

An Empirical Approach of the RERA Act from Home Buyers' Standpoint

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Abstract

The Real Estate Regulatory Authority (RERA) Act, 2016, has been enacted to standardize the real estate industry, which was earlier an unorganized sector, and to promote such a sector with the purpose of increasing real estate investment in India in an efficient and transparent manner. Its vital aspect is to protect the interests of consumers, by selling real estate projects or plots, flats, apartments, or buildings, or services by the promoters to customers, and it helps in establishing a proper adjudicating system to ensure quick resolution of issues. An appellate tribunal has been established to hear appeals (higher up in the hierarchy) regarding decisions, directions, or orders made by the Real Estate Regulatory Authority.

Keywords: Buyers' standpoint, directions, empirical, real estate, unorganized

INTRODUCTION TO THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate (Regulation and Development) Act (hereinafter referred to as this Act or RERA Act or RERA), 2016, is an act of the Parliament of India which seeks to protect home buyers as well as help boost investments in the real estate industry. The real estate sector was considered an unorganized sector.

The Act establishes a Real Estate Regulatory Authority (RERA) in each state for regulation of the real estate sector and also acts as an adjudicating body/Authority* for speedy dispute resolution**.

Explanation [1]

***Adjudicating body:** It means authority under this Act, appointed or authorised to pass any order or decision under this Act.

****Speedy dispute resolution:** To have a expedite/speedy resolution can be called as amicable dispute settlement process by way of taking assistance of the Conciliator/Mediator, who acts as a neutral third party.

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Implementation and Establishment of the Real Estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) bill was passed by the Rajya Sabha on 10 March 2016 and by the Lok Sabha on 15 March 2016. The Act is enacted by the Parliament in the 67th year of Republic of India. The Act came into force on 1 May 2016 with 59 of 92 sections notified. Remaining provisions came into force on 1 May 2017.

It extends to the whole of India, including the Union territory of Jammu and Kashmir and the

Union territory of Ladakh, which obtained its applicability on 30 October 2019 (*Notification No. S.O. 3912(E), dated 30th October, 2019*) [2].

Purpose of the Real Estate (Regulation and Development) Act, 2016 Act

- To establish real estate regulatory authority
- To regulate (control) and promote the real estate sector through such authority
- To ensure registration of real estate projects
- To ensure/validate sale of a plot, apartment, building, real estate project in an efficient and transparent manner
- To regulate/take control of the efficient completion and delivery of projects to consumers/home buyers/allottees by the promoters
- To establish a speedy dispute redressal mechanism
- The aim is to create an appellate tribunal that will handle appeals related to decisions, directives, or orders made by the real estate regulatory authority, as well as other relevant matters, in accordance with the provisions outlined in the Act.

Sections, Chapters, Rules, Regulations Alienated in the Act

- There are a total of 92 sections which are divided among 10 chapters.
- Amendment(s)/Notification(s)/Removal of Difficulties Order published from time to time as per the changing circumstances (published by the Ministry of Law and Justice—Legislative Department).
- The making of rules and regulations in order to carry out the provisions of this Act, done by the appropriate government* (Table 1).

***Explanation:** Appropriate Government Section 2(g) of the Act, explained in Point No. 7 here [3].

Table 1. Difference between rules and regulations.

S.N.	Point of difference	Rules	Regulations
1.	Meaning	Rules can be described as the guidelines or instructions of doing something correctly.	Regulations refer to directives or statutes enforced by law.
2.	Section	Section 2(zp) of the RERA, 2016 – “rule” means the rules made under this Act by the appropriate government.	Section 2(z) of the RERA, 2016 “regulations” means the regulations made by the authority under this Act.

Before the Era of the RERA Act

- Before RERA, real estate matters were dealt with under the Consumer Protection Act, 1986.
- If there is any matter pending before the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such forum or commission, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act (Section 71 of this Act).

Governance of the RERA

- Section 2(g) of this Act defines appropriate government and basically governs this Act [1].
- The appropriate government means the following:
 - 1..1 for the Union territory without a legislature, the central government;
 - 1..2 for the Union Territory of Puducherry, the union territory government;
 - 1..3 for the Union Territory of Delhi, the central ministry of urban development;
 - 1..4 for the state, the state government.

Involvement of Authorities in the RERA Act, 2016

- The real estate regulatory authorities of the appropriate government
- Real estate regulatory appellate authorities of the appropriate government
- There is a council namely the National Real Estate Development Council (NAREDCO), whose purpose is to be the collective force influencing, and the real estate industry in India is being influenced and guided by an organization that strives to facilitate its development and maintenance by collaborating with both industry and government through advisory services. and consultative processes. Section 41(2) of the Act.
- There is an association, namely the 'Confederation of Real Estate Developers' Associations of India (CREDAI), established in 1999 with a mandate to pursue the cause of housing and habitat providers. Its purpose is, in the interest of buyers, to maintain transparency and protect their interests.

The Power to Make Changes under the RERA Act, 2016

- The central government has the power to remove difficulties under this Act. The Government may do so by passing order and has to fulfill certain conditions (Section 91):
1..1 By publishing in official gazette;
1..2 Has to be consistent with the provisions of this Act;
1..3 The order has to be presented before each house of parliament;
1..4 All of these can only be done within 2 years from the date of the commencement of this Act.
- The appropriate government has the power to supersede (to surpass/to go beyond authority actions) the authority in case any default committed by the authority or any directions not followed by the appropriate government (Section 82).

