

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT (RERA), 2016- AN
ANALYSIS

This attempt of the government, in the form of legislation, is an initiative to ensure “housing for all” policy which is one of the most crucial elements to achieve internal development (development within the country). In India, even after nearly 70 years of Independence, people sleep on foot paths, shop verandas etc. Hence, an initiative on this regard cannot be ignored. By the implementation of this act, the conventional practices that were undertaken by the real estate developers in exploiting customers will come to a definite end. Indian judiciary along with the consumer appellants tribunals have seen number of cases where aggrieved consumers have approached them contending that they have made the down-payment/ initial payment, but the construction of the project has not yet started. This is not an unusual practice, because even before owning a plot of land for constructing a building, the developers start advertising, and use this advertisement as a technique for fund raising. Irrespective of having enough capital, they start construction and stop in the middle, or they do not start at all in the first place. Hence, this is an attempt to bring forth transparency between buyers and real estate agents.

The real estate sector has grown in the recent years but has largely been unregulated from the perspective of consumer protection. Though, consumer protection laws are available, the recourses available therein are only curative, but not preventive. This has affected the overall potential growth of the sector due to absence of professionalism and standardization. Under RERA, the real estate agents have to disclose necessary documents of ownership in the property, time frame within which they will finish the construction and various other approval documents. This will prevent the developers from manipulating the consumers in the name of “pre-launching”. RERA aims to:

- (i) promote and regulate the real estate sector,
- (ii) bring efficacy and transparency in the sale of plots/apartments/units etc.,
- (iii) protect the interest of the buyers/consumers in the real estate sector,

- (iv) establish a mechanism for a speedy dispute resolution¹, through the establishment of a State and national real estate regulatory authority in every state. The legislation not only gives direction, but also imposes punishment, either pecuniary, imprisonment or both.

The act calls for establishment of tribunals to ensure easy and effective disposal of cases. The relevance of such a body is due to the rapid growth of real estate sector. In the absence of a proper legislation, many investees have lost their money, and in the presence of a tribunal only for handling real estate related matters, the burden on the consumer appellant tribunal will go down, and effective and professional services could be rendered. RERA has also been enacted with an aim to establish a regulatory body to ensure the effective implementation of the act and promotion of real estate sector. This body will ensure the proper registrations and submission of documents, and also will work to identify the defaulters.

Section 3 of the act mandates the registration of the estate before advertising, marketing or selling of it. If it is an ongoing project, it must be registered within 3 months of the commencement of the act. This section also makes an exception from registering. If the estate is less than five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases, one need not register. But if the phases are more than eight, after the completion of each phase, it should be registered. This provision will ensure that, even after registration, the liability will not dispense. One has to timely adhere to the rules established. Since everything is time barred, they will not unnecessarily delay the process. And according to the act, one has to register by July 30th².

Sections 3 to 19 deal with registration of real estate project and registration of real estate agents, functions and duties of promoter and allottee. Sections 59 and 70 of the Act deal with offences and penalties. Contravention of the orders or directions of the authority by promoters, real estate agents have been made punishable with fine, and in some cases, with punishment also. Sections 79 and 80 bar jurisdiction of civil courts in the matters covered under the Act. The court shall not

¹ ET contributors, , “Buying a house? RERA likely to make 20:80 schemes unviable”, last updated: May 26, 2017, <http://economictimes.indiatimes.com/wealth/real-estate/rera-and-you/buying-a-house-rera-likely-to-make-2080-schemes-unviable/articleshow/58852185.cms>.

² Suresh KP, 12 Key Points from Real Estate Regulation Act, RERA, Last updated on May 4th, 2017, <https://myinvestmentideas.com/2017/05/key-points-from-real-estate-regulation-act-rera/>,

take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, except on a complaint in writing made by the authority³.

Section 4 (1) D says that the real estate developer will have to place 70% of the money collected from a buyer in a separate account to meet the construction cost of the project. This will put a check on the general practice by a majority of developers to divert the buyer's money to start a new project, instead of finishing the one for which money was collected. This will ensure that construction is completed on time. This provision is considered as the most important provision of the whole act. By investing 70% of the overall project expenses, the whole traditional practice of raising capital through advertising will come to an end.

Therefore, RERA makes it mandatory for developers to keep 70 per cent of the proceeds from a project in an escrow account, thereby restricting their ability to dip into project sale revenues. It also makes it mandatory for developers to obtain all approvals before launching any project, thereby prohibiting pre-launches, a favorite method of developers to raise funds to finance initial expenses for a project⁴.

Section 59 (1) and (2) say that all the under construction or on-going projects needs to be registered and if the developer fail, they will attract a penalty of 10% of the project cost and if he continues to violate section 3, then that will attract imprisonment for 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.

Section 20 of the act says that, state governments have to establish the regulatory authorities within one year of the law coming into force and these authorities will be authorized to decide on the complaints of buyers and developers in 60 days.

