the most formidable sectors of the Nigerian economy. As of the fourth quarter of 2023, the National Bureau of Statistics reported that the sector was the fourth-highest contributor to Nigeria's gross domestic product (GDP) at about 6.06%; while construction activities also contributed 3.47%. The growth of the real estate sector's contribution to the GDP was 22.40% (quarter-on-quarter).[1]

As of 2024, current developments and trends in the Nigerian economy indicate an upward trajectory for more growth in the real estate sector.

With Nigeria's 2024 GDP growth projected by the International Monetary Fund at 3%,[2] there continues to be various opportunities open for investors in the Nigerian real estate space, especially with the ever-growing demand for affordable homes, mixed-used buildings and the like in the country. It is estimated that Nigeria currently holds up to Nine Hundred Billion United States Dollars (US$ 900,000,000,000) worth of dead capital locked up in residential real estate and agricultural land, including federal government's abandoned properties estimated at Two Hundred and Thirty Billion Naira (NGN 230,000,000,000).[3] Another area of potential in the real estate sector is tied closely to road infrastructure, as the Nigerian infrastructural gap is adversely impacting the full potential of housing, economic growth, and development[4].

With its population at more than two hundred and twenty-seven million (227,000,000), a steady migration of people to urban areas, and the ever-increasing housing deficit, there is a burgeoning to develop various kinds of asset classes to meet the continuous rising demand in Nigeria's real estate market. For the year 2024, the Federal Housing Authority plans on allocating about seven hundred and seventy-six million, one hundred and fifty thousand (approximately 19.8% of its 2024 budget of NGN3.94 billion) towards the construction of low-cost housing [5].

Steps are also being taken by States to further improve their respective real estate sectors. For example, in 2023, the Lagos State Government budgeted sixty-seven billion, one hundred million Naira (NGN67,100,000,000) for the provision of affordable housing in the state, out of the entire budget of one trillion, seven hundred and seven billion Naira (NGN1,707,000,000,000) [6].

# SOURCES OF FUNDING FOR REAL ESTATE DEVELOPMENT

There are various sources for real estate development; however, the focus will be on these:

## Domestic Banks

Domestic banks in Nigeria are the most common source of financing for real estate development, offering various financing options such as construction loans and project financing to developers. Banks typically fund developers using short-term loans and high interest rates, making it difficult for developers to finance long-term projects with large upfront costs. Additionally, banks often require significant collateral and a strong credit history, which can limit access to financing for smaller developers or those undertaking riskier projects. Despite these limitations, domestic banks remain a significant source of funding for real estate projects.

## Development Finance Institutions (DFIs)

DFIs are specialized development banks that play an important role in promoting real estate development, particularly in emerging markets like Nigeria.

They typically provide capital for real estate projects through debt financing or equity investments, especially for projects that align with their development goals and impact; this could be a limitation in accessing their funds. Major characteristics of DFI financing is the long repayment period they offer to borrowers and rigorous project evaluation processes due to due diligence and investment approval processes.

# SOURCES OF FUNDING FOR REAL ESTATE DEVELOPMENT

## Federal Mortgage Bank of Nigeria (FMBN)

The Federal Mortgage Bank of Nigeria is a statutory institution with the mandate to provide long-term credit facilities to mortgage institutions in Nigeria. The FMBN directly offers mortgage loans and refinancing options to individuals and developers. These loans are often targeted at specific demographics, such as first-time homeowners or individuals with limited income.

Additionally, the FMBN acts as a secondary mortgage market facilitator, buying mortgages from other lenders and providing liquidity in the housing finance system. The FMBN also administers the National Housing Fund.

## Private Equity Funds

Private Equity companies that invest in the real estate sector pool money from investors – often institutions or high-net-worth individuals and dedicate these funds specifically to real estate ventures. These real estate ventures could be greenfield (in the form of a new project) or brownfield assets (purchase of an existing, underperforming property).

Since they are not restricted by strict rules and regulations as banks, PE funds offer more flexibility in their financing; however, they typically seek higher returns, which may make the cost of capital higher. Also, private equity firms will usually seek to own a stake in the project, therefore, it is imperative for a potential developer to consider carving out a portion of the ownership of the property, for PE financiers.

# SOURCES OF FUNDING FOR REAL ESTATE DEVELOPMENT

## Real Estate Investment Trusts (REITs)

Real Estate Investment Trusts (REITs) are collective investment schemes which offer individuals an opportunity to access real estate investments. These investment vehicles, which could be in the form of companies or trusts, invest in and manage income-generating properties, allowing investors to participate by holding a participating interest in the REIT proportionate to their investment without directly owning or operating them.

## Accessing Retirement Saving Towards Payment of Equity Contribution for Residential Mortgage.

In September 2022, the National Pension Commission (PenCom) introduced the Guidelines on Accessing Retirement Savings Account (RSA) Balance towards Payment of Equity Contribution for Residential Mortgage by RSA Holders (the Guidelines). By the Guidelines, RSA holders are allowed to utilize a part of their retirement savings as an equity contribution to obtain residential mortgages.

# SOURCES OF FUNDING FOR REAL ESTATE DEVELOPMENT

## Crowdfunding

While this is yet to become popular in Nigeria, it is an emerging source of real estate funding and provides easy and cheaper access to capital for small-scale projects. The Securities and Exchange Commission (SEC), Nigeria, on 21st January 2021, published its approved Rules on Crowdfunding.

Unlike in a syndicated loan arrangement, subject to some limitations in the SEC crowdfunding rules, funds can also be raised from the public usually on an online platform/website and not necessarily restricted to financial institutions and high-net individuals. Crowdfunding allows the real estate developer, in its role as issuer, to determine the pricing terms of the debt to be issued. However, the crowdfunding rules of the SEC limits the aggregate amount of money that can be raised through crowdfunding platforms, making it unattractive as a source of funding for large-scale projects. The aggregate amount of investment instruments that can be offered and sold by a Fundraiser within a twelve month period shall not exceed a hundred million naira (NGN100,000,000), if it is a medium enterprise, seventy million (NGN70,000,000) for a small enterprise and fifty million (NGN50,000,000) for a micro enterprise.[7]

## Nigeria Mortgage Refinance Company (NMRC)

The Nigerian Mortgage Refinance Company supports the retail consumer end of the real estate market, by providing affordable housing finance solutions. The NMRC raises long-term funds from the capital market to refinance compliant mortgage portfolios of mortgage and commercial banks in Nigeria. NMRC typically purchases these compliant mortgages originated by approved lenders (member banks), allowing the member banks to use the freed-up funds to grant more loans to other mortgage loan seekers.

# ASSET CATEGORIZATION OF REAL ESTATE IN NIGERIA

There are various categories of assets in Nigeria, with many laudable developments that have been undertaken under them. Some of these include the following:

## 1. COMMERCIAL REAL ESTATE

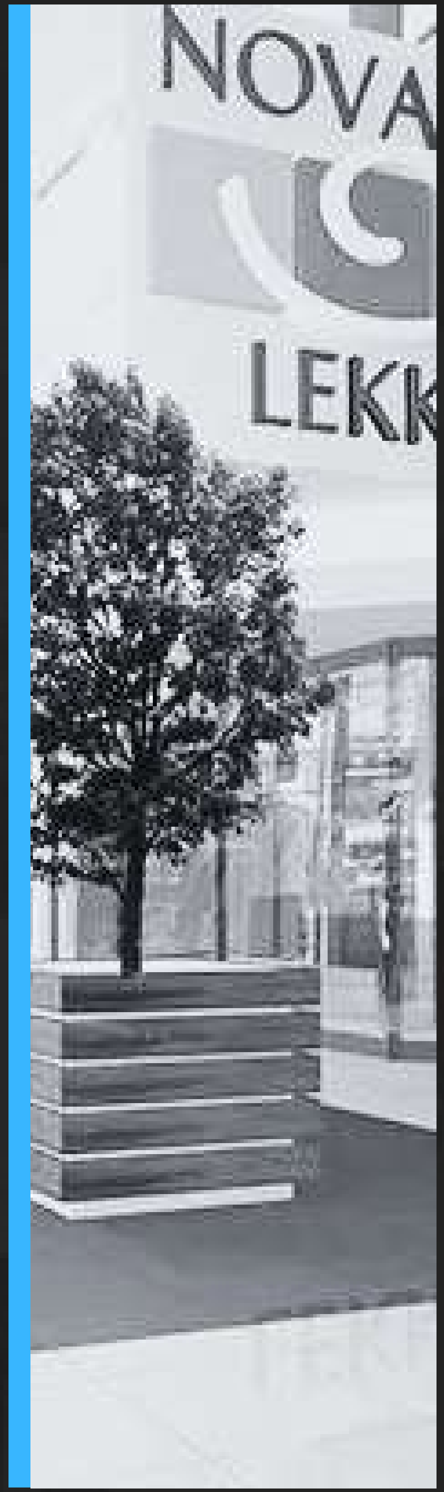
### a) Malls

**Novare Lekki Mall [8]**

The Novare Lekki Mall is a retail development by Novare Africa Property Fund, built by Monterosa Construction and located along the Lekki-Epe Expressway, Lagos. It houses major brands like Shoprite, Game, and Genesis Cinema. The mall is one of the largest malls in Lagos as it is situated on expansive land, housing up to a hundred (100) shops and a thousand (1000) open parking bays.

**Delta Mall**

The Delta Mall was developed through a joint venture between Stanbic IBTC, Resilient Africa, and the Delta State government. It is located at the Efurun roundabout in Delta State. The project's estimated cost was about Fifty-Five Million Dollars (US$55,000,000). The Mall has about sixty-five (65) shops and houses global brands such as Shoprite, Mr. Price, and Jet.



**b) Office**

**Heritage Place [9]**
This is a world-class office development project that cost about one hundred million dollars ($100,000,000) developed by Actis, a private equity firm that invests globally in sustainable infrastructure. The building is one of Nigeria's most advanced real estate developments with a Leadership in Energy and Environmental Design (LEED) Certificate.

**Institute of Directors Nigeria House (IoD House)**
In 2021, the Institute of Directors announced that it had commenced building a 15-floor mixed-use development building (to be located at 8 Temple Road, Ikoyi, Lagos). The cost of the construction was announced to be Ten Billion Naira (NGN10,000,000,000) at the time, and it was stated that the construction would be completed in thirty-six (36) months, i.e. 2024. The building will be the corporate headquarters of the Institute (both as an office complex and for residential purposes).

**c) Hospitality**

**Koko Beach Resort Ilashe, Curio Collection by Hilton [10]**
This is an ongoing project by Hilton, intended to be completed by 2025. It has been heralded as the first internationally branded resort, joining the esteemed Curio Collection family as its third African outpost. It is expected to have sixty (60) rooms.

