

CRITICAL ANALYSIS OF THE RERA ACT, 2016

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ABSTRACT

The real estate sector has witnessed some major changes after the introduction of the Real Estate Regulation and Development Act, 2016. It is primarily responsible for managing the housing and infrastructural demand in India. Improvement of funding in this sector, protecting home buyer's interest and delivery of project in a timely manner by the builder is the main aim of RERA. This paper critically analyses various aspects of RERA in terms of the reliefs granted and the Act being a better option than the other existing acts, or why smaller projects were left untouched under the RERA provisions. The paper also examines and lays down different approaches an aggrieved home-buyer can resort to in case of any grievance and at the end RERA being the best option for dispute settlement for big companies and builders. Further a brief comparison has been made between various platforms like RERA, NCLT and NCDRC which helps in the better understanding of the Act. The paper also discusses the lacunae present in the Act. Lastly, some light has been thrown on the present scenario of COVID -19 and its impact on the sector of land and building. It also discusses the key measures taken by the Central government to tackle the situation and its implementation thereafter.

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INTRODUCTION

The Indian Parliament passed RERA in March, 2016 which subsequently became effective on and from 1 May 2016. Improvement of investment in the real estate sector, protecting home buyer's interest and to maintain lucidity between the real estate transactions so as to protect the interests of the valued customer and also to get rid of the malpractices performed by the developers is the main aim of the Act. Also, to bring in more accountability and transparency in the real estate sector, the Act contains provisions such as in-time completion of project and delivery of the same to the buyers, collecting information of the project planning, government's acceptance, status of the land title, two-third of the allottees' consent for any addition or modification made and many other such provisions.

Each state has its own Real Estate Regulatory Authority (RERA) established by the Act in order to regulate this sector. It also functions as a determining figure for expeditious settlement of dispute. Providing a uniform framework for buying flats has proved to be the most positive aspect of RERA. The Act further seeks to systematize this practice all over the country. As "land" comes under the State List of the Constitution, one may question the Parliament's jurisdiction and authority to make laws. Nevertheless, it may be asserted that the main focus of the bill is regulation of the contract and transfer of property, both of which come under the Concurrent List. State laws have also been enacted in order to regulate the real estate projects. If the state act and the RERA act have inconsistencies then the RERA act will override the provisions of the state act.

Factors like GST, demonetization and implementation of the RERA have led the Indian housing market having a difficult time with respect to sales in the last few years. In 2017, demonetization made the sales dead across some top real estate markets. However, in 2018 it saw a rapid increase of 18 percent as RERA gained buyer confidence.

RELIEF BROUGHT BY RERA

Four years have passed since the enactment of RERA, but still the Act has not been made PAN India. Some states have weakened its order and some have made delay in advising the Act. Unlike other states, Madhya Pradesh and Maharashtra have implemented RERA in its true sense and the growth is fast.

Most of the states have not found their permanent regulator and are still working with the temporary ones. Also, out of 25,000 projects in India registered under RERA, Maharashtra alone has 62% of the total.¹

Maharashtra RERA has surprisingly given many judgments within 30 days after filing of complaint and also has been successful in restoring buyer's point of view in under-developed projects. Few years from now, real estate sector will be a totally distinct industry.

1. HIGH LUCIDITY

The real estate sector has become justly transparent since the introduction of RERA. For instance, no developer can now try manipulating the home-buyers with respect to flat's size by talking about 'urban spread'. At present, it is compulsory for the builders to cite in the agreement the actual 'carpet area'. Similarly, progress of the project can be checked on by the home-buyers anytime on the RERA website. Updates regarding the units sold off, growth stage, date of ownership and many more can all be checked by the buyers. Lately, the transactions have tended to become more transparent since the entire project related information is available on one single platform.

2. EXPANSION OF MARKET

Before any project launch is planned, developers make sure that all the necessary approvals are duly taken by the concerned authority. RERA has made the developers aware of the do's and don'ts with respect to their projects. The industry is getting settled with powerful developers taking over weak builders. Though RERA is cruel towards bad and weak developers, but it has surely provided opportunities to small and fine developers, they can get approval and money from financial organizations. Overall, RERA has been expanding the market rather than limiting it to a specific area. Level of corruption has reduced and the approval system has also smoothened ever since MNC's sanctioning authority has been brought up under RERA.