According to section 84 of the act, rules for implementing the provisions of the act have to be formulated by the central and state governments within six months, which is the maximum period stipulated in the act. The states have to ratify it since land belongs to list II, and it is for the state to make necessary laws. Hence, the center requires the state to make the necessary

³ Ashok Km, "Real Estate Act, Comes Into 'Full' Force From 1st May, 2017", Last Updated: APRIL 19, 2017 10:54 PM, <http://www.livelaw.in/real-estate-act-comes-full-force-1st-may-2017-read-notification/>.

⁴ Raghavendra Kamath, "RERA to deliver a debt blow to developers", May 11, 2017, Last Updated at 01:21 IST Mumbai

changes and implement the act. Despite continuous monitoring and follow up by the Ministry of Urban Development and Housing, Government of India, only nine states (Andhra Pradesh, Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Uttar Pradesh) and six union territories (Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, and National Capital Territory of Delhi) have notified their respective Real Estate (Regulation and Development) Rules, 2017⁵. The report says that, when the nine states are considered, they have diluted certain provisions of the act, which will affect the long term goal of implementing the act. The Centre has warned states against introducing rules and regulations in violation of the provisions of the Real Estate (Regulation and Development) Act (RERA), saying dilution may trigger legal challenge⁶. The Maharashtra government has included an anti-discrimination clause to ensure that builders will not deny selling flats or apartment on the basis of religion, marital status, locality etc.

The government and Real estate industry bodies Confederation of Real Estate Developers Associations of India (CREDAI) and National Real Estate Development Council (NAREDCO) has described the implementation of the consumer-centric Act as the beginning of an era where the consumer is king. Real estate players have also welcomed the implementation of the Act, saying it will bring a paradigm change in the way the Indian real estate sector functions⁷.

Carpet area has been clearly defined in the bill to include usable spaces like kitchen and toilets imparting clarity which was not the case earlier and the buyer will pay only for the carpet area (area within walls). The builder can't charge for the super built-up area, as is the practice at present⁸.

Since the last 10 years, many projects have seen delays of up to 7 years. Projects launched after the turn of this decade have faced delays as well. Some have run into obstacles even before a

⁵ CRISIL , *State-wise status of RERA: Most of them miss deadline, says report*, May 2, 2017, Last Updated at 19:22 IST, http://www.business-standard.com/article/current-affairs/a-117050201040_1.html.

⁶ By Dipak K. Dash TNN, "Centre warns states against diluting RERA ", last updated: May 22, 2017, 10.27 AM IST, <http://economictimes.indiatimes.com/wealth/real-estate/rera-and-you/centre-warns-states-against-diluting-rera/articleshow/58785591.cms>.

⁷ PTI, Real Estate Act comes into force today, only 13 states notify rules, Last Updated: Mon, May 01 2017. 05 18 PM IST, <http://www.livemint.com/Companies/5P2gvJ8eUojc1vz0fgR2hJ/RERA-comes-into-effect-tomorrow-only-13-states-notify-rules.html>.

⁸ Ronak Mastakar, "RERA: Everything you must know about the Real Estate Act", last updated: May 01, 2017 10:05 am, <http://www.freepressjournal.in/india/rera-all-you-need-to-know-about-the-real-estate-act/1055591>.

brick was laid. 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 issue⁹.

Experts believe that the act would bring more transparency between buyers, developers and real estate agents. Since real estate sector contributes 9% to gross domestic products to India's growth, this would definitely boost investments in Real estate sector¹⁰.

Based on the model contract given by RERA, if the promoter defaults on delivery within the agreed deadline, they will be required to return the entire money invested by the buyers along with the pre agreed interest rate mentioned in the contract and if the buyer chooses not to take the money back, the builder will have to pay monthly interest on each delay month to the buyer till they get delivery. And to add further security to buyers, RERA mandates that developers cannot ask for more than 10 per cent of the property's cost as an advanced payment booking amount before actually signing a registered sale agreement¹¹.

This act can be considered as the most ground-breaking recent attempt of the government which will be successful, if implemented flawlessly. In our country, the problem is not the absence of legislations; it is the failure in implementing it effectively. Real estate is a rapidly growing market, and an initiative like this will ease the hectic dispute resolving mechanism and moreover, the Gandhian principle of "consumer is the king" will become a reality. This benefits the consumer segment the most since their right is upheld. There will be security to the money invested and they can also seek redressal from a qualified and specialized authority. With the implementation of this act yet to be done by all the states, it can be said that we standing one step away from realizing the objective of Consumer Protection. The necessity of specialized courts is also another important dimension to this legislation. The CAT (Consumer Appellant Tribunal) will not have members who are specialized in real estate laws. With the coming of this act, the

⁹ Express Web Desk, "What is the Real Estate Regulation Act (RERA)? Here is how it will help buyers", last Updated: May 1, 2017 5:05 pm, <http://indianexpress.com/article/what-is/what-is-rera-and-how-will-it-help-homebuyers-4635705/>.

¹⁰ Supra footnote 2

¹¹ Supra footnote 10

Real Estate Appellant Tribunal will be in a position to guarantee quality and professional services to the aggrieved consumers.