**Protea Hotel by Marriott Abuja Jahi [11]**

Marriott International, through a franchise agreement with Gold Reef Hotel Ltd facilitated the setting up of the Protea Hotel to be opened in Jahi, Abuja, and managed by BON Hospitality West Africa Ltd. Projected to open by 2027 in the district of Jahi, Abuja, and straddling two prominent commercial areas, Gwarinpa and Jabi, it is expected to consist of one hundred and forty-four (144) guestrooms, two dining options, a swimming pool, and meeting facilities.


**d) Medical Facilities**

**Lagos American Speciality Hospital (LASH)**

This is an ongoing project by the American Hospital Management Company, estimated to be completed by the end of 2024. It is a private investment in specialized healthcare infrastructure. The project is estimated to cost about fifty million United States dollars (US$50 million).

**Fully Equipped 120-Bed Mother and Child Hospital in Kaduna State**

In 2023, the Presidency through a Sustainable Development Goals (OSSAP-SDGs) project, handed over a fully equipped 120-bed mother and child hospital to the Kaduna State Government, being one of the steps towards achieving the SDG-3 on 'quality health and well-being for all'.

## 2. RESIDENTIAL REAL ESTATE

**Eko Atlantic City [12]**

Eko Atlantic City is a large-scale development project aiming to create a new city on land reclaimed from the Atlantic Ocean off the coast of Lagos, Nigeria. The project is funded by a combination of private and public entities. Private funding comes from South Energyx Nigeria Limited, alongside several national and international banks. Public support is provided by the Lagos State Government and the Federal Government of Nigeria.

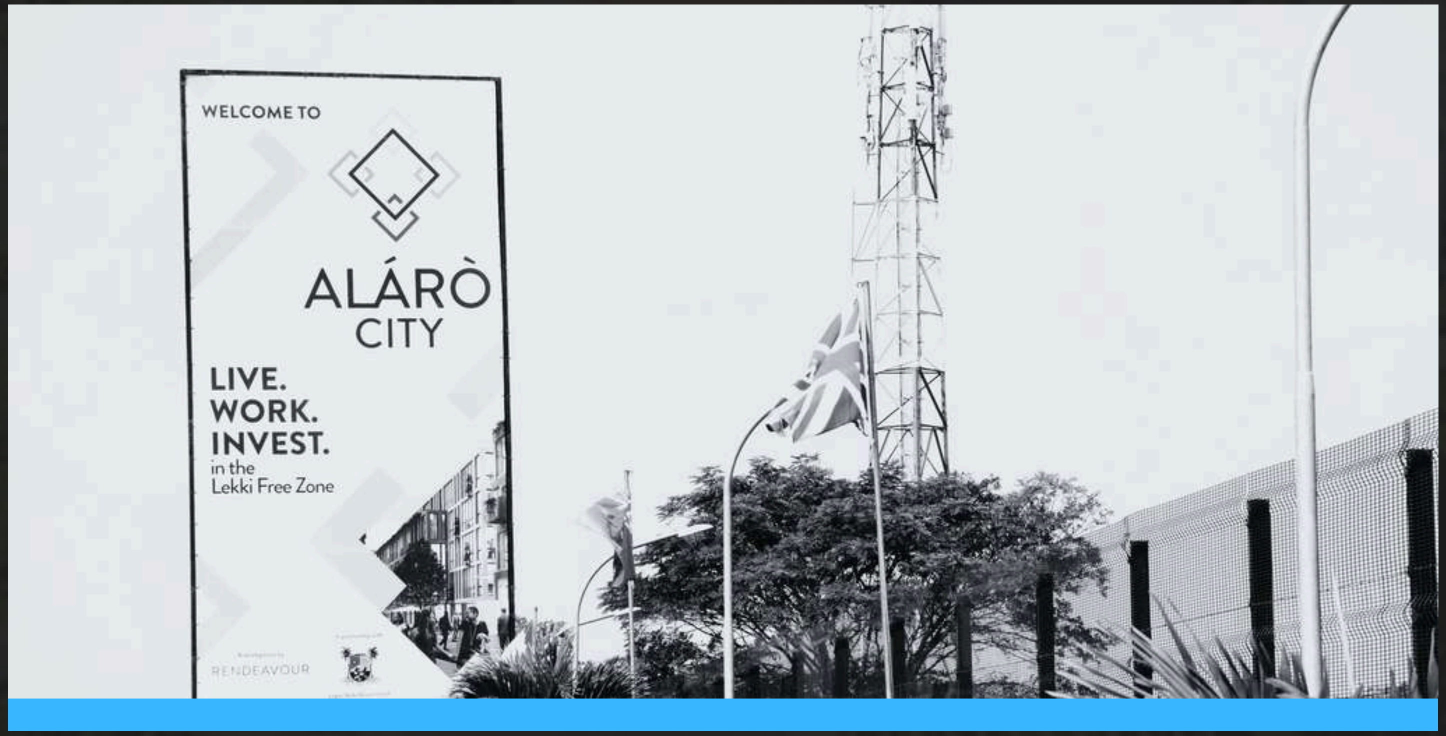
**Alaro City Nigeria [13]**

This is a mixed-use development planned for 2,000 hectares within the Lekki Free Zone in Lagos, Nigeria and being undertaken by Rendeavour under a joint venture with the Lagos State Government. Alaro is expected to attract residents, businesses, and investors seeking Lagos's modern and vibrant urban environment. The city's site is close to amenities, such as the approved location for the proposed Lekki International Airport and the deep seaport.

## 3. INDUSTRIAL REAL ESTATE

**The Lagos Food Security Systems and Central Logistics Park**

The Lagos Food Security Systems and Central Logistics Park, currently under construction, aims to be the largest food distribution center in sub-Saharan Africa upon completion. Located in Ketu-Ereyun, near Epe, this massive project will sit on 1.2 million square meters of land. This includes facilities for over 1,500 trucks, allowing for the movement of large quantities of food daily.

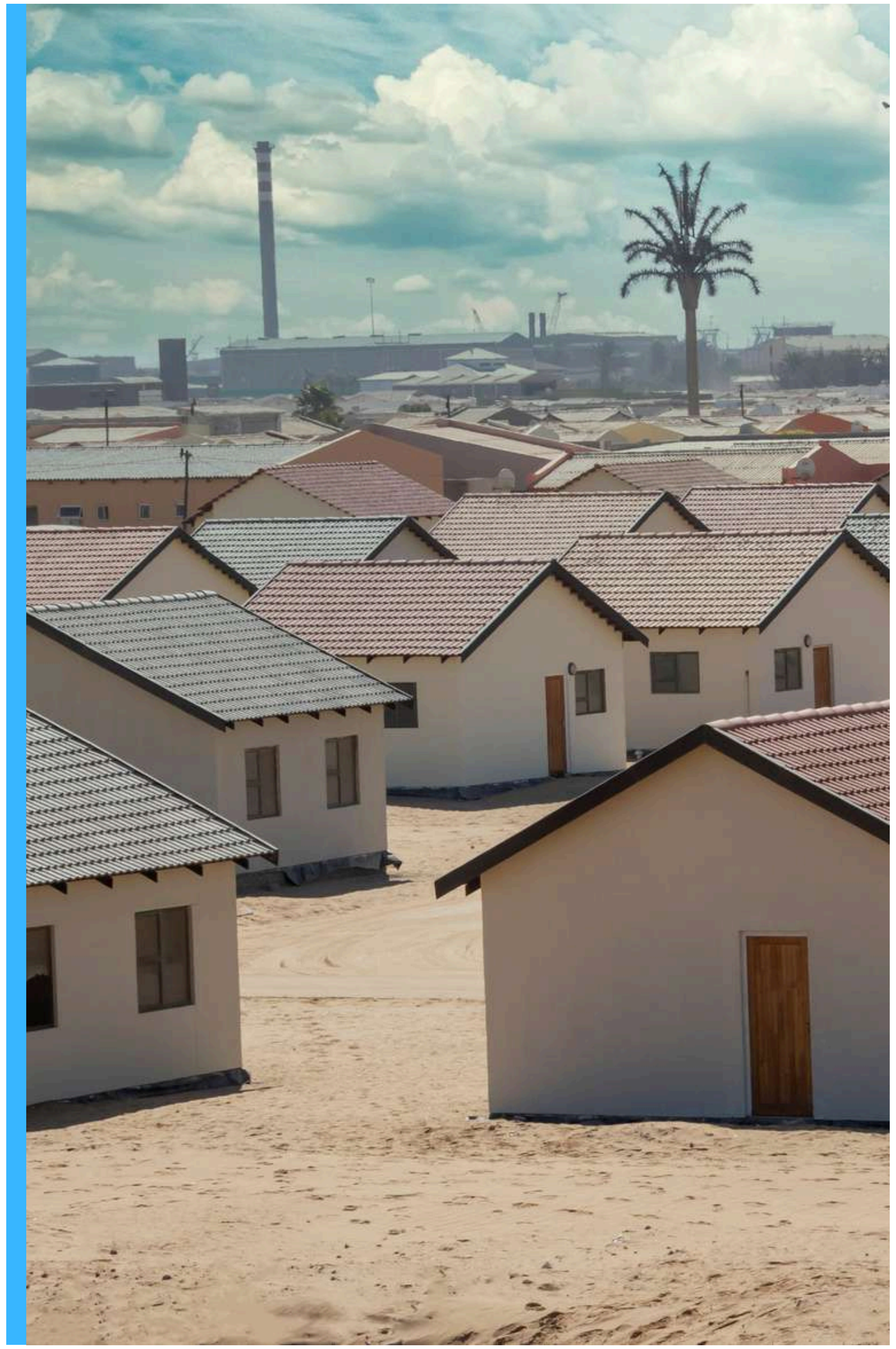


**4. ALTERNATIVE REAL ESTATE**

**MDXi Lekki Data Centre [14]**
In early 2022, MDXi, a subsidiary of MainOne, (which was acquired by Equinix) opened its second Tier III, Carrier Neutral, Payment Card Data Security Standard (PCI DSS) Data centre in Lekki.

# EMERGING MARKET OPPORTUNITIES IN THE REAL ESTATE SECTOR

**Low-Cost Housing**
The 2022 Nigeria Multidimensional Poverty Index (MPI) paints a stark picture, revealing that 51.4% of the population suffers from multidimensional poverty. This underscores the country's significant struggle with poverty and highlights the disparities across its regions. Further compounding the challenge, UN-Habitat estimates that 58.8% of the urban population resides in slums, signifying an immense and urgent demand for affordable housing with basic infrastructure in these areas. For example, in 2020, the Federal Government announced that it had entered into an agreement with the Family Homes Funds Limited (FHFL) for the implementation of the Federal Government's Social Housing programme as part of the Economic Sustainability Plan 2020, which was basically to deploy 300,000 homes in the 36 states of the federation and the Federal Capital Territory and to create up to up to one million, five hundred thousand (1,500,000) jobs in five (5) years. It appears that work is still ongoing [15].