¹ Narendra Nathan, *How much has RERA helped home buyers in last one year?*, ECONOMIC TIMES, Jun 25, 2018, 06:30 AM IST. https://economictimes.indiatimes.com/wealth/real-estate/how-much-has-rera-helped-home-buyers-in-last-one-year/articleshow/64708971.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

3. POSSESSION DATE EXTENSION

In some cases, RERA has directed extension in possession dates by more than five years. This extension in possession date is mainly due to the serious penalty provision against the developers for delay in project. The number of approvals to be taken during the construction of the project has increased in number. However, they are certainly temporary disruptions and ultimately it will achieve its objective in future. Builders will take everything into account and accordingly give possession dates which will be realistic. This will bring certainty to the buyers with respect to getting their possession.

○ DIFFERENT APPROACHES AN AGGRIEVED HOME-BUYER CAN RESORT TO:

Different course of action that an aggrieved home buyer can resort to are mainly:

1. Consumer Court
2. National Company Law Tribunal (NCLT)
3. Real Estate Regulation and Development Act (RERA)

Over the past few years, the real estate sector has witnessed some notable improvements in the buyer redressal process. Not long ago, buyers had just a single plan of action in opposition of offending developers, which eventually went to the Consumer court. Be that as it may, those courts were not well organized enough and also made huge delay in resolving problems.

NCLT: Enactment of the RERA, 2016 and IBC, 2016 has made a huge impact in today's time. Presently, home-buyers have increasingly successful choices and have more influence since they took the position of "financial creditors". Now, the corporate insolvency resolution process (CIRP) can be invoked by the homebuyers which further allows them to progress towards the National Company Law Tribunal (NCLT) in order to decide identified issues of postponed possession or default, if any.

At present, majority of buyer problems with regard to property are dealt by NCLT and RERA. Be that as it may, the consumer court despite everything still has a role to play. The National Company Law Tribunal (NCLT) is ending up being an increasingly mainstream decision among home-buyers looking for snappy help from deviating developers. Presently, a developer can be charged with an insolvency procedure by the home-buyer and can also subsequently be claimed for a sum of more than or equal to Rs 1 lakh. If by any chance, the

project is delayed due to obvious reasons then seeking help from NCLT can adversely affect the builder reason being, further works are affected additionally.

However, approaching NCLT leaves the project remaining in a precarious situation and doesn't ensure a refund, the two of which leaves the homebuyer vulnerable and hence doesn't end up being a win - win situation for both.

KEY DIFFERENCES BETWEEN RERA ACT AND THE CONSUMER PROTECTION ACT:²

ISSUE	RERA	CONSUMER PROTECTION ACT	Benefits arising out of RERA
Filing of case	✓ Sole claimant can file a plaint.	✓ Only registered purchasers or a registered association of purchasers can file a complaint	RERA ✓ Filing of a plaint is not limited to registered purchasers
Jurisdiction	✓ Limited to real estate projects only.	✓ It has jurisdiction to all disputes of consumer interest.	RERA ✓ It has dedicated courts & and has better chances of faster resolution.
Cognizance	✓ It can act either on the basis of a complaint or can take suo-moto cognizance.	✓ It can act only on the basis of a complaint.	RERA ✓ It can also take suo-moto cognizance.
Success of dispute resolution	✓ It has the power to imprison an errant developer up to 3 years but has very little precedence of dispute resolution.	✓ It does not have the power to imprison but has a good past record of dispute resolution across the country.	✓ It is too early to judge RERA in this component but Consumer court has past precedence

OTHER ADVANTAGES OF REAL ESTATE REGULATION AND DEVELOPMENT ACT:

- **Standardized carpet area:** Before RERA Act was enacted, carpet area calculation upon which the actual price of the flat or property was decided was not defined. All the

² Amit Sethi, *RERA vs NCDRC: Who will protect homebuyers better?*, HOUSING.COM, Jul 13, 2017. <https://housing.com/news/ra-versus-ncdrc-will-protect-home-buyers-better/>

builders and developers were believed to use their own method of calculation. However, after May 2016 the scenario has changed.