Relief to Home Buyers/Consumers/Allottees

- The relief is provided to home buyers/consumer/allottees in the form of interest, penalty amount from promoter, compensation, etc.
- In the case of conciliation/mediation negotiating to the level of resolving disputes between home buyers/consumers/allottees and promoters/developers/real estate agents/development authority/cooperating housing society, as the case may be (Table 2).

Table 2. Difference between penalty and compensation.

S.N.	Point of difference	Penalty	Compensation
1.	Meaning	Penalty is levied on violation, contravention (breaching/breaking the law) or non-compliance as per the provisions of the act.	Compensation means payment to cover losses of the compensated party (to remunerate to the home buyers for the damage caused to them).
2.	Section	Penalties for various offences are levied under Sections 59, 60, and 61 [1].	Compensation given to home buyer levied in Sections 14(3), 18(2), and 18(3) [4].

Note: If the promoters do not pay the penalty, interest, or compensation, the same can be recovered from arrears of land (Section 40).

Process of Filing of a Complaint

- Any aggrieved person can file a complaint with the authority or the adjudicating officer for any violation or contravention of the provisions of this Act or rules and regulations made thereunder against any promoter or real estate agent, as the case may be, by paying fees (Sections 31 and 71).
- Majority of all states have an online portal for filing complaints along with their rules and/or regulations of filing complaint; thereafter, the complaint is proceeded with legal proceedings.
- Once the order is received, the complainant/home buyer has to apply for the issuance of a recovery certificate [4, 5, 2].
- The procedure for issuance of recovery certificates is according to the rules of appropriate government and may vary.

- After the issuance of recovery certificate, the authority will send a letter along with the order passed for recovery of money/penalty/interest amount to the principal civil court* to execute the order [2].

*Principal Civil Court—where the real estate project is situated or against whom the order is passed

- Now the channel of receiving the amount to the home buyers may vary from authorities of different states as per their local laws (Section 40) [1, 4, 5, 2].
- Usually, 45 days are given to the promoter to refund the money to the home buyer according to the rules and regulations of particular state. It is practically seen that once the complainant/home buyer communicates with the promoter against whom the order is passed, the promoter provides the awarded amount to the complainant [4].
- After the money is recovered, it is deposited into the consolidated fund of India. The complainant or home buyer receives communication from the authority to collect their amount.

Time Period of Receiving Relief for the Home Buyers

- The Act mandates that the complaints be disposed of expeditiously within sixty days (two months) from the date of filing. However, if the RERA authority is unable to meet the timeline, then the requisite reasons should be communicated to the home buyer.
- In practicality, considering the sixty-day period, which gets extended in the usual course of nature, it seems that a home buyer gets relief/order only on bona fide grounds for approx. 6 to 8 months. The months may vary; they can be decreased or increased depending on the circumstances of the case. Thereafter, the period for recovering money by the principal civil court may vary according to the circumstances as well as according to the local laws of that particular state [2].
- If the home buyer is not satisfied with the order passed, the authority can file an appeal before an appellate tribunal within a period of sixty days by paying fees.
- If the home buyer is unable to file within 60 days, sufficient reasons are to be given to the appellate tribunal by paying fees [1].

Rights of Home Buyers/Consumers/Allottees (Section 19) [1]

Some major rights are as following:

- To obtain information pertaining to sanctioned plans and layout plans along with the specifications, which are duly approved by the competent authority
- To claim possession of an apartment, plot, or building. The building association of allottees is entitled to claim possession of the common areas.
- If the building or land promoter is unable to complete the handover of the apartment, plot or building, an allottee can claim a refund of any amount paid along with the interest at the prescribed rate, as well as compensation from the promoter [4].
- An allottee is entitled to have the necessary documents and plans, including those of common areas, after the promoter surrenders physical possession of the apartment, plot, or building.

Responsibilities of Home Buyers/Consumers/Allottees (Section 19) [1]

- Consumers have to make on-time payments.
- Must take possession on-time.
- Must actively participate in the formation of an association, a consumer federal, or any cooperative society.
- If allottees fail to comply with the orders of the appellate tribunal, he/she may get imprisonment up to one year or a fine up to 10% of the plot/apartment/unit cost for every day during which the default continues, or both.
- Must take part in the registration of the conveyance deed of the apartment, plot, or building.

The Laws Linked to the RERA

- The laws linked with the RERA are as follows [6, 7, 3]:
 - 1..1 Code of Civil Procedure, 1908
 - 1..2 Indian Evidence Act, 1872
 - 1..3 Consumer Protection Act, 1986

(Additional Information: The RERA has an overriding effect on conflicting state laws (Section 89).

CONCLUSION

Promoters have to keep money in a separate account for the completion of their projects. The cost of compliances (the purpose is to create transparency) which are to be completed by promoters would go up. Such stringent provisions will force the promoters to abide by the law. The faith of home buyers would rise for speedy disposal of cases and relief, which would further increase investment in this sector and help the economy grow.

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