

Plight of Buyers and Consumers and Respite under the Real Estate (Regulation and Development Act 2016)

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Abstract

The real estate sector plays a key role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, thereby reducing the consumers to state of helplessness. Hence, a need was felt to regulate this sector. Aspiring for the world-class facilities to its citizens by providing home for all, developing smart cities, and advancement in infrastructure development, the Indian government came up with the central legislation, namely, Real Estate Regulation and Development) Act, 2016, to protect the interests of consumers.

Keywords: Real Estate Regulation and Development Act, 2016, Promoter, Allottee, RERA

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INTRODUCTION

Home purchases that are very highly leveraged or unaffordable subject the borrower and lender to a great deal of risk. Moreover, even in a strong economy, unforeseen life events and risks in local real estate markets make highly leveraged borrower vulnerable.

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India has vast landscape and is its population; therefore equitable land dealings have become one of the primary. Further, this makes the requirement of a transparent government and real estate agency for a fair passage of real estate development in the country. In recent years, many problems have arisen, more particularly in the residential real estate sector. Every now and then, news regarding the buyer being harassed and cheated by property dealers or a builder comes. There are problems like delay of possession of a residential project, the levying of extra charges that were not told prior to the agreement, the change of plan, etc. The sufferers are mainly the middle-class people. Hence, the regulations of RERA have been made such that a buyer never has to face any sort of problems or irregularities regarding their properties. The problems for buyers are plenty in India; however, one must

not forget the difficulties many builders have to face [1].

Thousands of people have grown rich and many of them have made loss in real estate business. It is one of the leading revenue generators for the government. Even though it has such strong presence in the country, it never had a regulating body. Due to the failure of the government to observe this, many people have become victims of some scheming people doing the real estate business. We are not saying that every real estate project chooses unethical manner to sell their units, but lately, and lately here should be a few years, this has increased manifold with the economic growth of India. The buyers who come from a middle-class background have time and again fallen prey to such petty real estate developers. There was a growing need to bring a transparent government body which could check the developers [2].

Finally, the government delivered by bringing RERA (Real Estate Regulations and Development) Act, popularly referred to as the RERA Act, which came into force across the country in May 2016, is said to bring about a sense of clarity and order to the Indian real estate sector. While some agree that such an Act will play a pivotal role in creating a

positive, transparent atmosphere around the real estate transactions, others have expressed concerns over the likely increase in cost of capital and compliances. The Act has defined a set of stringent norms for the real estate developer, the intermediary as well as the consumer, to encourage healthy and just relationships between the parties involved; it brings both residential as well as commercial projects under the same umbrella, thereby simplifying the process for mixed-use developments. The Bill was drafted in the year 2013 and has undergone a series of changes since then. The amendments to the Bill were approved in April 2015. After much delay, the Bill was passed by the Rajya Sabha and Lok Sabha on 10th March 2016 and 15th March 2016 respectively. It received the Presidential nod on March 25, 2016.

The provision of the establishment of the Real Estate Regulatory Authority (hereinafter called the authority) is ensuring the regulation and promotion of real estate sector and also that sale of plot/apartment or a building, whatever the case may be, can be made in an efficient and transparent manner and also to protect the interests of the consumers on real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the authority. Further the Act aims to ensure accountability towards consumers and to reduce the frauds and delays in the cost of transactions. Further, the Act attempts to maintain a balance in the interests of consumers and promoters by imposing certain responsibilities on both. It also 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 [3]. Housing for all is not possible by the government effort alone. The government and also the private sector should join together to take up this challenge task of housing for all by 2022. The important sector of real estate has been marked by lack of trust and confidence between the consumers and project developers. People are so badly affected that they are meeting the Members of Parliament to raise their concern for not getting the possession of their flats. For various reasons including the lack of

regulation of this sector consumers have been reduced to the state of helplessness. Consumers drive the sector by investing their hard-earned money. Further, there is huge cost and time overrun. If you delay, the cost overruns results in increased cost of houses [4].

Salient features of the Real Estate Regulation and Development Act are illustrated as under:

Part I

Salient features of the RERA (The Act) are as follows:

1. **Applicability of the Act:** The Act applies not only to residential real estate projects but also to commercial real estate projects. In that sense, the Act has wide scope and coverage in real estate sector. The expression real estate project, however, does not cover the sale of ready to occupy property in the resale market.
2. **Compulsory Registration [5]:** The registration of real estate project is made compulsory in under the Act in cases where the land which is proposed to be developed exceeds 500 sq. m or the number of apartments which are proposed to be developed exceeds 8 including all the phases. It imposes an obligation upon the real estate agent not to facilitate sale or purchase of any plot, apartment or building as the case may be without registering himself with the authority for the projects which are on-going and which have not received completion certificate on the date of commencement of the Act and they have to seek registration within a period of 3 months. Further, the real estate agents, who facilitate the selling or purchase of properties, should obtain prior registration from RERA [6]. Such agents will be issued a single registration number for each state or union territory, which must be quoted by the agent in every sale facilitated by him.
3. **Escrow Account:** Builders would need to keep 70% of the sale proceeds, including land cost, in a separate escrow account maintained by a schedule bank to cover the cost of construction and the land cost, and the amount must be used for that purpose only. The amount withdrawn should be in proportion to the percentage of completion of the project [7].
4. **Carpet Area:** Carpet area [8] has been

defined under the Act and developers can sell units only on carpet area, which means the net usable floor area of an apartment. It is exclusive of the area which is covered by walls and areas under service shafts, the balcony or verandah area and open terrace area, but inclusive of the area covered by the internal partition walls of the apartment.

5. Cap on receiving of advance payment:

There is cap on the receipt of advance or application fee and not more than 10% of the cost of the plot apartment or building can be taken as an advance/application fee from such person and register the said agreement of sale, under the law for the time being in force [9].

6. Adherence to sanctioned plans: The promoter is debarred from making the changes (additions and alterations) in sanctioned plans, layout designs or specifications as approved by RERA without consent of person who has agreed to take one or more of the plots, apartments of building [10]. For any other additions, alterations or assigning or transferring of majority rights and liabilities of the promoter, the consent of at least two-thirds of the allottees, who have agreed to take apartments in such buildings and RERA, should be taken, except the promoter himself [11].

7. Return of amount and compensation to the allottees: If the promoter fails to complete the project or is unable to give the possession of apartment, plot or building then: (i) in case the allottee wishes to withdraw from project then he should receive interest and compensation as given in the Act or (ii) in case the allottee does not wish to withdraw from the project then he should be paid interest for every month of delay at specified rate, till the handing of the possession [12].

8. Establishment of Real Estate Regulatory Authority (RERA) and Real Estate Appellate Tribunal (REAT): "The Central and State government must establish RERA" [13] which will consist of a Chairman and at least two whole-time members appointed by the state government [14]. RERA can hear complaints filed by aggrieved persons for

contravention or violation of provisions of the Act by any promoter, allottee or real estate agent [15]. RERA's broad objectives and functions include inter alia ensuring transparency by registering and maintaining a database of real estate projects and publishing it on its website for public viewing, protection of interests of promoters, allottees and real estate agents, development of environmentally sustainable and affordable housing, rendering advice to the government and ensuring compliance with its regulations and the Act in general [16]. It can further govern both commercial and real estate transactions [17]. The persons aggrieved by the decision of RERA can approach REAT within 60 days of the former's order [18]. REAT must dispose of the appeal within 60 days [19] and will have powers of the civil court [20,21].

9. Establishment of advisory council: The Act provides for the establishment of an advisory council by the central government to advise and recommend to the central government on matters concerning the implementation of the proposed legislation, major question of policy, protection of consumer interests, growth, and development of the real estate sector [22].

10. Punitive measures: Stringent penal provisions have been prescribed under the Act against the promoter in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Regulatory Authority or the Appellate Tribunal which are the following:

- i. If the promoter does not register its project with the Regulatory Authority – the penalty may be up to 10% of the estimated cost of the project as determined by the Regulatory Authority;
- ii. If the promoter does not comply with the aforesaid order of the Regulatory Authority – imprisonment of up to three years and a further penalty of up to 10% of the estimated cost, or both; and
- iii. In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act – the

penalty may be up to 5% of the estimated cost of the project or construction” [23].

11. **Transparency in transactions:** “The main objective of this Act is to promote trust and transparency in the dubious real estate in India. To achieve this, approvals from the competent authority has been made mandatory for the builder before he can start the project. This way the builder will be left with negligible scope to cheat innocent buyers. However in order to fulfill one objective of transparency, the other objective of fast completion of the project would be defeated because gathering all the approvals take time” [24]. Developers would be required to make available information and documents to prospective buyers to bring transparency in development of the proposed project such as master plan, layout plans, structural drawings and designs, material specifications and construction schedule, etc., also the information regarding project management and documents to ensure sale of plot, apartment or building as the case may be or sale of real estate project in an efficient and transparent manner [25].
12. **Rights and obligations of key players of real estate :** The Act defines the rights and obligations of all the players in real estate projects. The Act defines the rights and obligations of all the players in the real estate sector, viz., promoters, (builders/developers/development authority such as DDA), allottees (buyers) and real estate agents [26-28].

After having an overview of the salient features of the Act, it is made out that the Act is surely aimed at protection of rights of consumers/buyers/allottees by way of giving more rights to consumers to have information about the projects, to have a proper redressal mechanism and punitive measures in place. The Act has a balance between the duties imposed on the promoter and rights of allottees and where consumer is actually the king. Let's have an overview of the important provisions which are specifically aimed and come to respites for the consumers and in turn puts an obligation on the promoter.