- *Default in Rate of Interest:* If a case of default arises, same rate of interest for both buyer and builder is provided by the Act.
- *Reduces the risk of builder insolvency/ bankruptcy:* Since several projects were built at the same time, builders used to redirect the allotted money to fund some different construction projects. But now it cannot happen as after the enactment of RERA, 70% of the amount received for the project has to be properly deposited in the bank account by the builders.
- *Buyer's Right in case of False Promises:* The buyer at any time can withdraw from the project, if the builder happens to make a mismatch in his commitment from the confirmed project. Also, the home-buyer is authorized for receiving full refund amount along with the advances paid with interest and can claim compensation too.
- *Advance Payment:* Before entering into an Agreement of sale, a builder cannot ask for an advance or application fee by the home-buyer of a sum larger than 10% of the price of apartment.
- *Buyer's Right with respect to defect after possession:* If the buyer by any chance finds some defect relating to quality or service and structural damage, if any, within first five years of receiving the delivery of the flat, those defects should be taken care of by the developer within a span of 30 days with no extra cost.
- *Buyer's Right in case of Title defect:* If the home-buyer finds any defect in the title of the property after getting the delivery of possession, then he/she may ask for relief from the developer.
- *Right to receive Information:* A home-buyer is authorized to receive all the information with respect to the project which also includes plan of execution, completion status and many more.

- *Grievance Redressal Authority*: The state authority set up under RERA is liable to look after any grievance against the builder. It has the power to redress all the wrong done. According to Section 44 of The Real Estate (Regulation and Development) Act, 2016, if the buyer is not satisfied by the decision of the State authority then he/she may file a case in Appellate Tribunal which will further rectify the issue in a time span of 60 days. In case of any failure, reasons have to be recorded in writing.

FAVORABLE ORDERS

It is encouraging to see some orders of the State body which convey that the Act has provided certain reliefs to few:

- For example, a home-buyer was permitted to withdraw in the midst of a project he invested in, by the Madhya Pradesh RERA officials and also got the refund after a fair deduction. In another case of Uttar Pradesh RERA, the officials ordered JNC Construction against default in possession, a refund of the amount along with 24% interest and Rs 2.5 lakh compensation for causing mental sufferings.³
- In the case of *Bikram Chatterji & Ors. vs Union of India & Ors.*,⁴ popularly known as the 'Amrapali Case', a Corporate Insolvency Resolution Process (CIRP) was initiated. The Hon'ble Supreme Court of India cancelled the license of the builder owing to the complaints of delay in possession.

However, these problems are just the tip of the iceberg, a lot is yet to be achieved in the long run.

Apart from the above favorable orders, more areas where an extensive influence of RERA has been noticed is the agreement of buyer-developer. Earlier, the agreement used to favor developers, leaving behind the buyers with no alternative or power of negotiation. But after enactment of RERA, the state authorities are now obliged to inform the rules of Agreement for Sale. The authorized agreement contains the details of the title, date of

³ Payaswini Upadhyay, *Has RERA Succeeded in Sheltering Homebuyers?*, BLOOMBERGQUINT, Published on Apr 19, 2018, 08:25 AM, Last Updated on Apr 19, 2018, 01:22 PM. <https://www.bloombergquint.com/law-and-policy/has-rera-succeeded-in-sheltering-homebuyers>

⁴ *Bikram Chatterji & Ors. vs Union of India & Ors.*, W.P. (C) No. 940-2017.

possession, carpet area, accepted layout of the property and many other relevant details. One can say that RERA has surely tried to change the dynamics.

CRITICISM

This on ground implementation of RERA Act has led the developers to face new challenges. Due to the 70% escrow mechanism, fundraising has become a challenge on part of the developer. Also, as the financial institutions are not fast enough as far as lending to the real estate developers are concerned and given that the project needs to be finished in a timely manner, the provision acts as a speed-breaker. One of the biggest fears is that the new project launches will slow down because of the RERA compliance issues. The effect of this is already visible, as every third of the new project launches are not being conducted. However, this can be termed as a short-term problem as if one sees from the buyer's perspective, it can be interpreted as lesser the number of new launches greater will be the certainty on delivery date.