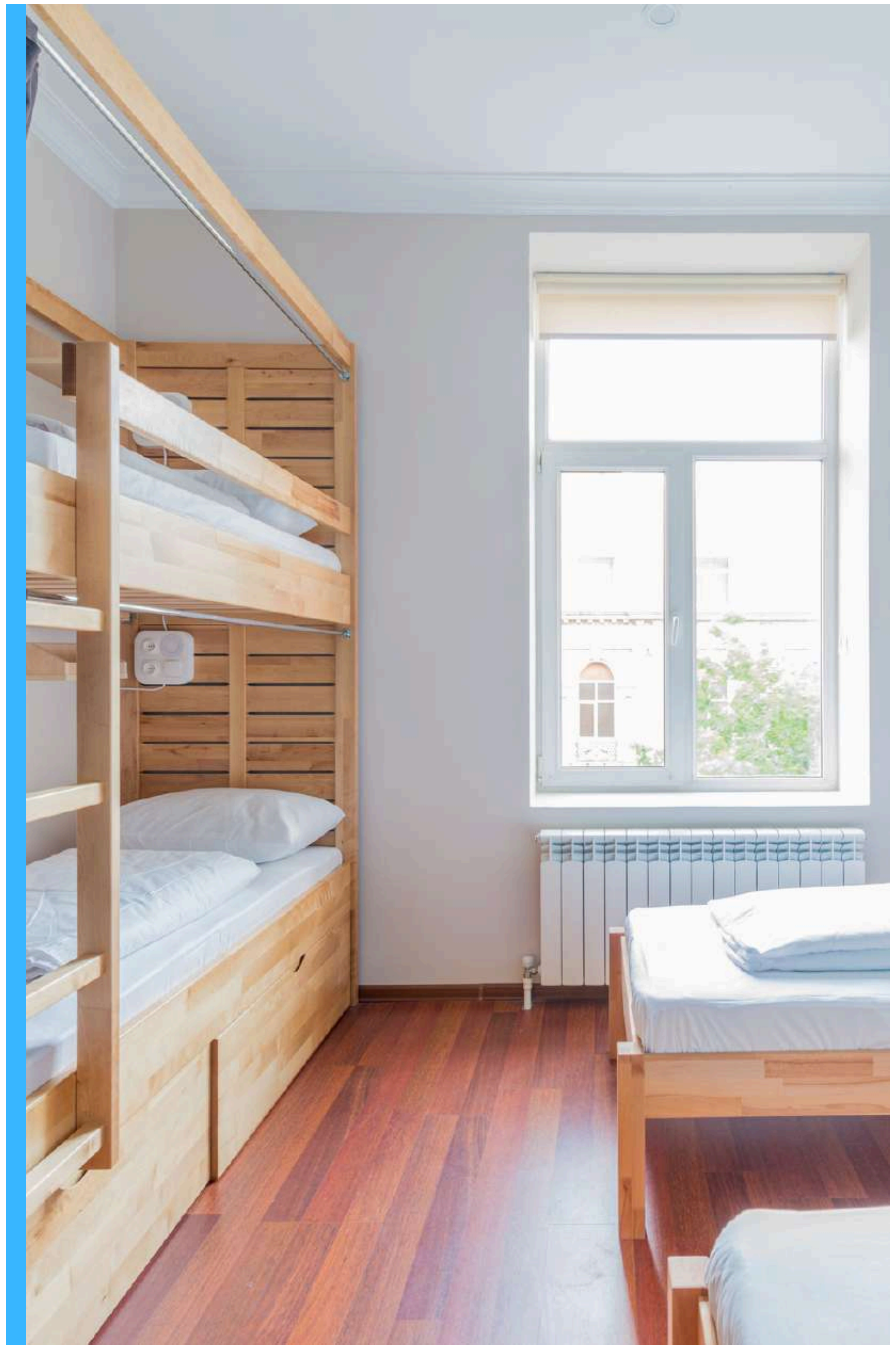
This is one of the steps taken by the government to address the housing deficit which remains an issue and an investment opportunity.

In the private sector, Millard Fuller Foundation through its Nigerian affiliate, MFF Housing is working to bridge this gap in Northern Nigeria by facilitating the construction of the Grandluvu 3B Estate, a 248-unit housing project comprising of one, two and three-bedroom semi-detached and fully detached bungalows in Luvu Madaki, Masaka, Nasarawa, which is a few kilometres from the Abuja. Through this kind of project, the organisation allows mid-low-income earners to own a house through various convenient payment options [16].

**Student Apartments and Single-Occupancy Apartment Schemes**

Steady growth in Nigeria's youth population is contributing actively to the continued demand for affordable student accommodation in that demographic. The Federal Ministry of Youth and Sports Development in collaboration with the National Bureau of Statistics estimated the total population of youth aged (15 - 35) years as ninety-five million, three hundred and fifteen thousand, one hundred and forty-four [17]. For example, in the Yaba area of Lagos, various student facilities cater to the needs of students of the Yaba College of Technology and the University of Lagos.

Also, with the growing number of young professionals in the country, there is an increasing market for single-occupancy apartment schemes that cater to the needs of young workers



looking for an affordable space to reside in. These apartments are typically smaller and more essential than traditional apartments, leading to lower rent and utility costs and are currently an emerging market in Nigeria[18].

**Short-let Apartments**

With the advent of Airbnb, short-let apartments have become very popular in Nigeria. Under this model, users can access flexible accommodation arrangements and investors can finance projects like these.

**Senior Care Homes**

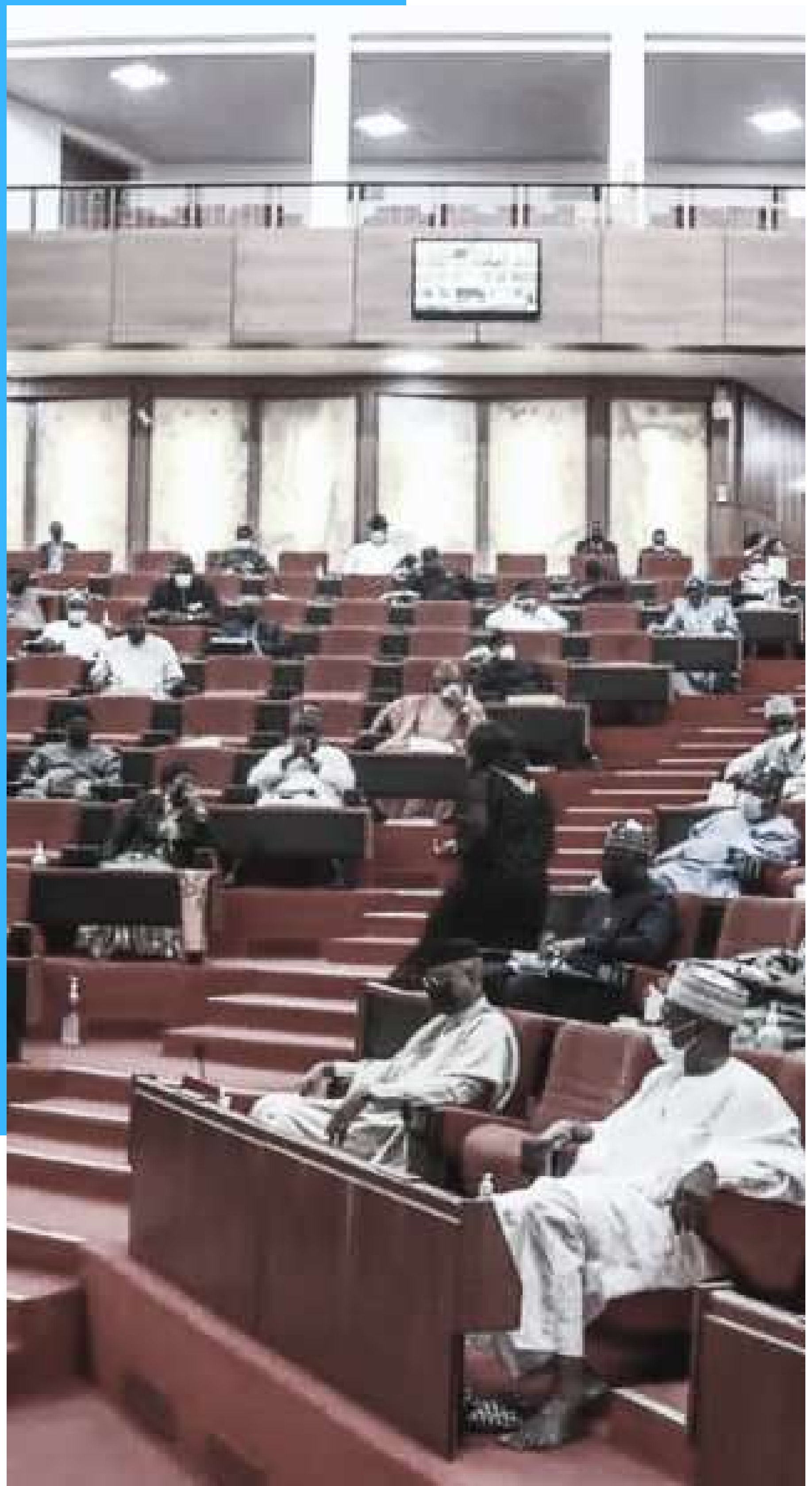
Nigeria's demographics are shifting rapidly, with a significant increase in the elderly population. This trend, coupled with changing social structures and economic realities, is creating a growing need for senior care homes in the country.

Part 2:

# Legal and Regulatory Framework for Real Estate Transactions

KEY LEGISLATIONS AND REGULATIONS (FEDERAL AND STATE)

LICENSES, PERMITS, AND APPROVALS



# LEGAL AND REGULATORY FRAMEWORK FOR REAL ESTATE TRANSACTIONS.

The legislative laydown of the Nigerian real estate industry primarily centres around proof of title, registration of title, interest obtainable and the legal protection available to players in the market. This framework is aimed at ensuring that all real estate transactions are documented to aid title investigation, thereby protecting a bonafide purchaser for value without notice and creating priority orders on registration of relevant interest.

# KEY LEGISLATIONS AND REGULATIONS (FEDERAL AND STATE)

**Constitution:** Section 43 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) codifies the right of every Nigerian citizen to acquire and own immovable property anywhere in Nigeria subject to certain exceptions.

