

Consumer Protection under The Real Estate (Regulation and Development) Act (RERA), 2016

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Abstract

Real estate lacks transparency. Real estate is a risky investment. Real estate disputes have remained unsolved for a long period. The Real Estate Regulatory and Development Act ensures to restore the lost trust of the investors in the Indian Real Estate. The authorities will certainly be making the real estate easier for the investors. This act would be putting the pressures on the builders and the buyers can buy the property hassle-free. This is certainly a positive ray in the murk of the real estate in India. The buyers are sure that they will be getting the best of their investment. The initiative would bring the results soon. This Study aims at analyzing the effects of RERA with special reference to consumers in India.

Keywords: RERA Act, Registration, Consumer, Real estate developer, Real Estate Agents, Project, Carpet Area.

Objective of RERA Act:

The Real Estate Act, 2016 aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

A brief Introduction to RERA:

Government of India has enacted the Real Estate (Regulation and Development) Act 2016 and all the provisions of the Act have come into force with effect from May 1, 2017.

All states and union territories (UTs) must establish state level regulatory authorities, called Real Estate Regulatory Authorities (RERAs) within one year of the Act coming into force. Two or more states or UTs may set up a common RERA. A state or UT may also establish more than one RERA. The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal. Section 84 of the Act stipulates that "The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act."

Section 20 of this Act also empowers appropriate Governments to designate any officer preferably Secretary of the Department dealing with Housing, as the interim Regulatory Authority until the establishment of Regulatory Authority under the provisions of the Act.

RERA in Rajasthan:

Under this Act, Government of Rajasthan has notified the Rules namely Rajasthan Real Estate (Regulation and Development) Rules, 2017. The State Government, vide its Order dt.17.02.2017 as designated the Additional Chief Secretary, Urban Development and Housing Department as the Real State Regulatory Authority until the establishment of a Real Estate Regulatory Authority (Rajasthan RERA). Similarly the State Government vide Notification dated 15.05.2017 has designated the Food Safety Appellate Tribunal

as the Real Estate Appellate Tribunal until the establishment of Real Estate Appellate Tribunal under the Act.

The industry was suffering with the following irregularities before RERA came into force:

- The project is not vetted by one single authority, but by different authorities from different angles.
- There is no provisions which compel the builders to utilize the fund raised from a project shall not be diverted to another project.
- The actual areas under sale are not uniform and open for manipulation by the builders.
- Multiplicity of brochures and advertisement material for project which often misguide the purchasers.
- Clearances for constructions are not known to investors/purchasers.
- Lack of efficient and transparency during the construction period.
- Interest of consumer are not secured and they cannot enforce their advance against the property i.e. land during the construction period if the land is mortgaged to Bank/Financial Institutions.
- Multiple laws and regulations which are not known to investors. Common laws are not sufficient to address the grievances of real estate investors or client.
- Non registration of Real Estate Projects and Brokers.

Key Provisions of RERA

Registration mandate for Real Estate Projects

All commercial and residential real estate projects will have to register except in projects where

- area of land proposed to be developed does not exceed five hundred square meters
- number of apartments proposed to be developed does not exceed eight inclusive of all phases
- promoter has received completion certificate for a real estate project prior to commencement of this Act
- for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project

No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area within Rajasthan, without registering the real estate project with the Rajasthan Real Estate Regulatory Authority. Promoter of ongoing real estate projects, in which all buildings as per sanctioned plan have not completed, shall also be required to be registered for such phase of the project.

If any promoter fails to register as per Act, he shall be liable to a penalty which may extend up to ten per cent of the estimated cost of the real estate project. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both. Apart from Registration, the promoters shall be required to provide quarterly updates on the status of the project to the Authority.

Real Estate Agents Registration

All Real Estate Agents should register under this Act. No real estate agent shall facilitate the sale or

purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, without obtaining registration under this Act. If any real estate agent fails to register, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.

Duties of the Promoter –

- 70% of the amount collected for the project from buyers must be used only for construction of that project and must be kept in a separate bank account. Also, the deposit of 70% is for both construction cost and land cost, and if the land cost has already been incurred the promoter can withdraw to that extent.
- The promoter shall, upon receiving his Login Id and password from the authority, upload the details of the project online.
- Promoter shall be responsible for making available to the buyer, site and layout plans of the project, the schedule of completion of the project and other documents enumerated in the law.
- A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building, as the case may be as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person.
- In case a buyer incurs a loss because of false advertising, and wishes to withdraw from the project, the promoter must return the amount collected, with interest.
- The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.
- Currently, if a project is delayed, then the developer does not suffer in any way. Now, the law ensures that any delay in project completion will make the developer liable to pay the same interest as the EMI being paid by the consumer to the bank back to the consumer.
- The developer cannot make any changes to the plan that had been sold without the written consent of the buyer. This puts end to a common and unpopular practice by developers to increase the cost of projects.

Rights and duties of the Buyers –

- The buyer shall be entitled to obtain the information relating to site and layout plans along with the specifications, approved by the competent authority from the Promoter.
- The consumer shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation and electricity.
- The buyer/allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building, as the case may be, to the allottee by the promoter.
- The buyer can contact the developer in writing within one year of taking possession to demand after sales service if any deficiency in the project is noticed.

