

ROLE OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016- A CRITICAL APPRAISAL

Name of Author: Miss. Kajal Gupta,
Co – author, Gaurav Gupta (Student) NLU, PATIALA
Assistant Professor, (Guest faculty)
School of Law, Justice & Governance, (Gautam Budh University)
Address: C-103 IRWO Palm Court, Rail Vihar Society,
Alpha-1, Greater Noida, Near Ryan International School.

ABSTRACT

The Real Estate (Regulation and Development) Act, 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 bill was passed by the Rajya Sabha and the Lok Sabha in March 2016. The Act came into force from 1st May 2016. Remaining provisions came into force from 1st May 2017. The objectives of this act are to Ensure Transparency & Efficiency in real estate sector in regards to sale of plot, apartment, building or real estate project; Protecting the interest of consumers in real estate sector; Establishing adjudicating mechanism for speedy dispute redress land Establishing Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority. Prior to RERA, there was no clarity on carpet area, was sort of monopoly of Builders regarding loading, rates, modes of payments. There were Frauds, no clear picture of project, possession, sanctions. An attempt has been made to find out the immediate impact of this act on the Builders, and the customer.

INTRODUCTION

The demand for housing has increased and became the most important part of individual's life. Access to adequate housing can be a first priority for the enjoyment of several human rights, including right to work, health, education, social security, vote, right to privacy etc. safe and secure housing is a fundamental need of a man. Housing is a key input in economic, social, and civic development¹.

Any country's overall growth can be calculated when sustainable development of that nation's infrastructure enhances and respects the development of other sectors. Real estate and infrastructure sector both have stood as the two biggest employers in India which has made enormous strides in the last decade and have also gained attention of the policy makers, corporate and banks to develop and implement regulations.

Real Estate plays an important role in providing the need and the demand for housing and infrastructure. But this sector has been unregulated for a longer period of time with the absence of professionalism and standardization and lack of adequate consumer protection. Though , the consumer protection Act, 1986 is

¹National Housing Bank 100th Report on Trends and Progress of Housing in India, 2013 (April 2014).

available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Also, delay in implementation of housing projects due to lack of transparency and accountability has become a serious issues and the credibility of the builders have come into question, this results in huge cost and time overruns as there is a delay, the cost goes up resulting in increased cost of houses. Consumers drive the sector by their hard earned money. For them, to be at the receiving end is not the right way ahead of this critical sector by simply asking them to go to courts. There are many developers who are black sheep who need to regulate by the law, so it had become extremely important to bring about a legislation which would govern the real estate sector in particular to boost the investment in the real estate and to protect the home buyers.

In *Belair owners Association vs. DLF limited, HUDA, and others*² in this case, it was strongly emphasized the need of the regulatory authority for real estate in the country. The inadequacy of laws and regulations are result in domination of the certain anti-social elements and illegal developments in the housing sector. It was pointed out that:-

“The absence of appropriate laws and regulations for the real estate business and trade strengthened the position of the middleman. The business operations were underpinned by contracts developed with the politicians and bureaucrats at a cost which could easily passed on to the final purchasers of the property. Though regular payoffs and offers be prized investment, the long arm of the law could thus be kept at bay, advance information obtained, files cleared promptly and irregularities condoned³”

But, surprisingly until the year 2016, there was no specific central legislation to govern the Real Estate sector. Therefore, the parliament in order to regulate this one of the fastest- growing sector passed “The Real Estate (Regulation and Development) Act, 2016⁴ which came into effect on 1st May 2016. The evolution of the Act commenced in the year 2009 when the Union Minister “Mr Venkaiah Naidu” said “the consumer , shall be the king as has happened in the sectors like telecom after regulatory mechanism has been put in place, and if there is a king there ought to be a queen also. The queen obviously is the developer and there shall be a happy marriage between the king and the queen. It is for both of them to live happily ever after⁵ this was said at the National Conference of Minister of Housing, urban Development and Municipal Affairs of States and UTs made a proposition of making a law on real estate sector. This was further endorsed with the consultation of central government and on approvals by the Competition Commission of India, tariff Commission, and Ministry of Consumer Affairs⁶. Subsequently, in July 2011, the Ministry of Law & Justice also suggested a central legislation in the real estate relying on the power of the Parliament given in the Concurrent List⁷. On getting the Union Cabinet approval, the Real Estate bill was introduced in Rajya Sabha on 4th August 2013.

²2010 AIR 2011.

³ Arun Kumar, *Real Estate as Business*, 50 (Books For Change, Bangalore, 2nd Edition, 1982).

⁴ Henceforth referred to as “The Act”.

⁵Press information Bureau, Government of India, Ministry of Housing and Urban Poverty Alleviation.