**Land Use Act, 1978:** This Act vests all lands in the territory of each State in the Governor of the State who is responsible for land allocation in urban areas to individuals and organizations for residential, agricultural, commercial and other uses while similar powers with respect to non-urban lands are conferred on local governments [19]. The Act also determines the principles of land tenure, powers of the Governor and local government, as well as other provisions on revocation of right of occupancy, alienation and surrender of rights of occupancy etc.

**Mortgage and Property (Amendment) Law 2015:** The creation of charge and mortgage interests in Lagos is regulated by the Mortgage and Property (Amendment Law) in 2015. Outside Lagos, the Property and Conveyancing Law and the Conveyancing Act apply to states in the old Northern and Eastern and the old Western and mid-western states respectively.

**Property and Conveyancing Law:** This law applies to the Western region of Nigeria[20]. An essential provision of the law is that no sale of land shall be enforced except there is a note or memorandum in writing, which contains the terms of the sale and is subsequently signed. The law also emphasizes the importance of land transaction instruments to be by deed [21]. The Conveyancing Act with similar provisions apply to the former Eastern region and states in Northern Nigeria.

# KEY LEGISLATIONS AND REGULATIONS (FEDERAL AND STATE)

**Model Mortgage and Foreclosure Law [22].** The Model Mortgage and Foreclosure Model Law ("the Model Law") was established to create a sound legal framework for judicial enforcement of mortgages, and encourage a non-judicial foreclosure regime, as the basis for a stronger secondary mortgage market in Nigeria. The Model Law has been passed in Kaduna, Ekiti, Lagos and Nasarawa States while several other states are at various stages of passing the Model Law. The key provisions of the Model law include establishing the mortgage registry, empowering mortgagees to register mortgages, significantly shortening perfection period, pegging perfection costs of consent, registration and stamping at a certain percentage of the transaction value etc. The practicality and success of the implementation of this legislation is yet to be ascertained.

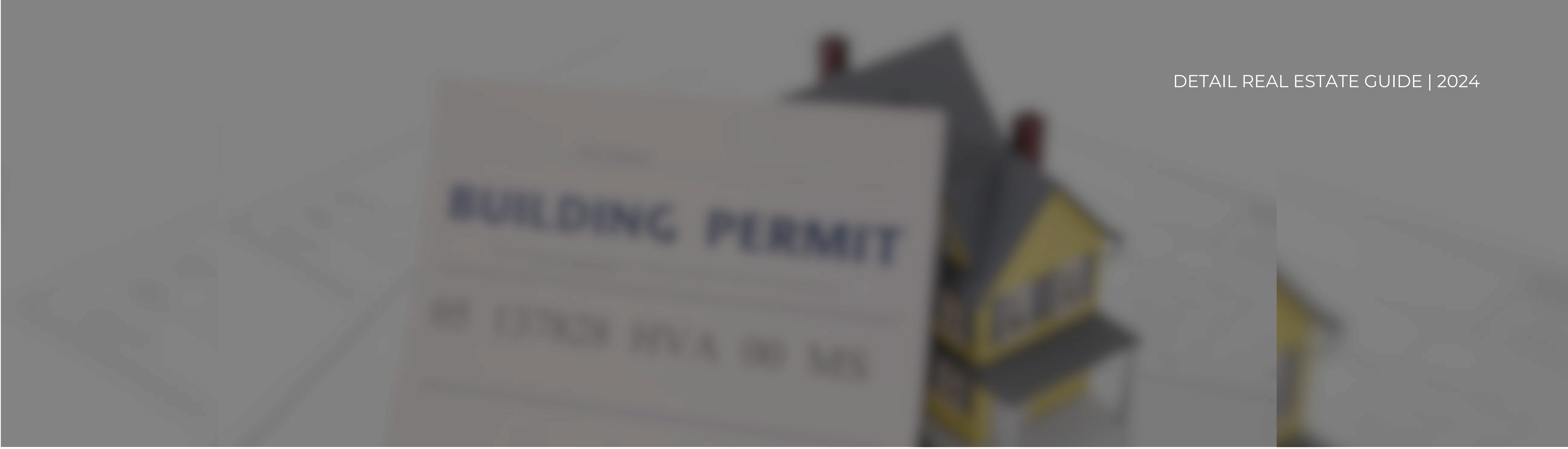
**Environmental Impact Assessment Act.** The Act sets out the general principles, procedures and methods to enable necessary consideration of environmental impact assessment on certain public or private projects. Section 55 of the Environmental Impact Assessment Act provides for the maintenance of a public registry for the purpose of facilitating public access to records relating to environmental assessments. A potential buyer may obtain information from the public registry maintained under this Act.

Other pertinent legislation includes the Lagos State Property Protection Law, the Lagos State Land Registration Law, the Lagos State Tenancy Law, the Administration of Estate Laws of various States, the Recovery of Premises Act etc.

# KEY LEGISLATIONS AND REGULATIONS (FEDERAL AND STATE)

**Lagos State Real Estate Regulatory Authority Law, 2022.** This law introduces new modalities into real estate practice in Lagos State. For example, all real estate practitioners within the state are required to be registered with, and licensed by, the Lagos State Real Estate Regulatory Authority.

**Nigerian Urban and Regional Planning Act:** The Act regulates physical planning activities in Nigeria. It sets out the procedures for land use planning, development control, and environmental impact assessment. It gives responsibilities to the federal, state and local governments and establishes certain bodies across these tiers of government to aid the implementation of the National Physical Development Plan, among other functions. Under the Act, a developer is required to obtain approval from the Development Control Department for a proposed development plan [23]. However, many States have also domesticated the Act as their law and require planning permits for real estate developments, thus replacing the operation of the Act to these kinds of developments[24]. In States where the Act has been domesticated, necessary approvals will be obtained from the agencies established to give such approvals. In Lagos, the agency that oversees this is the Lagos State Physical Planning Permit Authority (LASPPA). The Authority metamorphosed from the Development Control Department under the Ministry of Physical Planning prior to the establishment of the Lagos State Urban and Regional Planning Law [25]. For States yet to domesticate the Act, the provision of the Act applies. Effectively, necessary approvals will be obtained from the Development Control Department. Section 27 of the Act establishes the Development Control Department across the Federal, State and Local Government levels with control over federal lands and estates, State lands and estates and lands within the jurisdiction of the Local Government respectively.




# LICENSES, PERMITS, AND APPROVALS

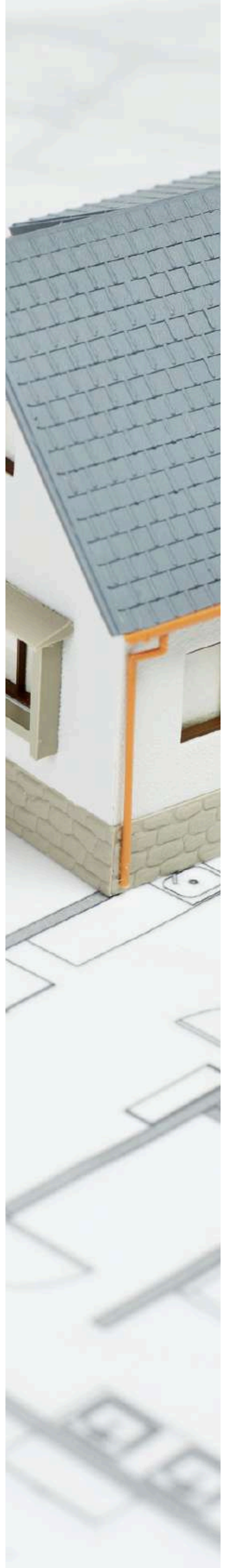
The licensing regime for the real estate sector is defined across several lines of building type, parties, location, design etc. The nature of the construction dictates the due processes to be followed and the permits, approval and license to be obtained.

**1. Planning/Development Permit:** Development permits are issued by the appropriate state department or authority in respective state jurisdictions. In Lagos State, the Physical Planning Permit Regulations 2019 provides that developers (whether private or government) must obtain a Planning Permit from Lagos State Physical Planning Permit Authority ("LASPPPA") to carry out any form of development within Lagos State. All planning permits to be granted shall be in the context of an approved Operative Development Plan (where available). The development on property is required to be in conformity with approved building plans. Any building carried out without a planning permit from the relevant authority shall be deemed illegal and treated as such [26].

The body in charge of building plan approvals in the Federal Capital Territory is the Department of Development Control (“**DDC**"). Each application undergoes a verification process by the vetting committee of the DDC to ensure adherence to the stipulated guidelines. All approvals obtained from the DDC are valid for two years, and failure to commence construction within that timeframe will require the developer to apply for validation upon expiry.

By virtue of the Kano State Land Use Decree of 1978, all developers must obtain a development permit from the Kano Urban Planning Development Authority ("**KNUPDA**”) before commencing any development. KNUDPA is committed to a 30-day processing period for all applications after fees are paid. Similarly, in Anambra State, by virtue of the Anambra State Urban and Regional Planning Law 2018, all individuals and organizations seeking to develop their land in Anambra State must apply for a development (building) permit through the Anambra State Physical Planning Board ("**ANSPB**”).

Some requirements for the application of development permits common to most states include Environmental Impact



Assessment (“**EIA**”) Approval Certificate, Soil Investigation Report for buildings exceeding three floors, Site Analysis Report, proposed architectural, mechanical and electrical drawings and layouts, Evidence of Personal Income Tax or Current Tax Clearance Certificate, among others.

**2. Other Construction Approvals and Authorisation:** Besides the development or building permits, agencies issues other construction certifications or authorizations throughout the construction process. In Lagos State, the Lagos State Building Control Agency ("**LABSCA**”) is responsible for issuing letters of authorization to commence construction and green stickers following a notice of intention to commence construction. It also carries out stage inspections and issues certifications at various stages of construction projects. LABSCA is also tasked with issuing certificates of completion and fitness for habitation/use upon the completion of construction. The Building Permit is an approval by the established authority that allows for the construction of buildings or remodelling of any existing buildings. The permit takes into consideration several safety precautions to be taken in granting the approval.

In Abuja, the DCC issues varying permits depending on the area and needs of the developer; and these include, Fast Track Planning Permit, Implementation Permit, Final Certificate of Completion and Decoration/Improvement Notice.

**3. Real Estate Agent License:** Section 27 of the Lagos State Estate Agency Regulatory Law provides that a property developer shall not practice the business of the estate agency in the State without the due license from the Authority for that purpose. Section 25 further provides for the registration process for companies that are real estate agents.

**4. Special Control Unit on Money Laundering ("SCUML") Certificate:** the Special Control Unit on Money Laundering was set up under the Economic and Financial Crime Commission ("EFCC") for the purpose of registering, monitoring and supervising the activities of Designated Non-Financial Businesses and Professionals ("**DNFBPs**"), otherwise called Designated Non-Financial Institutions ("**DNFIs**"). Real estate dealers and construction companies are among the institutions categorised as DNFIs according to the SCUML Registration Guidelines for DNFIs. A SCUML certificate is issued to DNFBPs as proof and an undertaking that the bank accounts of the establishment will not be used for money laundering purposes.

