

# Financing Paralegal Titles in Rural India: The case of Swarna Pragati Housing Microfinance

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## Abstract

Despite high levels of home ownership, the lack of clear, individual and mortgageable titles has been a systemic barrier to housing finance, particularly in rural India. This case study provides a description of a paralegal title financing mechanism that a Housing Finance Company, Swarna Pragati Housing Microfinance (SPHM), employed between the period of 2009 and 2016, after which it was discontinued indefinitely. This case study describes a unique product and operational mechanism of mainstream housing finance provision in an environment with absent or poor-quality home ownership titles. The SPHM model is one such attempt by the private sector to design and implement a co-operative process that involves various stakeholders, namely – financially excluded households, local self-governments, community-based organizations, and the legal enforcement apparatus to help solve this widespread systemic issue. By highlighting this case study, the authors argue for the need for similar experiments dovetailed with regulatory and funding support in a market ecosystem that is working steadfastly towards 'Housing for All'.

## Keywords

rural housing, home ownership, paralegal title, housing finance

## Disclaimer

All data in this report has been furnished by the company through one-on-one interviews conducted with the Chairman and past and present officials, between February-April 2021. Data, opinions, and information presented in this report has been reproduced by the authors as is.

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## Introduction

While the rural housing market poses many unique challenges, a key systemic issue which still prevents widespread private sector presence is the lack of clear, individual mortgageable titles. According to the 2011 Census, 95% of households in urban areas and 69% of households in rural areas were reported to be living in owned houses. However, specific data on how many of these households possess clear mortgageable property titles is unknown<sup>1</sup>. In addition, only 53% of the households described their houses as being in good condition, 41% described their houses as liveable, and 5% said they were dilapidated. Additionally, the average household size in India is 4.9, and more than 40% of households live in one room or no exclusive rooms, irrespective of rented or owned housing. At the same time, these homeowners are unable to leverage their own housing capital to access institutional finance because of the perceived lack of security of tenure. Owing to lack of access to finance, many households either cut back on or postpone housing construction. This leads to prolonged periods of poor living conditions without basic amenities, with obvious implications on life and health.

Established in 2009, Swarna Pragati Housing Microfinance Pvt. Ltd. (SPHM) has been hailed as

a unique innovator focused on improving access to mainstream housing finance in rural India. SPHM attempted to finance rural paralegal titles to help unlock the value of otherwise dead capital in the hands of these households, who own homes lack clear individual titles. In 2005, the Founder and current Chairman of SPHM, Mr. Ramesh Kumar (then Head of the Mumbai Circle at SBI) was invited by the National Bank for Agriculture and Rural Development (NABARD) to chair a National Committee on Rural Habitat to understand why the private sector was absent in the rural housing finance market. After eight months of study and field work to understand the pain points in the market, it became clear to Ramesh and the Committee that a typical housing finance product would not work in rural settings. Out of the box products, processes, and delivery solutions would be required. Suggestions made by the committee resulted in inputs towards a "Draft National Rural Habitat Policy", but it was not introduced in parliament. However, learnings from the study led to the foundation of Swarna Pragati Housing Microfinance, a Housing Finance Company, registered in 2009 with the National Housing Bank. The company launched its operations in Vidarbha district of Maharashtra, and over time, extended their reach to rural Odisha, Tamil Nadu, and Karnataka.

## Swarna Pragati's Product and Business Model

SPHM offered 3 types of products in their portfolio:

- 1) Traditional Mortgage Loan: for households with clear land titles to finance incremental housing construction, modelled on the lines of a group-based microfinance loan; average ticket size of INR 1.5 Lakhs
- 2) Productive Housing Loan: a traditional mortgage loan with an additional 20% top-up loan for livelihood enhancement, since it is a well established fact that a home serves as a productive asset for many households in this segment.

- 3) Paralegal Title Loan: for households with unclear or incomplete individual titles, using paralegal documents, leveraging the village panchayat; ticket sizes ranging from INR 50,000 to INR 2 Lakhs

