

# An Overview of 'RERA' in India: A Regulatory Shift

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## ARTICLE DETAILS

### Article History

Published Online: 10 January 2019

### Keywords

Act, Buyers, Agents, Builder, Real Estate, Flats, promoter, Gol

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## ABSTRACT

In the present era, the real estate and construction sectors play a crucial role in the process of development especially infrastructure. After agriculture it is the second largest employment sector. It includes of 4 sub-sectors namely; Housing, Retail, Commercial and Hospitality. Surprisingly, in spite of being such an important sector of the economy, the real estate sector has unregulated and controlled by local government with certain set of own rules and regulations for real estate development. Taking benefit of country's abysmal judicial system, the developers have been taking property buyers for a ride, and putting real estate sector on the bottom of customer protection and satisfaction pyramid. With the things getting bad to worse, it has let to big hue and cry, making urgent need for a unified regulatory legal framework to protect customers' interest RERA is the solution.

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 to boost investments in the real estate industry. Rajya Sabha and the Lok Sabha passed the bill in March 2016. The RERA Act came into force from 1 May 2016. 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 projects; to protect consumers in real estate sector; to begin judge the means for quick argument redressal and to set up Appellate Tribunal to pay attention fir appeals through a proper mechanism via RERA. Before implementation of RERA, the sector was lacking in clarity on carpet area, with practice of monopoly power of the part of builders concerning to loading, rates, sort of payments. With n number of frauds, unclear picture of project, ownership, approval etc. An attempt has been made through this paper to study RERA as a reform in Real Estate industry and to know its advantages, disadvantages with offering suggestions.

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## 1. Introduction

In the present era, the real estate and construction sectors play a crucial role in the process of development especially infrastructure. After agriculture it is the second largest employment sector. It includes of 4 sub-sectors namely; Housing, Retail, Commercial and Hospitality. 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 to boost investments in the real estate industry. Rajya Sabha and the Lok Sabha passed the bill in March 2016. Since, 1 May 2016 Act came into force. Residual requirements came into force from 1 May 2017. According to RERA, each state and union territory will have its own regulator and set of rules to govern the functioning of regulator.

Project delays are the chief concern of buyers. The reasons are many and impact is huge. Since last 10 years, many projects have seen delay up to 7 years. The reasons include diversion of funds to other projects, changes in regulation by authorities, the environment ministry, national green tribunal etc and bodies like those who involved in infrastructure and governing transport. In many places, land acquisition becomes an issue. Errant builders often sell projects to investors without the approval of plans, bad quality of construction, project stuck in litigation etc. RERA seeks to address issue like delays, price, quality of construction, and other changes.

The promoter of a real estate development firm has to maintain a separate escrow account to each of these projects. A minimum 70% of the money from investor and buyers will have to be deposited. This money can only be used for construction of projects and cost of borne towards land. RERA requires the builders to submit the original approved plans for their ongoing projects and alteration that they made later. They also have to furnish details of revenue collected from allottees, how the funds are utilized and the timeline for construction, completion and delivery that will need to be certified by an engineer/Architect/Practicing Chartered Accountant.

It will be responsibility of each state regulator to register the real estate project and real estate agent operating in their state under RERA. The Details of all the registered projects will be put on the Website of public access. Developers can't invite, advertise, sell, offer, market or book any plot, apartment, house, building, investment in project, without first registering it with the regulator authority. Further, more, after registration, all the advertisements inviting investment will have bear the RERA registration number.

## 2. Objectives

- i. To study RERA Act and its provisions.
- ii. To find the advantages and disadvantages of the Act.
- iii. To offer suggestions towards further improvement of the Act.

### 3. Evolution of RERA in India

The Government of India (Gol) has implemented the Real Estate Regulation and Development Act 2016, (RERA) all the sections of the Act came into force on May 1, 2017.

**Table 1: Evolution of RERA in India**

Year	Developments
2013	UPA Government introduced the Real Estate Regulatory and Authority Bill
09/09/2013	The Bill was referred to the Standing Committee on Urban Development for Examination
08/10/2013	The Standing Committee heard the briefing of the Ministry of Housing and Urban Poverty Alleviation
06/11/2013 to 12/11/2013	The Standing Committee heard the views of some of the NGOs working in the field of Real Estate
12/02/2014	The Standing Committee prepared its Report after Public opinion
13/02/2014	The Standing Committee o Urban Development submitted its Report
07/04/2015	The Union Cabinet under the Chairmanship of Prime Minister, Mr. Narendra Modi gave approval to amendments in the Bill
06/05/2015	The Bill was introduced in the Rajya Sabha and was Referred to the Standing Committee of 21 members of Rajya Sabha
03/07/2015	The selected Committee held 17 settings to examine the Bill
30/07/2015	The Committee submitted its Report to the Rajya Sabha
10/12/2015	The Cabinet accepted 20 odd major Amendments to the Bills
10/03/2015	Rajya Sabha Passed the Bill
15/03/2016	The Lok Sabha passed the Bill and received assent of the President
01/05/2016	The Real Estate Regulatory and Development Act (RERA) came into force.