Part 3:

# Financing Real Estate Development in Nigeria: Key Considerations

.DUE DILIGENCE CONSIDERATIONS

THE RISK OF COMPULSORY ACQUISITION IN REAL ESTATE INVESTMENT IN NIGERIA

SECURITY CONSIDERATIONS AND STRUCTURING OPTIONS FOR REAL ESTATE PROJECT FINANCING

# FINANCING REAL ESTATE DEVELOPMENT IN NIGERIA: KEY CONSIDERATIONS

## Due Diligence Considerations

Legal due diligence remains a focal point in real estate investments in Nigeria and may be considered one of the most crucial preliminary aspects of real estate investment. In a typical property sale transaction, due diligence on the property can be conducted by either the vendor or the purchaser, but usually the purchaser. The vendor may issue a generic know-your-customer or know-your-business information request on the purchaser to verify its identity and to ensure that the transaction is not a conduit for money laundering or other illegal purpose. The purchaser on its part conducts verification checks on the vendor's title to the target property, as well as identifies encumbrances (if any) on it. Also, in real estate project finance, due diligence process by the financier will extend to the developer/project sponsor. Among other things, the financier will ascertain the creditworthiness of the developer/sponsor and the bankability of the project.

Below, we have outlined the major due diligence considerations that are imperative in real estate acquisition/transactions.

# General Due Diligence on the Real Estate Project Asset:[27]

**a). Preliminary Matters:** Usually, a due diligence check kickstarts with an information request by an interested party (this could be the purchaser or the financier depending on the nature of the transaction) to the developer (the could be the property owner when it is a sale or developing company, when it is a real estate project finance), covering title documents such as the title deed, contracts of sale, and other underlying documents for the project. The interested party proceeds to the lands registry and fills out the appropriate search form provided by the registry [28]. Recently, the Lagos State Government made significant advancements in the digitization of land administration with the introduction of the Electronic Geographic Information System (e-GIS) platform which enables users to search, verify, and apply for land titles remotely. At the time of preparing this Guide, we note that the website appears to be functional.

**b). Existing Charge or Encumbrance Over the Property:** Here, the interested party verifies at the lands registry that there is no existing encumbrance (such as mortgage) on the property. Where the property is owned by a company, the interested party may, in addition to conducting a search at the lands registry, also conduct a search at the Corporate Affairs Commission (CAC) to ensure that there is no registered charge on the property.

**c). Approved Use of the Property:** This is a crucial due diligence consideration in real estate transactions in Nigeria and refers to the purpose for which the land or property is intended to be used, as approved by the relevant authorities. Generally, the certificate of occupancy stipulate the permitted use of the property. To confirm the approved use, the interested party may send the survey plan obtained from the developer alongside other relevant documents to the office of the Surveyor General to confirm the planned use/zoning of the target property.

Where the approved use is inconsistent with the intended use by the developer, it is possible to apply for the designated use of a property to be changed. The process for a change of designated use is by formal application by the owner of the property to the Lagos State Ministry of Physical Planning and Urban Development (in the case of Lagos) accompanied by a cover letter explaining the reason for the proposed change of use, title documents of the property, application form by the Ministry, survey plan of the property and receipt of payment of requisite fees. The grant or approval is subject to payment of the assessed official fees and compliance with the procedure as may be determined by the location and valuation of the property. The approval is not automatic and is at the discretion of the state government and cannot be challenged as of right, however where approved, the ministry will grant the applicant a planning permit.

Also, it is possible to change the approved use where the property is a federal government land. Federal government lands refer to lands that are vested in the Federal Government of Nigeria and are controlled and managed for and on behalf of the Federal Government by the Federal Ministry responsible for lands and land matters or any other authority designated by the Ministry for that purpose. Where the change of approved use is for federal government land, the developer/project sponsor will submit an Application for Change of Use to the Federal Housing Authority website, along with the payment of a non-refundable processing fee of N2,000,000.00 (two million naira) paid to the Federal Housing Authority REMITA account. This application will be accompanied by an allocation/consent letter, evidence of Building Plan Approval, detailed Site Analysis Report, Feasibility Report and a Certified Copy of the Environmental Impact Assessment Report (**EIA**)/Change of Use Report.

**d). Regulatory Compliance:** As part of the due diligence process, the developer provides evidence of compliance with regulatory requirements. The purpose of this is to examine all licenses, permits, consents, approvals and authorizations required to be obtained from federal and/or state government or other regulatory bodies in connection with the viability of the project. Some of the approvals highlighted above may typically be required at this stage. In some cases, evidence of tax compliance of the developer is also required. Also, where the investment is by REIT or crowdfunding, it is essential that the financiers ensure that the company has obtained all the necessary approvals and licenses from the SEC.

**e). Litigation and Claims:** At the pre-commencement of the due diligence check, it is advisable that the interested party includes a request for the details of any pending litigation on the target property. In this regard, the interested party may need to conduct a search in court to confirm if the property is subject to any pending litigation or claim. The nature of the search for claims and litigation on land may differ slightly depending on whether the property is owned by a company or an individual. In the case of a company, the general practice seems to be that the search is conducted at the state high court in the state where the registered office of the company is located, or at the state high court where the land is situated.

Where the developer fails to disclose existing litigation claims on the property and the interested party executes a subsequent definitive agreement without notice of such claims, the law may consider the interested party to be a bona fide purchaser for value without notice[29]. In addition, it is advisable for the interested party to include a warranty and indemnity clause in the instrument of transfer of title, to mitigate the risks around such disclosures.

**f). Constitutional Structure of the Developer:** Here, the interested party conducts a search at the Corporate Affairs Commission (CAC) to examine the corporate and constitutional information of the developer and to ascertain its corporate status. This will entail the examination of the registration status, objects of the company, shareholding structure, directors and compliance with regulatory returns requirements. Where the search reveals certain

non-compliance with a regulatory obligation, the interested party may require the developer to regularize such non-compliance as a condition precedent to the financing.

**g). Financial Standing of the Developer/Project Sponsor:** This is typical to real estate financing. The financier may in its due diligence, review the financial information of the developer/project sponsor, including the existing indebtedness. Where the developing company is a special purpose vehicle, it is typical for the financier to demand the financial information of the sponsor of the entity. The analysis of the financial information may entail the review of loan agreements, security arrangements, guarantees etc., to ascertain the level of existing indebtedness, financial obligations, and identification of potential risks of a default.

**h). Developer/Project Sponsor's Subsisting Material Contracts:** This is an important factor in due diligence consideration for real estate project finance. It is done by reviewing all contracts executed by the developer/project sponsor to ascertain the likely effect of those contracts on the proposed financing. For large scale projects, the usual contracts in view may include joint venture, and partnership contracts, design and build contracts, construction contracts, offtake contracts, and management agreements, among others. These contracts are examined giving consideration to the status of their execution, termination provisions, outstanding rights, obligations and liabilities of parties. In some projects, the financier may take security over a set of project documents, such as offtake contracts, alongside a mortgage over the real property.

**i). Platform Reputation, Track Record and Past Projects:** This is a very essential consideration for financiers funding real estate development through crowdfunding platforms. Here, the financiers research the platform's history and the experience of its management team, obtain independent reviews from past financiers and verify past projects executed. By so doing, the financiers can determine if the company has the capacity to execute the proposed project.

**j). Investment Details:** In the case of investment via crowdfunding platforms, it is imperative that the financiers examine all offering memorandum documents as they will provide information on the fundraising and possible risks, such as the amount sought to be raised, details of control measures that will guard against losses, the identity of the fundraisers, and provide a general risk warning on participating in funding through the platform.

## The Risk of Compulsory Acquisition in Real Estate Investment in Nigeria

The conduct of due diligence on a property and its subsequent registration does not automatically exclude such property from compulsory government acquisition. Compulsory acquisition occurs when the government takes possession of land owned by individuals or entities for overriding public interest. Very recently, the federal government through the Minister of Works initiated the demolition of sections of Landmark Beach, The Good Beach and Mami Chula Beach Lifestyle in Lagos as part of the Lagos-Calabar Coastal Highway project . According to the Minister, the Lagos-Calabar Coastal Highway project is essential for economic development and infrastructure improvements along the coastal corridor, thus, the demolition was necessary because the landmarks were situated on the federal government's right-of-way for the project. The government may also revoke a right of occupancy where the property is sited in a reserved area. For instance, the Lagos State Government through the state Commissioner of Environment and Water Resources, commenced the demolition of properties at the Mende Estate Villa at Maryland Lagos to reclaim the Odo Iya Laro drainage channel .

The Land Use Act vests all land in the territory of each State (with the exception of Federal Government land) in the Federation on the Governor of that State, and such land shall be held in trust and administered for the use and common benefit of all Nigerians . The Act also vests the Governor with the right to revoke a right of occupancy for overriding public interest, however, where such revocation occurs, the holder of the right of occupancy shall be entitled to compensation for the value of the property at the date of revocation of their unexhausted improvements. In the alternative, where a right of occupancy is in respect of any developed land on which a residential building has been erected, the government may offer in lieu of compensation payable, resettlement in any other place or area.