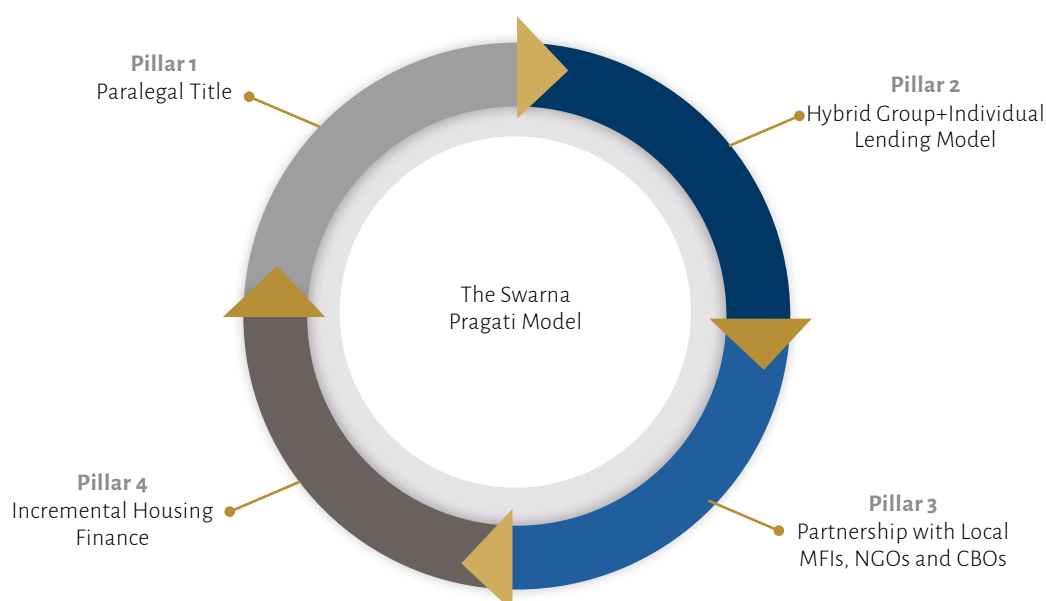
This report is focused purely on product 3, the paralegal title loan, and its operational mechanism.

The Paralegal Title Loan consists for four key pillars, each designed to cater to a particular rural market failure.

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<sup>1</sup> For more information on the issues around land titling in India, refer to: <https://prsindia.org/policy/analytical-reports/land-records-and-titles-india>

## Swarna Pragati's Paralegal Title Loan - The Four Pillar Model



Paralegal Title Equitable Mortgage Product		Registered or Equitable Mortgage Product	
<b>Loan Purpose</b>	Incremental Home Construction	<b>Loan Purpose</b>	Incremental Home Construction
<b>Average Loan Size</b>	INR 1,00,000	<b>Average Loan Size</b>	INR 1,50,000
<b>Loan Tenor</b>	3 Years	<b>Loan Tenor</b>	Not more than 4 years (Especially for Loan Against Property (LAP) Product)
<b>Interest Rates</b>	24% (On par with microfinance rates)	<b>Interest Rates</b>	24% (On par with microfinance rates)
<b>Total Disbursements as on 31.01.2021</b>	Amount: INR 226,350,336 Number of Customers: 3536 (no new disbursements in this product since 2016)	<b>Total Disbursements as on 31.01.2021</b>	Amount: INR 2,892,454,567 Number of customers: 19321 <sup>2</sup>

### Pillar 1: Paralegal Title Mechanism

A significant proportion of SPHM's clientele resides in Abadi lands. Abadi land refers to land that has been under habitation and has extended beyond its original village boundaries over time; they are not surveyed or mapped in many states<sup>3</sup>. Hence, houses residing in these areas have no Record of Rights (RoR)<sup>4</sup>. Abadi land law differs for every state, primarily because it comes under the purview of the Panchayati Raj machinery, which is subject to state

laws. Even where households do possess an RoR, there could be additional challenges. An RoR is given by the district collector, block tehsildar, or village patwari, and could be in the form of ownership, long-term lease holds, or tenancy. In cases where ownership rights are accorded, conditionalities like prevention of transfer<sup>5</sup> or mortgage of property may be involved. For households with a RoR, the above conditionalities remain a deterrent for lenders to give loans against these documents.

<sup>2</sup> These numbers include Home Loans only, it excludes the following: Sanitation Loans, Loan Against Property and Income Generation Loans (Hybrid Home Loans)

<sup>3</sup> Refer to Svamitva Scheme Guidelines: <https://svamitva.nic.in/svamitva/>

<sup>4</sup> Refer to the Section on Maintenance of Land Records: <https://prsindia.org/policy/analytical-reports/land-records-and-titles-india>

<sup>5</sup> Informal Properties and Inadequate Property Rights: <https://www.fsg.org/sites/default/files/publications/Informal%20Housing%20Inadequate%20Property%20Rights.pdf>

However, in the majority of cases that SPHM encountered, households did not even possess a title or ROR document. In addition, they witnessed multiple cases where a clear chain of documents indicating transfer of ownership rights between generations did not exist, or where ownership was informally split among family members over multiple generations. Further, many households were still residing on land meant for agricultural use. For such clients, even though they own their home and have resided there for many generations, there is little to no documentary proof. As a practical workaround to this, SPHM invented a paralegal title document in partnership with the village panchayat leadership to ascertain and formalise ownership. Details on these paralegal title documents are presented in further sections.