Part II

Important Provisions/Sections which Illustrate the Obligations/Duties of the Promoter

General duties: “The promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations. Responsible for obtaining leasehold certificate, completion/occupancy certificate. And maintaining essential services until takeover of the maintenance by the association of allottees. Execute a registered conveyance deed of the apartment, plot or building within 3 months from the date of issue of occupancy certificate” [29].

Further, the Act provides for specific duties of the promoter:

- **Advertisement:** Advertisement or prospectus issued by the promoter shall mention prominently the website address of RERA where all details of registered project are entered and also the registration number. Further, the promoter should not indulge in any unfair practice to promote the sale of project [30]. As per Section 12 of the Act, the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus.
- **Prior registration [31]:** Promoter should not book, sell or offer for sale or invite persons to purchase any plot apartment or building as the case may be in any real estate project without registration of the real estate project with the authority; such registration is compulsory where the area of the land proposed to be developed exceeds 500 sq. m or number of the apartments proposed to be developed exceed 8 inclusive of all phases.
- **Separate bank account to deposit amount realized from allottees:** The builder are under an obligation to keep 70% of the amount realized from real estate project from the allottees from time to time, which is deposited in a separate account in a scheduled bank and to use the same only for meeting the cost of construction and the land cost. Withdrawal from separate account to cover cost of the project shall be in proportion to the percentage of completion of the project after certification from an engineer, an

architect, and a CA in practice to that effect [32].

- **Obligation of promoter regarding insurance of real estate project:** It is the duty of the promoter to obtain all insurances as may be notified by appropriate government including but not limited with respect of title of land and building as a part of real estate project and construction of the real estate project. Further he shall be liable to pay the premium charges as well [33].
- **Booking and allotment:** The promoter cannot accept a sum more than 10% of the apartment/plot cost as an advance payment / application fee. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee [34].
- **Completion certificate and the occupancy certificate:** To obtain and provide completion certificate and occupancy certificate and occupancy and make it available to allottees or association of allottees [35].
- **Adherence to sanctioned plans and project specifications:** "Proposed project to be developed and completed in accordance with sanctioned plans approved by competent authorities [36]. Builder is barred from making any alterations or additions to sanctioned plans, layout plans, and specifications other than minor additions or alterations without the previous written consent of at least two-thirds of allottees other than promoters" [37].
- **Liability to rectify structural defect or defect in workmanship within 30 days, if brought to notice of promoter by allottee within 5 years from the date of handing over [38].**
- **Obligation of promoter in case of transfer of real estate project to a third party:** "The promoter shall not transfer or assign his majority rights and liabilities in respect of real estate project to a third party without obtaining prior written consent of two-third allottees except the promoter and without the prior written approval of the authority [39]."
- **Transfer of title:** The promoter shall

execute a registered conveyance deed in favor of the allottee along with the undivided proportionate title in common areas to the association of allottees or competent authority and handover the physical possession of the plot, apartment of building to the allottees.

- **Compensation:** Liability to compensate allottee for failure to discharge obligations imposed by the Act or rules or regulations thereunder or by an agreement [40]. Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.
- **Penalty for non-registration and contravention:** The provision of penalty of 10% of estimated project cost, imprisonment of 3 years who advertises without registration and further penalty of 5% of the cost of project for providing false information [41]. If any real estate agent fails to comply with the provisions of Section 9 or Section 10, he shall be liable for penalty of ten thousand rupees for everyday during which such default continues which may cumulatively extend up to 5% of the cost of the apartment or building as the case may be of the real estate project for which the sale or purchase has been facilitated as determined by the authority [42].

The Act provides for some specific rights of the allottees which are as under:

Section 19 [43] of the Act, provides for various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered with the allottees, namely –

- Stage-wise schedule of completion of the project and the services.
- Claim timely possession of the apartment/plot.
- Entitlement to necessary documents, plans, etc.
- Obtain refund with interest at such rates as may be prescribed and compensation in the manner provided under the Act from the promoter if he fails

to give possession.

As the rights come with duties let us have an overview of some duties of allottees as under:

The allottee who has entered into an agreement for sale to take an apartment plot or building shall make necessary payments in the manner and within the time as specified in the said agreement for sale. Every allottee shall pay at the proper time and place the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent and other charges if any [44].

Responsibility to pay interest for delay in payment: the allottee shall be liable to pay interest at such rates as may be prescribed for any delay in payment towards any amount or charges to be paid as above [45].

Responsibility to participate in formation of association: Every allottee shall participate towards the formation of an association or society or cooperative society of the allottees

[46].

Part III

After having an overview of the important provisions of the Act, we need to evaluate the impact of the important provisions of the Act, which are of benefit to the buyers/consumers.