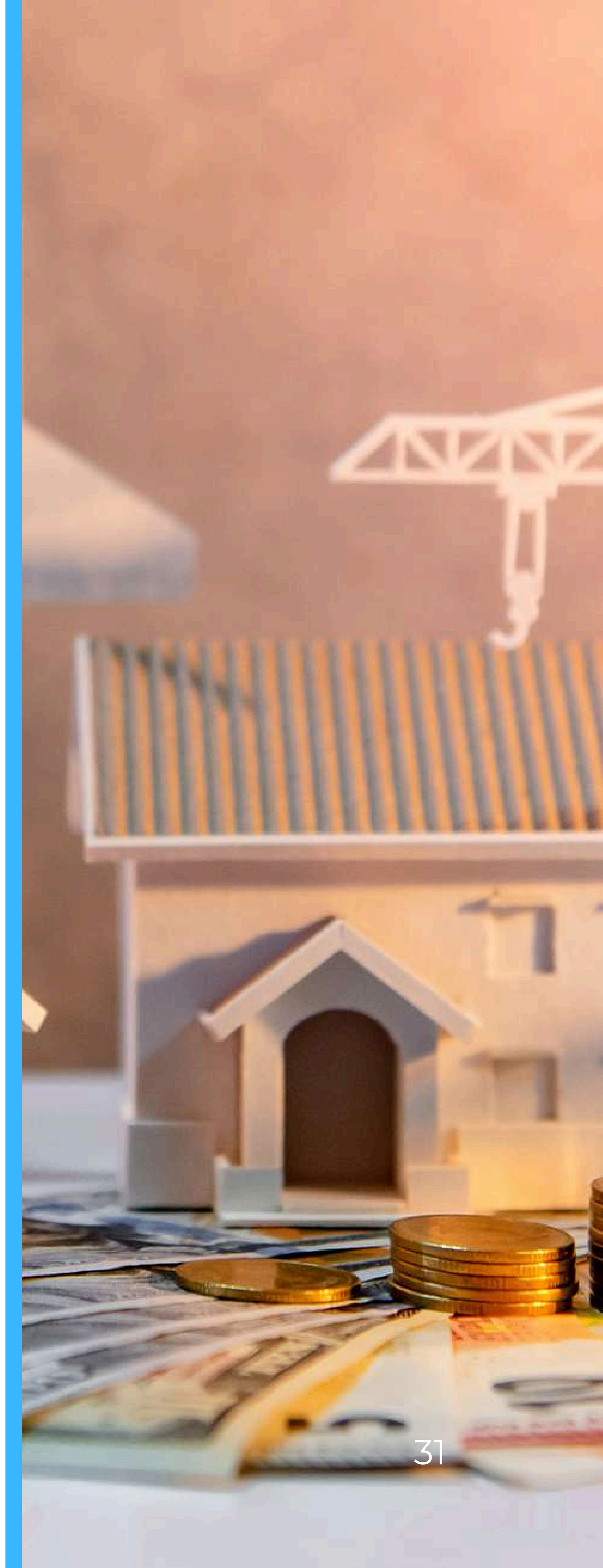
Thus, while there is a risk of compulsory acquisition by the government, the conduct of due diligence and registration of properties are very essential to protect the rights of investors, particularly, the right to receive compensation.

**a). Security Considerations and Structuring Options for Real Estate Project Financing.**

As highlighted above, asset types of projects may range from commercial, residential, hospitality, industrial, mixed-use and alternative real estate. The security for such transactions may generally be based on the asset type of the real estate project being financed.

For instance, in commercial real estate projects, a financier will usually have to factor in the cashflow of the project from which repayment of the financing will be sourced. Such a risk assessment by a financier may entail evaluating the frequency of payments to be received from offtakers, who may be corporate or individual. The risk factor of the project determines how the transaction is structured, including what form of security a financier will adopt. For instance, in addition to typical contractual representations and warranties, the financier may require that a developer obtains a third-party guarantee/security where cash flow proceeds for a project are uncertain.

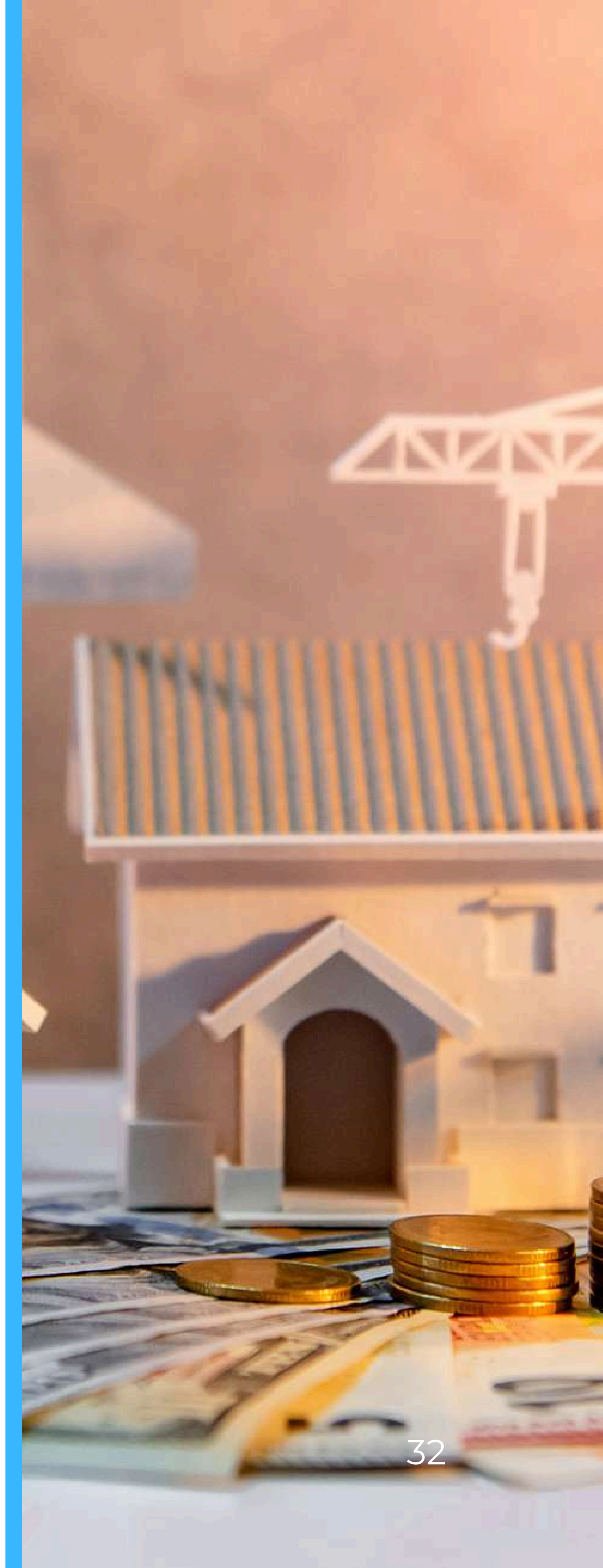
Real estate projects are typically large scale involving the development or construction of real property assets. Thus, the tenor for such projects are usually medium to long term to ensure that repayments for the financing can be spread over a long period of time, giving the developer some headroom to make profits, repay debt, and operate the developed project.



Financing for these types of projects may also feature a security mechanism that allows the financier to control the bank account into which the proceeds from the project is received. Usually, this is achieved via a deed of account charge or a collections account agreement.

Real estate developers may consider structuring projects through the use of Special Purpose Vehicles (SPV). The real estate project to be financed will generally be implemented by its sponsors permitting the project to be done off-balance sheet of the sponsor, and the liabilities to be on the books of the SPV. The creditworthiness of the sponsor (whom may be required to provide a corporate guarantee) and the viability of the investment will still be important where bank-financed projects are concerned.

Real estate developers may form joint ventures or partnerships to undertake real estate projects. For instance in PPP-related real estate projects, typically, the equity contribution by public sector partners under such projects may be the contribution of land assets, and in some instances, public sector support for the project. Also, in many instances, due to the public sector interest in that project, the financier may not be able to take a mortgage on such land assets as security for financing such a project. Due to the nature of some JV projects, it may be difficult for financiers to take a mortgage over the title in the project, this may require the project sponsor to provide alternative security arrangements such as a strong corporate guarantee, or the assignment of an advance payment guarantee to the lender.



Part 4:

# Trends and Future Outlook of the Nigerian Real Estate Sector


# TRENDS AND FUTURE OUTLOOK OF THE NIGERIAN REAL ESTATE SECTOR

## Fractional Ownership: Transaction Structuring and Securitization

As the real estate market continues to evolve, one of the concepts that is gaining momentum is fractional ownership. Fractional ownership is the shared ownership of an asset/property by a group of people either in an individual property or real estate fund. It allows for the purchase of an ownership stake in a property by pooling capital with other investors. In simpler terms, it entails owning a fractional interest in a property, represented through participating interests or tokens. Each owner owns a part of the property and shares the benefits and responsibilities that come with it, proportionate to the percentage of the property they own. The management of the property would usually fall to a third-party management company or a trustee company.

The primary advantage of fractional ownership is that it gives buyers access to properties that they could not otherwise afford. Fractional ownership offers a more flexible and lower-cost entry approach into real estate investment without the total commitment and responsibilities of outright ownership.



The primary advantage of fractional ownership is that it gives buyers access to properties that they could not otherwise afford. Fractional ownership offers a more flexible and lower-cost entry approach into real estate investment without the total commitment and responsibilities of outright ownership. It is also an excellent way to diversify one's investment portfolio, as investors can own shares in multiple properties, spreading their risks across different markets and asset types. Each owner has a direct share in the property, and the value of that share changes as the asset appreciates or depreciates [30].

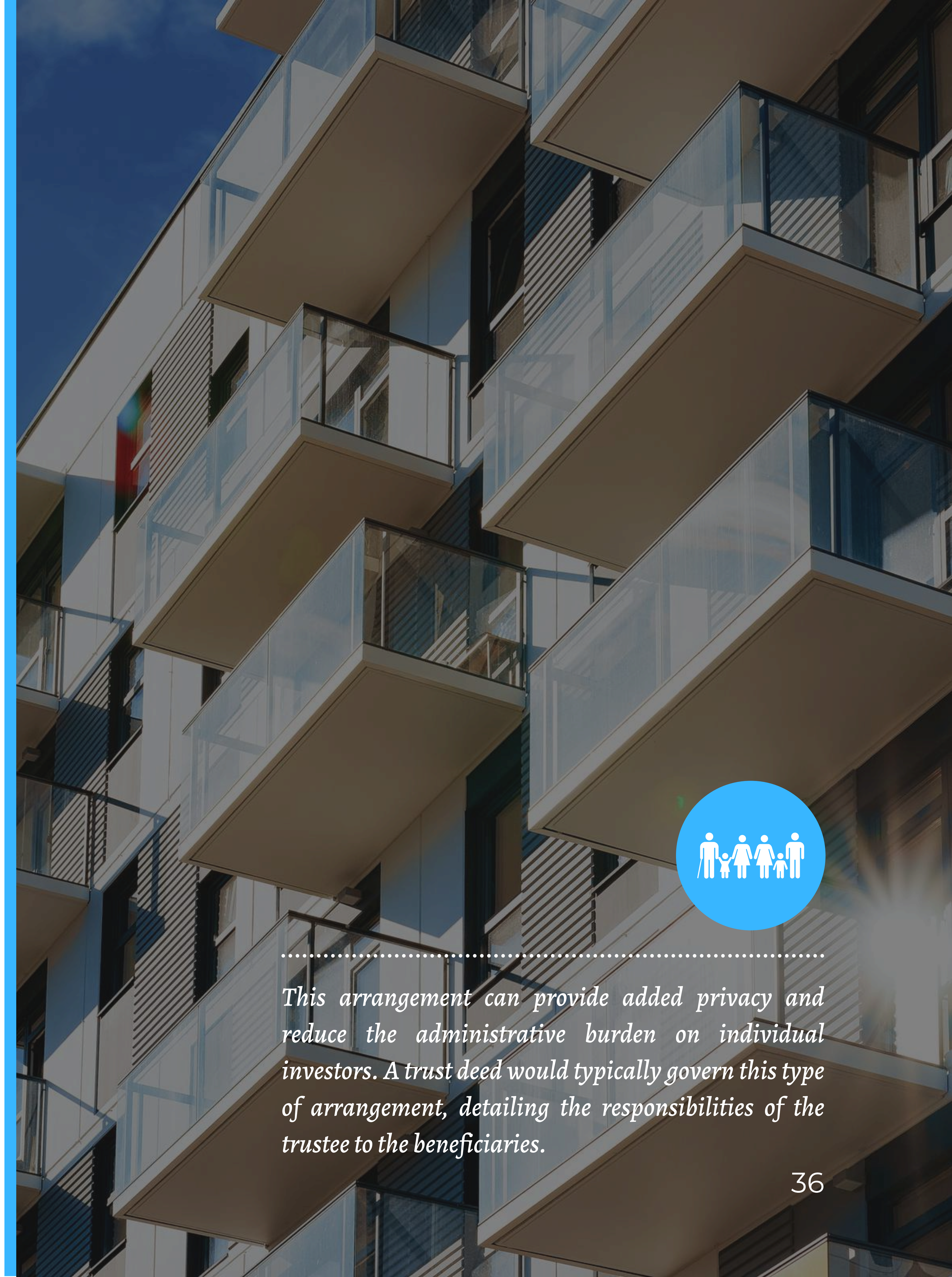
**The Structure of Fractional Ownership in Real Estate**