In order to make RERA better implemented in India, one needs to ensure that the state desists itself in bringing exceptions to the definition of ongoing projects. Along with that the government agencies should also be held responsible for the delays made in granting approvals and a uniform payment plan must be made for all home buyers across the states.

The central government and state government must resolve together any future conflicts which may arise during RERA's implementation. Lastly, real estate developers must be made available for other formal financing options as well. From a legal aspect, Insolvency and Bankruptcy Code (IBC) should be implemented in such a manner that no conflict arises with RERA, mainly when home-buyers are concerned and later them being described under the creditors category.⁵

One cannot overlook the benefits the home-buyers have obtained due to the implementation of the Act. Nevertheless, the RERA Act, 2016 is yet to cover some of the lacunae present. One of them being no launch of the website of the respective State RERA and Union Territory RERA like in Kerala, Assam, etc. Also, states like Karnataka are failing in terms of IT implementation and synchronization. RERA's insufficient recovery powers is

⁵ Niranjan Hiranandani, *RERA good for industry, consumers; more needs to be accomplished*, ECONOMIC TIMES, Apr 29, 2018, 07:41 AM IST. <https://realty.economictimes.indiatimes.com/realty-check/era-good-for-industry-consumers-more-needs-to-be-accomplished/3009>.

supposed to be the major gap which fails all the orders given in the favor of the homebuyers, passed by the RERA authorities in their particular states. Majority of aggrieved homebuyers face the issue of not getting the fine imposed on the developer who doesn't comply with the orders. Lack of single window clearance leads to delay in getting the approval for various phases of development hence, adding up to the inconsistencies present in the RERA Act. Capital efficiency is also perhaps a major shortcoming of this Act, mainly because the need to deposit 70% of sale proceeds in a different account may affect the usage of project receivables and increased promoter dependency on institutional capital for example bank finance or private equity. It can lead to rise in project costs, which subsequently may be passed to the customers. The last inconsistency is that of the systemic issues. The Act neither addresses the problem of availability of housing stock across all income levels nor does it accept a conclusive title for land or culture of using black money in transactions of real estate. Though RERA provisions have provided so many benefits and facilities but it does have certain shortcomings which need to be taken care of. Thus, all matters should be analyzed in both viewpoints keeping in mind all the pros and cons of the Act.

WHY WERE SMALLER PROJECTS LEFT OUT OF RERA?

Although the Act focuses on making real estate purchase easier by maintaining a better level of lucidity and responsibility within the system, basic query arises is why the government had to omit a few projects out of this Act? People investing their hard earned money in their respective small projects are equally entitled to the legal safeguards provided by the RERA Act, 2016. There are people who have been considering real estate as a profession and have always acted in a way they think is correct in the eyes of law. But, some senseless players happen to be the fly-by-night operators. Before RERA was enacted, dimensions of the land were irrelevant and any individual could become a builder. But now the scene is different, the Act has constructed an entry-level barrier. At times it is the small unregistered builders who tend to commit wrong and happen to make violations and deviations from what was committed thus, making it necessary to take the small builders in the ambit of the Act.

However, the primary aim of RERA is to bring group housing projects under its ambit. Big companies making big & multiple projects were defaulting more and it was difficult for individuals to fight legal battles against the big companies. Most of the large-sized projects are located in big cities and towns and that is where most of the consumer complaints come

from. It is estimated that 80 percent of all real estate transactions take place in the seven metros of the country. So, it is fair enough to say that the act covers the majority of the cases. The dispute of smaller projects can be resolved in civil courts as far as commercial projects are concerned and consumer courts or civil courts for non-commercial projects. One may also invoke state laws concerned with property.

Since, it is understood that the main intention of our legislators was to bring big housing projects under its ambit, it is reasonable to exclude small projects (minimum area= 500 sq meter or 8 apartments).⁶ Thus it makes mandatory for all the residential and commercial RERA projects to be submitted along with the stipulated amount of fee, except for the projects where:

1. Project completion certificate has been received already by the promoter before the commencement of the Act,
2. Area to be developed is less than 500 square meter or total flats less than 8
3. Any renovation or repair work is required in an existing building which doesn't require advertisement, marketing or selling of any plot or apartment.