Source: apnarera.com <accessed on 04/01/019>

#### 3.1 Before RERA Act:

- There was no clarity on the carpet and loadings on the built-up area. Every builder had their own calculations.
- There was a sort of monopoly of builders regarding the areas, rates, modes of payments.
- There was no clear picture of project, possession, sanctions, legality and rates which lead to frauds and confusions to clients.

#### 3.2 About RERA Act:

No promoter is allowed to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the project with the RERA. The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority and the registration number obtained from the Authority.

Where any Allottee sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act. The entire investment along with interest and compensation shall be returned to allottee if he intends to withdraw from project.

The promoter shall make an application to the Authority for registration of the project within a period of three months from the date of commencement of this Act for ongoing projects and whose completion certificate is not issued.

#### No registration of the real estate project required where;

1. The area of land proposed to be developed does not exceed 500 square meters or the number of

apartments proposed does not exceed eight inclusive of all phases.

2. The promoter has received completion certificate for a real estate project prior to commencement of this Act;
3. 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, under the real estate project. Act specifies the list of documents and drawings which the promoter has to submit for Registration.

The promoter shall create his web page on the RERA website and enter all details of the proposed project in all the fields as provided, for public viewing, including:

1. Details of the registration granted by the Authority
2. quarterly up-to-date the list of number and types of apartments or plots booked, garages booked, approvals taken and pending subsequent to commencement certificate and status of the project;
3. Such other information and documents as may be specified.

It is the right of Allottee to get all the above information from time to time.

He is responsible for all obligations, responsibilities and functions till the conveyance of all the apartments, plots or buildings. With respect to the structural defect or any other defect continue even after the conveyance deed, its promoter's responsibility to execute.

#### 3.3 The Major Responsibilities of the RERA:

- Making certain the disclosures of real estate projects by promoters/developers
- Registration of real estate projects & real estate agents
- Redressal of Complaints
- Counseling and suggesting the state government in matters related to the development & promotion of real estate sector;
- Appellate tribunal shall also be set to hear appeals from the decisions of the Real Estate Regulatory Authority with a period of 60 days.
- Any person cheated by any decision of the Appellate Tribunal may file an appeal to the High Court.

#### Advantages:

- This act is beneficial for the builders with a high budget.
- Customers are happy that he has Government support now.
- Builders have great hopes from single window system.
- Carpet area concept is clarified in a good manner. m
- Escrow account is looked a good concept where project money will be managed properly.
- Due to this act builders are mandatorily bound to include the technical and professional people.
- All the possible ways of corruption are totally altered.
- Corruption between the agents and the builders could be stopped to a greater extent.
- The Stamp duty in form of taxes could be recovered.
- This process is highly transparent.
- RERA website is good and user friendly and registration process is smooth.
- Timely updates and amendments are easily available at RERA website.

#### Disadvantages:

- The timelines of approvals by regulatory authorities have not been properly defined. Approval delays from regulatory authorities may affect buyers.
- The Bill leads to little higher prices of properties and assets due to the reduction in competition.
- New project launches may decrease as developers find difficult to launch with more number of approval procedure, hence process may be carried by two to three years.

#### 2.4 Major Recommendations:

- Smaller sale projects should also be included as they are more prone to frauds.
- A clear understanding of area calculation is required upon which the price of the flat will be calculated.
- Customer should be aware of area and pricing calculation methods. No thought is given to it.
- Mixed replies from the customer survey depict the confusion status about the act.
- There is very much expectation from single window system as it may save the efforts of the promoter in documentation process and thus saving project completion time.

#### 4. Suggestions

Major suggestions are as per the issues are discussed in brief below:

1. At present the developer desires to start advertising and marketing and so he decides to make an application for registration on 5th January 2019. In this case, as per the Act, the validity of his registration will expire on 31st December 2018 itself as Sub section 3 of Section 5 of Real Estate Regulation Act states very clearly that, "The registration granted under this section shall be valid for a period declared by the promoter under sub clause (c) of clause I of sub section (2) of section 4 for completion of the project or phase thereof as the case may be"

If we go through the purpose of registration we will realize that there are three main purposes:

- a. To monitor the progress of the project so that the project is completed timely;
- b. To ensure that the amount collected from the buyers is not diverted to any other purpose; and
- c. To see that layout plan, building plan, specifications etc. as approved by the competent authority are followed by the promoter.