Offenses and Penalties –

- In case the promoter fails to register the property, he may be penalized up to 10% of the estimated cost of the project.
- Failure to register despite orders issued by the RERA will lead to imprisonment for up to three years, and/or an additional fine of 10% of the estimated cost of the project.
- The promoter will have to pay up to 5% of the estimate cost of the project if he violates any other provisions of the Act.
- Real estate agents will have to pay a fine of Rs 10,000 for violating any provisions of the Act, for each day the violation continues.

Problems faced by the Consumers in Real Estate Sector:

RERA seeks to address issues like delays, price, quality of construction, title and other changes. The following issues forced the Indian Government to enact the law:

- Delay in projects is the biggest issue faced by buyers. The reasons include diversion of funds to other projects, changes in regulations by authorities, the environment ministry, national green tribunal etc and other bodies like those involved in infrastructure development and governing transport.
- In many places, land acquisition becomes an issue. Errant builders often sell projects to investors without the approval of plans.
- Unauthorized increase in Floor Area Ratio (FAR), sometimes the builders unscrupulously increase the FAR to sell more flats on the same area crossing the limits of FAR decided by the authorities. This put burden on natural resources and surrounding infrastructure.
- Quality of construction is compromised by the builders and buyers despite paying the hefty amounts do not get quality construction. Sometimes, a home might contain hidden problems one probably won't notice even if a reasonable inspection is done. Some common examples are leak roof, poor furniture, plaster etc.
- Projects stuck in litigation. Another common problem that haunts most home buyers is litigations over newly purchased property. It therefore becomes essential to check if the property meets all the rules before booking.
- Most of the times, customers complain of below par service provided by the brokers/ agents. Customers feel cheated, and often express their discontent at such unprofessional, pseudo agents. This happens primarily because unprofessional, pseudo-agents. Often it so happens that people who are jobless choose to be a broker without proper knowledge of the profession or the market, and act only for their personal interests.

Advantages of RERA to Consumers

- **Timely delivery of flats:** Developers often make false promises about the completion date of the project, but hardly ever deliver. As per the bill, strict regulations will be enforced on builders to ensure that construction runs on time and flats are delivered on schedule to the buyer. If the builder is not able to deliver the flats on time, he/she will have to refund the purchaser with interest.
- **Furnishing of accurate project details:** In the construction stage, builders promote their projects defining the various amenities and features that will be part of the project. But not everything goes as

per plan, with several features missing. As per this bill, there can't be any changes to a plan. And if a builder is found guilty of this, he/she will be penalized 10% of the project costs or face jail time of up to three years.

- **Specifying carpet area:** Generally, builders sell flats on the basis of built-in area, which includes a common passage area, stairs and other spaces which are 20-30% more than the actual flat area. But, not all buyers are aware of the concept of carpet area. With this bill it will become mandatory to declare the actual carpet area.
- **All clearances are mandatory before beginning a project:** Builders often attract buyers with huge discounts and pre-launch offers. And, the buyer, enticed by the offers, does not bother about the clearance. But, due to delays in getting clearance, the buyer does not get the flat on time. This bill ensures that developers get all the clearances before selling flats.
- **Each project should have a separate bank account:** Developers raise funds through pre-launch offers and use them to purchase some other land or invest it in other projects. This bill will make it compulsory that a separate bank account be maintained for each project. Each transaction will have to be recorded, and diversion to another project will not be entertained.
- **After sales service:** As per an interesting clause in the bill, if the buyer finds any structural deficiency in the development of the building, the buyer can contact the builder for after sales service. But, the buyer should approach the builder within a year of purchase to rectify such defects without further charges.

Limitations of the Act

- The requirement to protect 70% of the proceeds received from buyers was a reaction to developers diverting funds attributed to one project to finance another. This practice was thought to cause delays and put purchasers at risk. There is a concern that it will result in an increased reliance on institutional capital which could have a knock on impact on project costs.
- The Act devises a mechanism wherein the RERA can initiate investigations into the affairs of any promoter or real estate agent not only upon receipt of a complaint but also by a *suo moto* action. The Act lacks clarity in relation to the procedure for investigation.
- Moreover, the Act provides for the RERA to give recommendations to the government upon important aspects like environmental concerns, single window clearances, investments and grading of projects. However, the future course of action of such recommendations is not discussed, thereby making it a toothless provision.
- The cases where the land proposed to be developed is less than 500 square meters or the number of apartments proposed to be developed is less than 8 in total have been exempted from such registration. It may be noted that a good chunk of the residential plots would fall under the exemption range thereby rendering small buyers no relief under the Act.

Conclusions and suggestions

It is hardly of any dispute that the Act is a much needed legislation and a welcome change. The Act puts in place various institutions and procedural regulations thereby providing stability, certainty and transparency to the mechanism. However, the efforts in formulating the Act shall be of no significance in the absence of effective implementation. RERA certainly helps in creating greater opportunities for and

attract increased investment in Indian real estate from international private equity, as developers may need to look at funding sources other than from purchasers, the risks involved in property development are lowered, with project timelines being shortened, mandatory insurance meaning that risk is more considered, and online publication of Promoter's details meaning that the risk of investing with errant Promoters is reduced.

To conclude, although it will take some time for the actual change to get visible, still RERA Act has already gained consumer confidence to a significant extent and seemed to bring in a poise to the over-priced real estate market in India. This new legislation, will not only safeguards the interests of the residential and commercial investors, but, it will also result into some non-credible players exiting the sector because of the checks and balances that will come into place.

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