### **Pillar 2: Group + Individual Hybrid Lending Model**

The second innovation by SPHM was to challenge the notion that housing loans need to be individual loans. A hybrid lending model, based on the tenets of group lending in microfinance was developed, resulting in housing microfinance. First, loans were provided to several members of established groups with a successful savings track record in pre-existing Self Help Groups (SHGs) or Joint Liability Groups (JLGs), coupled with a group guarantee mechanism. The idea was to utilize pre-existing credit history of borrowers and leverage the coalitions and bonds between members of established groups to exert social and moral pressure for repayments. Second, eligibility for loan amounts were determined by household cash-flow assessments and cost of construction, rather than the value of the asset, similar to a micro-enterprise loan.

## **Unpacking the Swarna Pragati Paralegal Title and Process**

The 73rd Amendment Act, 1992, or the Panchayati Raj Act as it is more commonly known, provides gram panchayats, comprised of elected members, the power to raise taxes and implement development schemes to further economic development and social justice objectives of its citizens. Panchayats are bodies of local self-governance and are constitutionally required to hold village assemblies, a minimum of 4 times a year. These assemblies, called Gram Sabhas, publicly address issues concerning its villagers

### **Pillar 3: Incremental Housing Finance Product**

It is a well-established fact that low-income households do not typically build their houses in one go, as their cash flow does not allow them to do so. Particularly in rural areas, households tend to build on their own and incrementally over time, when they can afford to do so. Based on this, SPHM designed a product with small loan sizes, disbursed in up to three tranches, with loan utilisation checks built in through the disbursement process. Similar to a group loan structure, members were eligible for the next loan only if they successfully repaid their first loan.

### **Pillar 4: Partnerships with established local MFIs, NGOs, and CBOs**

The fourth pillar rested on building partnerships with trusted local microfinance institutions (MFIs), non-governmental organisations (NGOs), and community-based organisations (CBOs) already present in these geographies. These business associates (BAs) as they were collectively called by SPHM effectively operated as sourcing and loan servicing agents. The agents performed the following functions: KYC Verification, reference checks, and collections as per credit policy and guidelines laid down by SPHM. On the other hand, door-step credit appraisal, credit risk underwriting, and online disbursements to client bank accounts was done by SPHM. The idea was to leverage local established BAs who had strong relationships with the local communities to aggregate clients while SPHM focussed largely on underwriting and disbursements.

and are a key feature of local self-governance in rural India.

During the early days, the SPHM team decided to utilise the Gram Sabha as a vehicle to introduce their product, as it is usually attended by all villagers, including their BAs who had a well-established relationship in the community. However, this process did not take off. First, the Gram Sabha meetings were not frequent enough for SPHM to effectively scale their business through this route

given the volume of demand. Second, while Gram Sabhas do liaison with private partners and engage in public-private partnership (PPP) programmes, they were unable to make changes in rules to favour one company without an official MoU signed between the two parties. Signing of an MoU was not a route actively pursued by SPHM; however, this mechanism of private lenders working with Gram Sabhas in the presence of a formal MoU to work for the betterment of the Gram Sabha members is something that the law allows for and could be explored further by other lenders.

SPHM pivoted to working with the Panchayat officials directly, since they too were elected members of the Gram Sabhas. Several visits were conducted to the panchayat offices to understand the type and number of documents that possess property title details. Through this process, they discovered a few documents and forms which indicated demarcations and land boundaries in the name of a particular family (e.g., Form 8A in Maharashtra, Form 12/13 in Karnataka). They mostly pertained to the nominal tax levied on a family for occupying the said land, and were not traditional home ownership documents. But their legal sanctity could not be dismissed since they were collected by the Panchayat, a primary arm of the government. This became the basis of the paralegal title through which SPHM provided housing loans to residents in the village.