Some misses of the Act are as follows:

- The Act applies to project over 4000 sq. m. This clause itself destroys the protection layer for consumers. Builder can always break the whole project into different phases and show them as different projects under different companies which are just one project side by side to save the tax.
- Further no single window clearance for approval this will take a lot of time and open the gate for bribes and red-tapism.
- The timelines of approvals by regulatory authorities have not been defined. Any delay in approvals from regulatory authorities could impact buyers as well.

Provision of the Act	Impact on the Buyers
Mandatory to acquire all clearances before the launch	As per this provision, the practice of “soft/pre-launch” offers will curb. All permissions are also to be displayed on the website of the developer. However, this might slowdown the supply side because right now a builder keeps on launching new projects. On the other hand, buyers will not feel cheated if there is any flaw in the project since clearance will be granted only when all requirements get fulfilled.
Use of Photograph of actual site for advertisements	This is great help to the buyer. There will be less of cheating on account of rosy pictures.
Establishment of RERA and REAT	The establishment of RERA was with objective to bring transparency by registering and maintaining a database of real estate projects and publishing it on the website for public viewing, protection of interest of consumers. Further the aggrieved buyers can approach RERT to challenge the decision of RERA. This will strengthen the redressal mechanism.
Registration of real estate project	The provision of registration will discourage the developers from notoriously diverting their funds, it will also prevent delay in completion the project and handover to the consumers.
Definition of carpet area [47]	The developers can sell units only on carpet area. This will enable the buyers to get clear picture of the useable space.
Cap on receiving of advance payment [48]	The cap on the promoter is that he cannot accept more than 10% of the cost of the plot.
Adherence to sanctioned plans [49]	The changes in sanctioned plans cannot be made without the consent of allottee. This will discourage the developers from increasing the cost of the project midway or acting against the interest of the consumers.
Compensation to allottees	If promoter fails to complete the project, he has to compensate the buyer. This is welcome change from the previous position where the developers were not penalized of held responsible.
Penal provision for promoters [50]	There is a provision of penalty, i.e., 10% of estimated project cost, imprisonment of 3 years who advertise without registration and further penalty of 5% of the cost of project for providing false information. This will be deterrence for those who are at fault.
Transparency	The buyers will be exposed to all information relating to project and developers and cannot cheat them easily.
Full refund with interest if property not handed over in time	Buyers will get compensation if delay happens in possession of property.

- The Act may lead to slightly higher prices of properties due to the reduced competition.

CONCLUSION

The Real Estate Act seeks to form a happy alliance between the buyers and developers. The Act seeks to address the complexities of the sector by putting in place a regulatory mechanism. It is a regulation not strangulation. The Act is not aimed at anybody. The real estate and housing sector are fundamentally unregulated and opaque with consumers often being unable to procure complete information and hence failed to enforce accountability against builders and developers in the absence of effective regulation. There is dire need of regulations to have a check on the unfair practices of the builders. After the enactment of this Act, there is a ray of hope for the buyers/consumers as it makes registration compulsory, good and effective redressal mechanism in form of RERA and RERT. However, the effectiveness of the Act depends on how successfully the housing sector issues like standardization of agreements of sale, efficiency in resolution of complaints, and encouragement of private equity through effective regulations are enforced. Further the role of government in regulating the growth of the real estate sector housing sector along with the cooperation extended by the major players also plays an important role. The effectiveness of this Act is a big question as of now Developers have repeatedly complained that their projects are dependent on several government approvals. Consequently, delays in obtaining approvals, results in a scenario where they are unable to complete the project within its stipulated time. Hence, they insist that the government must strive to provide single-window clearances, to remove bureaucratic delays. Central government has passed the Real Estate (Regulatory & Development) Act in 2016 and has given states enough time to do amendments according to their respective land rules. RERA will surely redefine the future of the Indian real estate sector by enhancing the must-needed transparency and professionalism. It is the dawn of a new era of Indian real estate sector that will usher in the contemporary world where no one can be believed blindly.

RERA gives property buyers the power and the right to raise voice against realtors' unethical modus of operandi in doing business. The Act is not primarily against the real estate developers and agents. It just aims in increasing the efficiency in delivering projects, making real estate transaction secure and transparent and building trust between property buyers and sellers. It not only gives rights to the consumers, but also allows property builders and agents to file complaints against buyers in case of late payments or any unethical behavior. Along with these, the developers and promoters who adhere to the RERA rules will enjoy premium benefits when it comes to getting finance for the project. RERA is right for those who carry out their business in an ethical way, complying with the laws. In the upcoming years, the real estate sector will witness a massive boom. The boom will create drastic changes that will be something unheard and unseen. These changes will profit both the consumers and realtors. It will give the real estate sector; new heights and realtors will be viewed with respect like never and will end the plights of the consumers to a great extent [51].

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