Fractional ownership's continued popularity is largely due to the concept of the sharing economy. Understanding the legal framework for fractional ownership is pivotal to those considering this form of ownership. Fractional ownership in real estate can either occur through an entity, a trust, or through tenancy in common. Assessing which structure aligns with your investment objectives and risk tolerance is crucial to a well-informed decision.

A legal entity such as a limited liability partnership (LLP) or a Limited Liability Company (LLC) is set up to own the property. The entity divides ownership rights of the property into shares by issuing equity, partnership stakes, membership units, or other fractional interests. Individual investors buy shares in the entity which gives them the economic benefit of owning a fraction of the underlying property. It is important to note that in the memorandum of association of the entity, the objective/primary business of the entity should be holding, acquisition of properties, giving it for rent, and so on. The entity's articles of association should also provide the restrictions and stipulations on the transfer of shares.

Where it is set up through a trust, the trustee holds property for the benefit of the beneficiary who are the intending fractional owners. Typically, the prospective fractional owners create a trust. The initial seller of the property is the trustee, who acts as the settlor by executing a trust deed. He executes a trust for the beneficial interest of the proposed fractional owners. Instead of receiving a property ownership certificate, the investors obtain a declaration of trust. The name of the trustee/trust is listed as the owner of the property at registries, holding the property in trust on behalf of the beneficiaries, who are the investors. This arrangement can provide added privacy and reduce the administrative burden on individual investors. A trust deed would typically govern this type of arrangement, detailing the responsibilities of the trustee to the beneficiaries.

On the other hand, fractional ownership can be facilitated through online platforms and blockchain technology, leveraging the distributed ledger system. The property is divided into shares or fractions, which are then bought by different individuals, with each share owner holding a percentage of the property's value. These shares, represented as digital tokens, are usually sold through a platform that facilitates the transactions and manages the ongoing ownership structure. Ownership is recorded on the blockchain, ensuring transparency and security.



*This arrangement can provide added privacy and reduce the administrative burden on individual investors. A trust deed would typically govern this type of arrangement, detailing the responsibilities of the trustee to the beneficiaries.*

It is also possible to invest in fractional ownership through a real estate syndicate. In syndication, a lead investor pools funds from multiple investors to acquire and manage properties. A syndicate agreement will typically govern the arrangement between the multiple investors in addition to the co-ownership agreement and other agreements that will govern the relationship between the parties. It is important to note that real estate syndications are generally only available to accredited investors who usually are individuals or entities that meet certain financial criteria, such as having a high net worth, significant annual income, or professional investment experience.

It is important to note that investing in fractional ownership through a real estate syndicate is different from a Real Estate Investment Trust (REIT). REITs are corporations that own or provide funding for income-producing real estate across a variety of property industries. They are seen as one of the more effective ways of managing real estate, and they provide either open-end or closed-end funds. In Nigeria, REITs are traded on the Nigerian Stock Exchange (NGX) and are bought and sold through authorized stockbrokers in the form of stocks and shares. Some of the top REITs in Nigeria are UPDC REIT, Skye Shelter REIT, and Union Homes REIT [31]. The most obvious difference between a REIT and a real estate syndication lies in the specific asset people are investing in. With a real estate syndication, investors have equity in a specific property, whereas REIT investors own a share of the company that owns the properties. Investors in a real estate syndication can evaluate deals and choose to invest in a specific property. With REITs, you don't have control over which properties the REIT will invest your money into

as you are investing in a company that owns different deals and properties. Because many REITs are publicly traded, there is a low barrier to entry for investors who wish to purchase a small number of shares in the company. Real estate syndications, however, are only available to accredited investors, and most syndication sponsors will have a minimum investment threshold [32].

Fractional ownership agreements must be clearly defined and documented. The agreement not only sets out ownership shares and responsibility for maintenance costs but also a legal framework that covers management and how decisions as to who uses the property are made. Detailed legal documentation, including contracts, deeds, and operating agreements, defines the terms and conditions governing the ownership structure. Provisions will also be made concerning property upkeep, management responsibilities, and the allocation of expenses among co-owners. The owners may have limited decision-making power over the property and need to trust that the property manager will do their job to maximize investor returns.

Depending on the terms of the agreement, exit strategies may include buyout options, rights of first refusal, or predefined procedures and stipulations for the marketing and sale of an owner’s shares in the property. Investors are advised to carefully consider key factors like the legal and regulatory landscape, conducting appropriate due diligence, the platform's reputation, tax implications and the potential for disagreements among co-owners before opting for fractional ownership of a property.

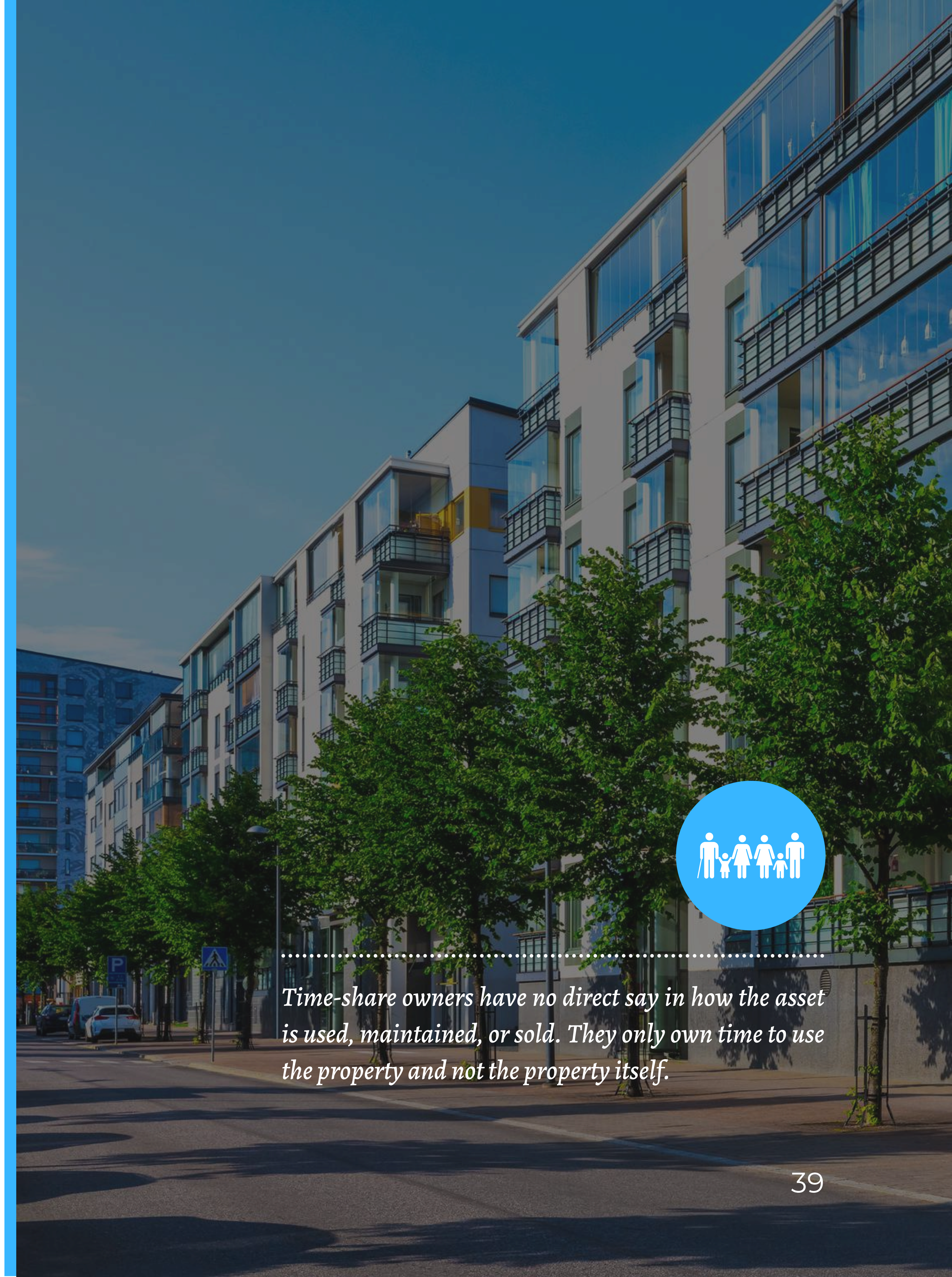
Fraqvest and Clusstr are examples of startups that offer fractional ownership in real estate. On some platforms like Clusstr, users can even leverage their tokenized assets as collateral for quick loans, access credit facilities, and interact seamlessly with decentralised finance.

**Fractional Ownership Versus Timeshares**

Timeshares in real estate is also another concept that has gained popularity in real estate. Fractional ownership differs from a timeshare arrangement. Timeshares mostly occur with vacation homes or condominiums (also called a "condo"), and they provide rights to possess or use but don’t bestow ownership. Timeshares allow the use of a property for a defined period only. Time-share owners have no direct say in how the asset is used, maintained, or sold. They only own time to use the property and not the property itself.

**Tax Implications of Fractional Ownership**

From a tax perspective, fractional ownership can have several implications. For instance, income generated from renting out the property is usually taxable, and each co-owner handles their share of the income on their tax returns. Property taxes are also a consideration and are typically divided among the owners based on their ownership percentage. In addition, if the property appreciates in value and is sold for a profit, capital gains tax may apply. The tax treatment of expenses related to the property, such as maintenance, repairs, and improvements, can also be complex, as these may be deductible depending on the specific circumstances [33].