⁶ Real estate act comes into force tomorrow after 8 – year’s long efforts, Press Information Bureau, April. 30, 2016.

⁷ The parliament has enacted this statute on the basis of Entry No. 6 (Transfer of property other than agricultural land; registration of deeds and documents) and Entry No. 7 (Contracts, including partnership, agency , contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land) of Seventh Schedule of Indian constitution.

Finally, it came into force in the year 2016, when both Rajya Sabha and Lok Sabha passed it on 10th and 15th March respectively. Further, the bill was passed by the Honourable President was published in the official gazette on 26th March 2016 for public information.

“Real estate includes the land and anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, shrubs, fences, sewers, structures, and utility systems⁸”.

In simple words real estate can be depicted as anything related to lands, improvements, and buildings thereon, which are commercial, residential or industrial in nature. It also encompasses sale, purchase, development and construction of such improvements and buildings on these lands. Real estate is always associated with immovable property. The General Clauses Act, 1897⁹ and the transfer of property Act, 1882 defines immovable property.

In India, one of the major reforms was introduced in the form of RERA, which ensures to deliver much needed accountability and transparency in the sector of real estate. It promised to build up and strengthens consumer protection by providing that the consumer gets the delivery of its product on the promised time, thereby enhancing consumer confidence and also facilitating to create longer lasting developer brands which are durable on quality and timely delivered.

The Act makes mandatory for the promoter or a developer of a project needs to get registered under the Act by making the required application to the Real Estate Regulatory Authority who will have the right to grant or refuse the registration within thirty days from the date of the application. And also most importantly, before the registration promoter is not allowed to carry out any advertising of the project.

This Act also makes compulsory for the developer to deposit 70% of the project fund in a separate escrow account. It will make ensure that the developers are not able to invest their booking money in numerous new projects.

The promoter is not permitted to transfer or assign his rights and liabilities to a third party without the consent of at least 2/3rd majority of allottees and prior consent of Real Estate Regulatory Authority. It is because most builders and developers were transferring their rights and liabilities to third parties and allottees came to know about this after the significant amount of money had transferred in their hands, and this amount to problem for allottees as allottees may not be comfortable with the third party for a variety of reason including reputation, or ability to deliver, etc. Further, the promoter cannot make any changes in the plan of the project without the consent of the 2/3rd majority of allottees.

Another significant contribution of the Act is to the introduction of the Real Estate Regulatory Authority which is required to be formed within one year from the date of commencement of the Act.

The government regulations in India is persistently growing which leads to severe regulatory compliance and it also follows the worldwide parameters of carrying out mercantile business which makes the regulators extra

⁸Black's law Dictionary, 2nd Edition.

⁹The General Clauses Act, 1897, Section 3(26), defines, “immovable property” shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth.

belligerent and rigid in order to summon the current regulations. Real estate sector currently provides employment over 40 million workforces with forward and backward linkages to over 250 sectors and subsidiary industries, it has emerged as the third-chief provider to the Indian economic system. Few of the problems connected with the land business in urban areas include of irregular growth in the requirement for urban property, creation of spurious documents, Benami land transactions, etc., and such infirmity can mostly be depicted to disappointing checks at various government positions for overlooking these irregularities.

REVIEW OF LITERATURE

Literature review are secondary sources, and do not report new or original experimental work. The Real Estate sector of India being an important area of study has attracted several research projects as discussed below.

This book covers the rights of Buyers of Plots/ Apartment their function & duties of Builders, rights & obligations of Real Estate agents also the adjudication of compensation by adjudication officer also the various Authorities under Act & specific State rules¹⁰. Similarly Young Global's, book covers the Law, Concept & Procedure of the Real Estate (Regulation & Development Act, 2016) along with section – wise commentary, state wise ready Reckoner, FAQ's, State rules & notification¹¹. In the similar line, Dr. Sanjeev Kumar¹² studies answers of various questions related to the said Act & particularly analyses all the 92 sections of the Act & offers Commentaries on the same. On the other hand, another author¹³ of the book stated that The Indian Real Estate sector has been thriving and it has become one of the fastest growing markets in the world. Industry experts have assert that the opportunities by the Indian property market is going to attract many investors in the upcoming years, therefore, giving solid boost to the national economy. This book also deals with the investment opportunities in the various areas of the Indian real estate sector both in the already metropolitan cities. The real estate market in India is and will continue to be mysterious, but it depend on how you play the game, or you could end up losing what you have or you could multiply your wealth. Similarly, Ministry of Housing & Urban Poverty Alleviation Government of India has also try to look after the frequently asked Questions (FAQ's) and the responses therein are for general information and guidance only. These questions and responses have been framed keeping in view possible doubts that may rise and are not based on individual cases. Therefore, it is not to be taken as a final view of the Ministry of specific legal interpretation of the extant provisions of the Real Estate (Regulation & Development) Act, 2016.