It is therefore clear that the requirement of registration is to monitor the project from commencement to completion and that the validity of registration expires on issuing of completion certificate or on expiry of period for completion of project declared by promoter under section 4(2)(l)(c), keeping in view the provisions of section 5(3).

In this respect if the promoter applies for registration, the Authority should observe that registration is not required in this case as the Authority cannot issue a registration certificate on or after 5th January 2019 ( date used in the example) which would, as per law be valid only till 31st December 2018 ( date used in the example). This may lead to an issue whether the other applicable provisions of RERA will be binding on the promoter even though the project is not registered. Solution for such a problem is such projects ( which have obtained the Completion Certificate on or after 1st August 2017 and the promoter has not done any promotion or sales till the date of completion) will definitely be governed by other applicable provisions of RERA, only contention is that registration does not appear to be possible / mandatory.

In such a case, it will be better to include the exemption specifically under Section 3(2) so that the system does not end up doing things which are of no consequences and not warranted.

2. In case of Joint Development Agreements for plotted development there are two types:
  - a. Where revenues are shared.
  - b. Where plots are divided between the Landowner and the Developer by way of a supplemental sharing agreement.

In such a case it is assumed that,

- a. A single registration is required where the revenues are shared

- b. And separate registrations have to be insisted for the Developer and the Landowner where the plots have already been divided between the Developer and the Promoter by a separate Sharing Agreement.

A clarity in this regard is very essential as there cannot be a single registration for (b) above because the plots are divided and the Developer has no control over Landowner and vice versa.

3. The Act as well as the Rules are basically drafted for Apartments but they are also applicable for Plotted Developments. A proper thought has to be given to the process of Plotted Development and the Act has to account for all the relevant issues especially but should not be restricted to the following:
  - a. The Roads, Playgrounds and all facilities are handed over to the Municipal Corporation on completion, so there is nothing in control of the promoter thereafter for which he could be made liable.
  - b. All the facilities are in the open and there is no way the promoter can ensure for example that Lorries will not hit a pole or any structure.
4. While giving the details of the projects completed in the last five years it will be helpful if there is clarity regarding whether we take the projects
  - a. That have got a Completion certificate in the last 5 years or
  - b. The projects that have commenced in the last 5 years.

## 5. Conclusion

Though the act is very new, it is accepted very easily by the seller and buyers. A very positive impact is expected in the future as the act becomes more intact. Amendments are still going on. It is very early to study the results of this act in terms of both the parties. Single window system plays an important role in the success of the RERA Act. In last one year, some positive and potentially long-term modifications are noticed in the Indian real estate sector. The passing of Real Estate

(Regulation and Development) Act 2016 or RERA, the Benami Transactions Act and the move of demonetization ensured that the sector has lost much of its historic taint and became more transparent. But the issues of concern is that all the states have to notify their RERA rules by July 31, 2017, but Only 16 out of 29 states have complied by this deadline.

Another problem is that most of the states have managed to tweaked the regulations in favour of the real estate developers and weaken the operational rules and the core purpose of the Act and thus created a mockery of a citizen centric law, which is not in favour of the home buyers. Over and above this, RERA recommends imprisonment and fines for non-compliance with the Act. Several states have diluted this as well. Most of the real estate projects have not been registered with the RERA although the deadline was July 31, 2017 which is also a matter to worry. Another issue of concern is that it is not mandatory to register projects, which are smaller than 500 square meters and 8 apartments. From the business point of view though in the first quarter of the financial year there has been slow down in real estate market as the promoters did not enter agreement as they were busy in projects money in unregistered projects. As per the industry experts this slow down is temporary and soon the market will pick up and stabilize in next few quarters as the legal reform in the sector will act as a catalyst in facilitating a more transparent and robust environment. As far as the redressal of disputes in real estate sector is concerned the success of the RERA will depend upon the timely setting up of the dispute redressal agencies and the fast disposals with degree of the finality.

The big players in the real estate sectors welcomed this Act as it is considered as a positive move to clean up and regulate the market better but the small time developers operating the unorganized real estate segment are unhappy calling it biased towards the buyers. Nevertheless the intent of RERA is loud and clear – satisfaction of homebuyers and providing them value for their money. Hence, it can be concluded that RERA is a good reform in Real estate sector.

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