# Proptech

Another aspect of real estate that has gained momentum in recent years is property technology, commonly known as proptech. Proptech refers to all the technology tools that are used to optimize the way people buy, sell, research, market, and manage a property. The goal of these proptech companies is set on making the real estate sector simpler to navigate and ultimately more financially rewarding. These tools would include real estate agent and brokerage tools designed to streamline the real estate process such as property listing, leasing, sales, and management. Some of these tools also provide predictive data analysis for higher return on investment, effective investment management and deal tracking for investors.

Proptech consists of two types: front-end technologies that consumers interact with directly (like real estate apps) and back-end technologies that power these platforms (such as data analytics and cloud-based software). Depending on the type of proptech business operated, the nature of the transactions facilitated on the proptech platform, proptech companies will be required to obtain certain licenses to carry out their businesses. The typical legal documentation that would be required for proptech companies, in addition to a privacy policy and terms of use, include a Non-disclosure Agreement, Legal Disclaimer, Developer Agreement, and Intellectual Property Assignment Agreement to mention a few.


# Escrow Arrangement in Real Estate Transactions

A closer look at the Nigerian real estate space reveals attempts to establish escrow arrangements in real estate transactions. This arrangement involves a neutral third party holding funds until specific conditions are met, ensuring a smooth transaction for buyers, sellers, brokers, and lawyers. Several real estate transactions are fraught with risk, and players have over the years had their fingers burnt due to fraudulent activities. Buyers might pay upfront but never receive the property due to ownership disputes or incomplete paperwork. Conversely, sellers could hand over titles and not receive full payment. These issues led to a lack of trust and delays in closing deals. To address this, some stakeholders turned to lawyers holding funds in trust accounts. However, this process often lacked transparency and could be cumbersome. This led to the emergence of escrow platforms like Trustcrow, which offers a more secure and streamlined solution.

These platforms act as neutral intermediaries, holding onto funds until predefined conditions are fulfilled. This protects all parties involved in the transaction, including buyers, sellers, brokers and lawyers by allowing parties to monitor progress efficiently. Established escrow arrangements, facilitated by platforms like Trustcrow, are revolutionizing Nigeria's real estate sector by minimizing risk, fostering trust, and expediting transactions for all parties involved.

Similar transformative changes have been observed in other African countries with the introduction of innovative escrow services. These services are tailored to address specific challenges within the real estate sector. Examples include platforms like PayTrust and TradeSafe.

# Future Outlook of the Real Estate Market

The real estate landscape has been reshaped significantly by technological evolutions. Innovations like blockchain technology, big data, Artificial Intelligence (AI) and machine learning technologies continue to propel real estate investment as an increasingly viable avenue for a broader investor base. Some of the trends and outlook of the real estate landscape are examined below:

### Smart Real Estate/Homes:

This is a subset of proptech denoting the use of internet-connected devices and appliances, collectively known as the Internet of Things (IoT), to enable the remote monitoring and management of a house. With features such as smart locks, surveillance cameras, and motion sensors, homeowners can now monitor and secure their properties remotely. Smart homes are prevalent for several reasons, but security and energy management are among the most significant. Some smart homes are designed to be energy-efficient, helping homeowners reduce their energy consumption and lower their utility bills. Some smart homes can also collect data that can be utilised for predictive maintenance, saving the homeowners time and money in the long run.

With the growing global emphasis on sustainable living, more smart homes are beginning to incorporate renewable energy solutions such as solar panels and wind turbines.

### AI and Machine Learning for Automation of Back-Office Processes:

Big data and AI have also revolutionised the real estate industry. Most mundane processes in the real estate industry including home tours, customer support, and asset valuation have now been transformed into streamlined processes. In addition to this, with predictive analytics, stakeholders in the real estate industry can identify various market trends and now make more informed decisions on sustainable development plans, investment strategies, and risk development solutions.

### Digitalization and Tokenization of Property Data Assets:

With AI taking the lead in real estate technology, real estate asset tokenization is reshaping the landscape of property investment. The ownership rights in a property are now converted to digital tokens on a blockchain. These tokens represent a share in the property, making it divisible and accessible to a wider range of investors. Blockchain technology ensures transparency, security, and efficiency in the process. The result is a fractional ownership model that democratizes real estate investment. Subsequently, real estate tokenisation is likely to integrate with decentralized finance protocols, enabling investors to leverage their tokenized assets for loans, yield farming, and other financial instruments.

### Contech (Construction Technology):

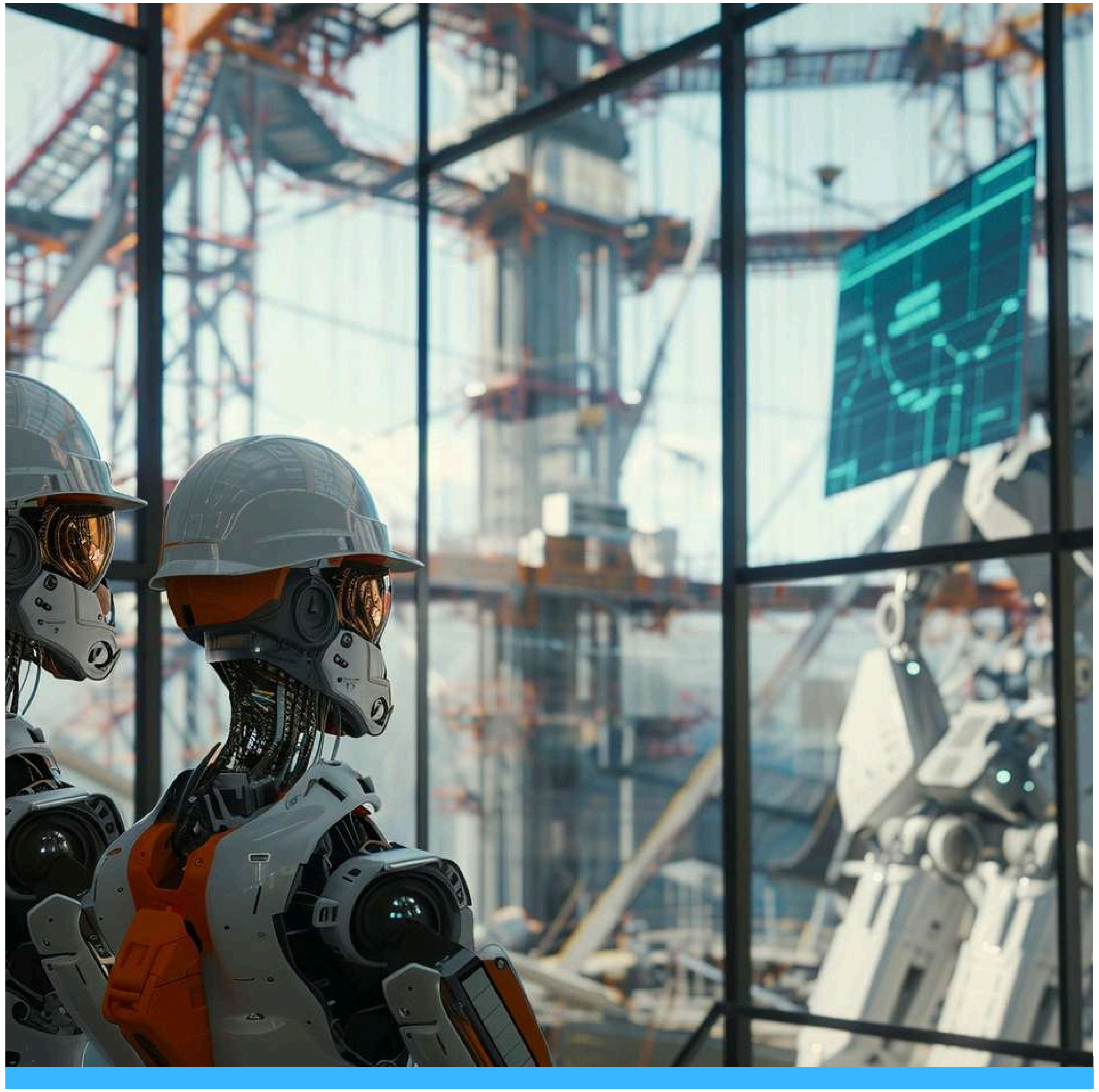
This entails the use of modern/innovative materials and sustainable approaches in building. In simpler terms, it means the use of technology in real estate construction that enhances efficiency and safety, improves project sustainability, and adopts more cost-effective procedures. Some of the examples of technologies commonly explored in Contech include:

- **Building Information Modelling (BIM) Software –** which is used to create 3D models of buildings and structures, allowing for more accurate and efficient planning and design.

- **Drones** – which are used to inspect and survey active and potential construction sites. Because they provide aerial views of the locations in question, they create safer, more efficient inspection procedures.

- **Virtual and Augmented Reality** - are used in construction to provide immersive simulations of buildings and structures. Augmented Reality helps to overlay instructions or construction elements onto the real-world environment, illustrating how processes will look once they're completed.

- **Robotics** – are used for tasks such as bricklaying, demolition, and excavation. These tools reduce the need for manual labour, enhance efficiency, and improve employee safety (by decreasing the potential for injuries and fatigue). Everite, a South African startup, is an example of a startup that provides Contech solutions.



## Climate Tech and Green Tech for Sustainability:

The world is rapidly stepping towards a more environmentally friendly approach to every aspect of life. Sustainable real estate refers to the development or management of properties that have negligible detrimental impacts on the environment and contribute positively to the health and comfort of the occupants. This includes the efficient use of resources, adherence to socially acceptable practices, and maintenance of high environmental standards.

Typically, sustainable real estate development revolves around four key principles: energy efficiency, water efficiency, material efficiency, and healthy living conditions. They significantly contribute to the betterment of the environment by reducing carbon emissions and energy consumption. Examples of green residential properties include homes with solar panels, effective insulation, energy-star rated appliances, and sustainable landscaping.

Financing green real estate projects provides more incentives. For instance, banks offer favourable financing conditions such as reduced interest rates, longer tenors, longer grace periods or cheaper front-end charges to help developers stretch out or offset the large upfront costs of constructing green projects. Some of the institutions that offer green financing in Nigeria include NSP-SPV Plc, the Green Climate Fund, and the Green-Bank MFB.

There is no gainsaying that innovative technologies will continue to revolutionise the real estate industry. These technologies would continue to address traditional barriers in the sector, transform the real estate industry into a more accessible liquid asset class, provide portfolio diversification for investors and foster a more inclusive investment environment.

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