The panchayat administration also showed active inclination to support SPHM and agreed to mark a Lien<sup>6</sup> manually in these records against SPHM's loan, which went on to become the key paralegal title document. The relationships of SPHM and their BAs with the village leadership was an important aspect which prompted the panchayat officials to take this step. This lien was critical as it served as an official Panchayat acknowledgement of the loan towards the borrower's property and provided an informal means by which SPHM could prevent resales or multiple lending towards the same property.

After the marking of lien in the panchayat records, an equitable mortgage<sup>7</sup> was created at SPHM's office, with the deposit of the paralegal title through a physical recital describing the act of deposit of the documents by the borrowers. Chronologically recorded loan recitals at SPHM's branch offices helped establish the genuineness of documents with the intent to create a mortgage. In addition, group members signed a group guarantee agreement, making additional group members liable for the repayment of loans taken by members. SPHM took an informed decision to opt for an equitable mortgage versus a registered mortgage for cost reasons<sup>8,9</sup>. The additional cost of registering a mortgage would have been close to INR 7,000 for a loan ticket size of just INR 1 lakh. This, together with processing fees and insurance charges, would have been very onerous on the customer who also risked a loss in his/her daily wages as they were required to be physically present in the sub-registrar's office for a minimum of two days to finish the registration process. Upon the creation of an equitable mortgage and deposit of the paralegal title, loans were sanctioned.

It is interesting to note the ingenuity of the local government in one particular municipality in Maharashtra, where municipal property tax records were digitized, making the manual lien marking process impossible. Undeterred by this, officials decided to mark this lien to SPHM digitally, by adding another column in their MIS systems to record the lien towards the loan made by SPHM.

While SPHM's operations initially began in Maharashtra, it went on to make similar paralegal housing loans in Karnataka, Odisha, and Tamil Nadu. This process of document discovery and lien marking was unique to every village that SPHM expanded to and required an initial investment of 2-3 months. But with every loan sanctioned, the process was more streamlined. The management team reported that initially, the turnaround time from sourcing to disbursement was as long as six months, but as the process stabilised, it was brought down to one month.

<sup>6</sup> A lien is a claim or legal right against assets that are typically used as collateral to satisfy a debt. A lien could be established by a creditor or a legal judgement. A lien serves to guarantee an underlying obligation, such as the repayment of a loan. A lien is NOT a mortgage.

<sup>7</sup> An Equitable mortgage is a type of mortgage where the terms of the agreement are made solely between the mortgagor and the mortgagee. There is no third party or government agency involved. The term "equitable mortgage" is derived from the word equity which in this context means in the interest of justice.

<sup>8</sup> In a Registered Mortgage it is necessary to take the approval of the sub-registrar to finalize the agreement. Thus, the mortgagee and the mortgager agree to abide by a certain set of terms and conditions for the tenure of the loan which is set by a third party.

<sup>9</sup> This was before the establishment of Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) in 2015, which now mandates compulsory registration of mortgages.





## Loan Recovery Process for Wilful Defaulters

In the case of wilful defaulters, an arbitration process outside of the court system was used as the first step for loan recovery, and an empanelled arbitrator was appointed by SPHM. The basis for moving the case to arbitration rested on the loan documents, paralegal titles, mortgage of the property by the borrower, and the group guarantee mechanism which made co-members liable for repayment. The arbitration was conducted in the presence of all group members who were co-signers in the group loan agreement and responded to the arbitrator's notice.

Arbitration is an informal legal process in the presence of all group members and a qualified arbitrator; it was perceived as a suitable route for dispute resolution, given the customer segment involved. Obtaining arbitration awards in SPHM's favour strengthened their case when they proceeded with the execution of awards (i.e., execution petitions) in the district courts. Group guarantee, loan recitals, and the lien on paralegal titles in the gram panchayat records played an important role in the arbitration and recovery process, especially in cases where SPHM had to seize the home, or the borrower was found at risk of re-selling the property or applying for another mortgage loan. As time went by, SPHM also began to collect post-dated cheques which

allowed them to invoke Section 138 and added an additional legal recovery tool to their existing options. However, for most of the cases in the paralegal portfolio, SPHM relied on the legal arbitration process to initiate recovery.

After obtaining awards in their favour, SPHM filed execution petitions for those awards in the District Courts, following which summons were issued to all parties in the petition to appear for hearings. These hearings resulted in favourable court orders for SPHM in all the execution petition cases, gave orders for attachment of properties, movable and mortgaged, of the defaulting borrowers.