On the contrary An Article has written by Prof. G.D Parulekar¹⁴, Stated that housing sector is one of the top contributors to country GDP and employment creation surprisingly in spite of being such an important part of the economy, the Estate sector has remained by and large unregulated. So, it has let to big hue & cry making urgent need for a unified regulatory legal framework to protect customer's interest. It will be the responsibility of each state regulator to register the Real Estate project & Real Estate agent operating in their state under

¹⁰Mihir Garg: *A Comprehensive Guide To Real Estate (Regulation & Development) Act*, 2016 (Taxmann Publications Pvt. Ltd., New Delhi, 3rd Edition, 2017).

¹¹Shambhu K. Thakur, *Real Estate (Regulation & Development) Act, 2016*, (Young Global Publications, New Delhi, 1st Edition, 2018).

¹²Real Estate (Regulation & Development) Act, 2016.

¹³Umesh Mathur, *Understanding India's Property*, 56 (Excel Books, New Delhi, 1st Edition, 2016).

¹⁴Prof S.S Patil, *Detailed study & analysis of RERA Act*, 78 (Delhi Law House, New Delhi, 2nd Edition, 2017).

RERA. The details of all the registered projects will be put on the website of public access. Researcher has studied on “BHARAT KA RAJPATRA”, the gazette of India. This gazette is related to buyers & sellers of Real Estate. It has made survey of builders & contractors, also the survey of buyers. By the survey, researcher has concluded that, this Act is beneficial for the builders with a high budget, is highly transparent process, but the Bill may lead to slightly in high prices of properties due to the less competition. And its future scope is that few sections of this Act should be revised in future considering customer’s as well as builders or developer’s convenience. There also been an article on Will Rera Impact Real Sector Prices¹⁵ Stated that RERA is going to impact Real Estate in terms of price for existing property and as well as under construction property. As the super built – up cost of a property will be calculated in carpet area itself, which will increase the overall prices of the property. Every developer has to register his new or under construction project under RERA. Due to the RERA norms & conditions, developer has to complete the project on a given period of time, which will increase the cost of under construction projects. This will be a lot of pressure on developers to deliver projects on time, this will create a huge demand for contractors and they are going to charge more which will indirectly burden the customers.

STATEMENT OF PROBLEM

With the recent enactment of RERA it has found that to some extent, the problem of real estate has decreased but still there are some issues which need to see and yet has not been curbed the existing problem. The main concern regarding the Bill is its strict rules such as launching projects only after getting statutory clearance that would delay projects and increase the cost of the project. And also bill doesn’t say anything about the delays in the launching of the project which may be caused due to the failure of the governmental agencies in providing timely approval of the project.

As now a days buyers are purchasing commercial property from the builders/developers, so bill is silent on the commercial property and hence in its present form leave the commercial Real Estate sector from its purview which is a significant part of the overall real estate sector and should not be overlooked. Bill makes its mandatory for a developer to keep 70% of money of the project in a separate escrow account and also separate account for each project so that money cannot be diverted for the purpose of other ongoing projects, this provision will affect the other financial cash flows for projects, especially in metropolitan cities where the land cost is very high. And also for the large developers who have number of projects ongoing may have difficulty in managing so many accounts. The bill will only be effective from the prospective view and not from the retrospective so the projects which have already been launched will not come under its purview.

The Act has defined the Carpet area under section 2(k) of RERA but the net usable area so it should also be defined under this. Such a definition should also include the area which is sold to the buyer for individual use including bathroom, living room, lavatory, kitchen area, and bathroom and any other area which has been allotted to the buyer including parking area. The Act, however will have a negative impact on local and

¹⁵Sunil Dhawan, “Will RERA Impact Real Sector Prices”, 25 JILI 211 (2017).

regional developers. Already a number of small developers have either left the market or entered into agreement with the large firms for the development of the projects under taken by them.

The major difficulties face by these developers is to maintain 70% amount for the separate account. Ambiguity prevails through the various provision of the act. The term construction execution certificate hasn't been defined in the act. The biggest challenge to this act is to implement it effectively. In order to achieve the aims of the act, it should be implemented in true spirit or it would turn into another centre of corruption. It was found from the study that most of the projects are incomplete and 95% of such projects are under private sector tenure. And also Act doesn't provide any regulation to check on black money in real estate transaction. Small real estate project i.e. below the 500 sq. aren't covered under the act. It has increased the focus on the timely completion of the project but builders/contractors are facing problems with this provision especially on the ongoing projects.

HYPOTHESIS

1. The Real Estate Regulation and Development Act, 2016 is beneficial for the consumers.
2. The Real Estate Regulation and Development Act, 2016 has subdued the pre-existing problem of housing to only a little extent.
3. A lot more is required to be done to curb the problem in totality.