With the court order in hand, in partnership with the BAs, SPHM attempted to seize movable assets from the household in the presence of a court appointed official. However, since the social fabric villages in strong, the notion of public removal of household items and repossession was a strong signal to initiate repayment or arrive at a negotiated settlement. As mentioned earlier, in no case was the repossession of the actual property done. Recoveries were done solely based on the fear of Court orders being executed. For two case studies that were resolved partially and fully through the legal arbitration process, refer to Annexure 1.

## Conclusion

SPHM weathered a significant business crisis, from 2016 onwards (post demonetisation) which resulted in complete suspension of this experiment and their regular business for some time. While some data presented here indicates the operational validity of the model, we are not in a position to analyse the portfolio data conclusively to determine if the model is replicable, and whether it was a success or failure. However, it would be a disservice to assign one label to this idea without further experimentation on the ground. At the end of the day, approximately 3000 financially excluded borrowers received housing loans to finance their incremental housing dreams through formal institutional means. These households would have been locked out of the mainstream housing finance market without the paralegal title document and the design of the product.

Looking back, one may say that this product might have been too complex. For example, would it have been easier to lend this money as an unsecured loan, a successful and common practice among microfinance companies? Mr. Ramesh, the founder of SPHM, offered two reasons to justify the product design. First, for SPHM the purpose of loan utilisation, i.e. housing construction, was sacrosanct. The idea was to treat this as a normal housing loan for all practical purposes to prevent fungibility of credit. Second, it is important to note that INR 1 lakh was, and continues to be, a substantially higher amount than existing microfinance loans. Increasing the loan amount any further would have placed a significant debt burden on the households. Hence, complex as it may seem, it was a conscious choice by the

company to use the incremental build concept, group structure, cash-flow assessments, staged disbursements with loan utilisation checks, along with the paralegal title mechanism, to attempt to lend responsibly without contributing household indebtedness. The choice of an equitable mortgage over a registered one was also made to prevent unnecessary cost escalations. When asked what the company could have done differently, they felt they could have been more rigorous in the selection of geographies and business partners, as the quality of their loan portfolio was directly dependent on the partner's governance abilities and operational capacities.

Can this be replicated in other states? Perhaps not in its entirety, and certainly not in all geographies. The move towards digitisation of land records reduces the scope for such experiments, even if local authorities are favourable to it. However, as mentioned earlier, it is noteworthy that in one particular municipality where records were digitised, SPHM was able to convince local government authorities to add a new data entry column to mark liens against these records digitally.

Nonetheless, there are aspects of this business model which we believe merit further experimentation and enquiry, namely –

- 1) How can arms of local self-governance, like panchayats, be empowered to play an active role in innovation in property rights?
- 2) How can the Gram Sabha machinery be utilised to effectively involve private sector entities to solve for inadequacies in property rights and access to finance?
- 3) How can CBOs, NGOs, and SHGs play a role in community endorsement, improved credit assessment, and collections?
- 4) How important are effective loan utilisation checks and processes to make housing microfinance loans less fungible, and thereby preserve a responsible credit culture?
- 5) Most importantly, how can we ensure experiments like these are encouraged, even if in a limited and controlled fashion, to ensure that the traditional mould of mortgage finance is re-examined in geographies where prevailing conditions make it difficult to conduct business as usual practices?

It is also relevant to ask what market ecosystem factors could have played a role in nurturing ideas like this. In SPHM's case, the regulator (then the National Housing Bank) was supportive of the idea and appreciated their innovations; but SPHM did not get access to refinancing under their existing schemes, which would have significantly improved their ability to scale up, charge lower interest rates, and experiment with the business model more. Second, a well-functioning credit guarantee program is a strong incentive for lenders to venture into risky geographies and segments, particularly to serve social objectives, which they would otherwise avoid. There is a need to study how this program can be reformed to support socially beneficial experiments. Third, one cannot overstate the importance of subsidised funding, patient capital, or philanthropic grants to fund ideas which might otherwise get deprioritised. At the time of writing this article, there is news of a major rural housing finance player looking to replicate the paralegal title model in other parts of the country. Similarly, an association of MFIs has shown interest in pursuing incremental housing finance and the paralegal mortgage concept. These are encouraging steps forward.