RESEARCH QUESTIONS

1. What is the regulatory mechanism to check ownership in India?
2. Is there a need for a regulatory authority to check this mechanism?
3. What is the need of Real Estate Regulator?
4. What are the features of Real Estate Act?
5. How efficient is the working of Real Estate Act?
6. Does the escrow of 70% of the money collected from the allottees in any way effect the efficiency of the promoters?

CRITICAL ANALYSIS

The Act has indeed made investments in real estate transactions a lot safer. Ultimately, the intention of the Act has always been to ensure that the buyers are protected from the undue harshness inflicted by the builders and developers in the market. The enactment of this legislation has brought about more transparency in the manner in which real estate transactions are carried out. While most of the liabilities of the Promoters and allottees were being practised even prior to the enactment of the legislation, the major difference is that the obligations were initially being enforced contractually and more often than not the contractual provisions favoured the builder or the developer. With the law having specifically stated the requisites for the promoters, builders, developers and allottees to follow, the buyers have a legal recourse under law as opposed to that of a contract.

A reading of the legislation would clearly indicate that the law makers have indeed delved deep into the practical problems faced by the real estate purchasers especially the middle income sectors and have tried to address them in the best manner possible. Major provisions, such as restrictions on advances taken by the Promoters for a project, parking of 70% of funds in an account by the developer etc. could definitely have the desired impact of protecting the buyers in the market. In most cases, if the Promoters default or abandon the project, the buyers are not

Completely helpless and would be in a position to recover some portion of the monies invested at the least. This is in contrast to the earlier provisions wherein the buyers were completely helpless with no idea who to approach in respect of the legal scenario. From the point of view of investment, it seems that the enactment of the Act is definitely aimed at increasing the investment in the real estate sector. This would be possible primarily because of the reason that the real estate sector is now regulated in a more professional manner with dedicated authorities having requisite experience and expertise in the real estate sector. From a consumer point of view, the most incentivising factor would be the redressal mechanism provided under the Act. Since the Act provides for an authority specifically for redressal of disputes, the consumer gets a lot of comfort in knowing that the redressal would be at minimal cost minus the litigations and speedier thereby, increasing the confidence to invest in the real estate sector.

CONCLUSION AND SUGGESTIONS

The new regulation of Real Estate (Regulation and Development) Act, 2016 is an act which is focussed to bring a positive development and is expected to relinquish the problems of late delivery of projects, consumer exploitation, lack of accountability, arbitrary practices and EMIs. It puts down regulations for governing the real estate business. Even Though RERA is a Central Act but it has its own versions at State level, which allures and promotes investment in the real estate sector by restoring consumer confidence, protecting buyer's interest, setting up Real Estate Regulatory Authority and Appellate Tribunal. This leads to reducing number of litigations due to deterrent rules and regulations in this extensively corrupt sector. Hence there is an urgent requirement for all the states to establish these Regulatory Authorities in order to fulfil the desired aim of RERA. Impact of the Act over the developers, buyers and economy at large will be witnessed with time. Compliance of this act should not enforce an additional layer of approvals to be obtained, but shall ease out the procedure in entirety. Furthermore, RERA cannot be executed efficaciously till the time political timidity in implementing the Act is eliminated being a vital obstruction. Therefore, the Act requires legislative amendments by discussing with the stakeholders indulged, as there is a great scope coupled with eliminating any conflict of interest that the political class may have while implementing the Act. The aim of the act is not only to protect the lawyers but also the investors and the developers. The projects get delayed because the local authorities do not give permission to carry on the projects. And permissions for electricity and water supply etc. RERA does not mention about any rule or regulation regarding the time limit for giving approvals by these sanctioning authorities which leads to inconvenience to both the builder as well as the purchaser even after the completion of the construction. Therefore the government shall bring these authorities within the purview of RERA, so that the projects do not get unnecessarily delayed.

With the coming up of RERA, the so called developers will get eroded from the real estate market, thereby providing a guard to the purchasers from the defrauding execution of such developers. A provision needs to be added to essentially follow the National Disaster Management Authority standards while construction. In the present market situation, there are a lot of pending projects that has been delayed from more than two years, however the buyers are still paying the instalments, thus putting financial burden on them. The government should take into account the conditions of these purchasers and provide them with tax benefits on the interest for this delay in construction period as well. In RERA, the developers may require certain time to get in accordance with its provisions and difficulties of its rules. Due to various reforms undertaken by the Government in such a short period the prices of the real estate sector might get fluctuated but stabilisation can be expected due to the productivity brought in by the RERA. Therefore, it can be said that the main aim of introducing RERA was to benefit all the functionaries in the real estate market and not any one segment of the sector which will finally boost the real estate sector at large.

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