Lastly, the phenomenal uptake of the Beneficiary-Led Construction component of the PMAY (as of 2019, among the four verticals of the mission, 55% of homes sanctioned are under the BLC component) shows that supporting auto-construction – people's own efforts to upgrade and build housing – is central to improve the quality of habitat in India. A majority of households in the country have always built housing incrementally on their own, and continue to do so. One study conducted in Tamil Nadu has pointed out the lack of institutional gap financing as a critical barrier to the completion of houses sanctioned under BLC, which also represents an untapped market opportunity for the private sector. Therefore, to truly achieve the 'Housing for All' goal, the government needs to play a role in not just offering construction capital subsidies, but also to help lay the foundation for a more robust and innovative financing ecosystem. This can be achieved by identifying and supporting innovative demand-side financing product solutions which empower households to build on their own – responsibly and incrementally.

## Annexure 1 - Sample Case Studies for Legal Recovery

Legal action stages for two recovery cases which were resolved at the arbitration stage:

- 1) As a first step, SPHM appointed an arbitrator for the case who then proceeded to send an arbitration notice to both parties.
- 2) Once the borrower acknowledged the summons, SPHM provided a claim statement stating the facts at their end to the arbitrator, after which a few days were given to the borrower to provide a counter claim to the statement.
- 3) This was followed by counselling and negotiation between the two parties in the presence of the arbitrator to help settle the case.
- 4) After listening to both parties and perusing the claim settlement and case file documents, the arbitrator passed an appropriate award.
- 5) With a favourable award in hand, SPHM moved district courts for an award execution to obtain a court order for attachment of properties – movable or mortgaged.

<b>Case 1: District: Waghbodi, Bhandara, Maharashtra</b>	
<b>Business Associate</b>	A microfinance institution based in southern India
<b>Loan Amount</b>	Rs. 100,000
<b>Loan Tenure</b>	48 Months
<b>Date of Disbursement</b>	24-06-2016
<b>Channel of Lending</b>	Joint Liability Group (JLG) through a Business Associate
<b>Para-Legal Property Title Obtained</b>	Namuna 8A
<b>Types of Securities Created</b>	Lien on paralegal document, post-dated cheques, group agreement
<b>Legal Action Taken</b>	The case was successfully negotiated at the arbitration stage after a favourable award was given in SPHM's favour, following which an execution petition was filed in District Courts.
<b>End Result</b>	Partial repayments received and collections are still ongoing.

<b>Case 2: District: Balangir Town, Balangir District, Odisha</b>	
<b>Business Associate</b>	SPHM Orissa
<b>Loan Amount</b>	Rs. 300,000
<b>Loan Tenure</b>	48 Months
<b>Date of Disbursement</b>	16-07-2016
<b>Channel of Lending</b>	Direct Lending
<b>Para-Legal Property Title Obtained</b>	Individual loan agreement
<b>Types of Securities Created</b>	post-dated cheques, loan and guarantee agreement
<b>Legal Action Taken</b>	The case was successfully closed at the arbitration stage after a favourable award was given in SPHM's favour, following which an execution petition was filed for in District Courts.
<b>End Result</b>	Repayment regularized and the loan account closed as on Jan'2021.

## About authors

Shilpa Rao brings with her over a decade of experience in low-income housing and housing finance. She is currently a freelance consultant working on housing related projects with non-profits, multilateral institutions and private sector clients across India and South Asia. Her last professional stint was with Janalakshmi Financial Services (now Jana Small Finance Bank) where she helped set up and run their retail housing and affordable housing project finance business. Prior to that she ran the South Asia Housing Finance Advisory vertical (Financial Institutions Group) in International Finance Corporation, World Bank Group where she worked closely with early pioneers in the Low-Income Housing Finance space in India to launch innovative financing products. Her work has also involved advocating for an enabling market ecosystem to help support

more private sector involvement in Housing and Housing Finance.

Ipshita Sinha is a young professional with a demonstrated expertise in public policy, particularly in labour market research and gender dimensions in developing countries. She has led the retail housing and affordable housing project financing team at Jana Small Finance Bank (erstwhile Janalakshmi Financial Services). She has previously contributed to CIDCO's mapping of the employment and socio-economic backgrounds of the unorganized workforce in Navi Mumbai, and has also done labour market research with the Bill & Melinda Gates Foundation. Ipshita is a graduate in Economics from Lady Shri Ram College, Delhi University and has a Master's in Labour Studies from Tata Institute of Social Sciences, Mumbai.

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## About IHR

India Housing Report is an online archive and periodic report that brings together the rich but disparate analytical work on housing in India, weaving together key debates on housing affordability, adequacy, technology, finance and tenure with ongoing urban transformations in India that impact livelihood, infrastructure, services, liveability and governance. The archive and associated report seek to catalyse a debate on current issues and explore new directions to study housing and its complexities, intersections and novelties.

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