However, the act does not restrict the state RERA acts to reduce the threshold. For instance, the Maharashtra State RERA Act covers all projects above 250 sq meter or 5 apartments. The Bombay High Court in the case of *Mohammed Zain Khan vs State of Maharashtra* also ruled that homebuyers of unregistered projects can file a complaint with the RERA Authority after a payment of Rs 5000.⁷

IMPACT OF COVID-19 ON HOMEBUYERS

The COVID -19 outbreak and its impact on the Indian economy have put a huge question mark on the real estate sector's future. Private enterprises and housing sectors are assumed to get affected in terms of sales, prices and launches. With higher chance of delay in possession of the project due to the pandemic, it is expected for the homebuyers to want to buy properties from government authorities and reputed private developers so as to get the assurance of completion of the project. The country has also seen the movement of migrant laborers to their respective native places as a result of stoppage in the construction work of the

⁶ Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016.

⁷ *Mohammed Zain Khan vs State of Maharashtra*, W.P. (Lodging) No. 908 of 2018, Order dated July 31, 2018].

real estate projects. The sales in 2020 may notably decrease owing to the current situation. The residential real estate sector is highly dependent on physical interactions, site visits and documentations but now the majority of home-buyers will certainly postpone their decision of buying flats/ villas so as to maintain distance from human interaction and also from the project sites. Also, homebuyers can postpone owing to the belief of price correction post the outbreak.

The ongoing lockdown in India has brought the real estate sector to a standstill, now the recovery curve is mainly dependent on the government's fiscal stimulus. The Union Finance Minister has declared Covid-19 as an occurrence of “force majeure” under the real estate law RERA⁸ and has also urged all the State RERA and Union Territory RERA to consider it the same. All the projects which are registered under the RERA Act and are expiring on or after March 25 shall be given the required relief. Thus, the primary objective is to safeguard homebuyer's rights along with providing appropriate regulatory relief to the builders for finishing the project.

The Central Government on account of the Covid-19 outbreak has issued certain advisory for extension of the deadline of finishing the real estate project by a period of six months and further up to three months.⁹ These measures are given in order to make the homebuyers believe that though there will be delay in the completion of the project by a few months however, they will definitely get the possession. Karnataka and Maharashtra RERA are the ones who have extended the completion date of the real estate project already by three months each. Many real estate projects are in the danger of getting stalled which may subsequently proceed to litigation because of absence of an urgent remedial regulatory in RERA, 2016. Such omissions can lead to non- delivery of flats for which the home-buyers have invested all their hard earned money. The real estate sector has already seen a lot of projects getting canceled for some or the other reason. Thus, it becomes very important to follow the remedial measures given by the government to make sure that the pandemic does not lead the way for a total failure of this sector.

⁸ Office Memorandum No. O-17024/230/2018- Housing- UD/EFS-9056405 dated 13th May, 2020 titled ‘Advisory for extension of registration of real estate projects due to ‘Force Majeure’ under the provisions of Real Estate (Regulation and Development) Act, 2016 (RERA)- regarding’, issued by Ministry of Housing & Urban Affairs, (Housing Section), Government of India.

⁹ *Ibid.*

CONCLUSION

Succeeding the onset of Real Estate Regulation and Development Act, 2016, legal scenario of land and building sector has changed completely. In present day, home-buyers and builders can seek for a healthy and a better legal environment for redressal of their grievances and also for settling the disputes relating to delays, negligence, compensation if any etc. RERA has also brought a positive change in the real estate sector in terms of developers' increasing accountability and transparency. It is expected to witness an increase in the number of home-buyers owing to better laws and its implementation thereafter. Seeing the number of good judgments and orders coming from different state RERA authorities, one can say that introduction of RERA was the perfect move for this sector.¹⁰ Nevertheless, in the long run RERA has certain grey areas which need to be rectified.

In Maharashtra, the developers have been facing huge financial problems due to Maharashtra RERA thus making a negative impact on the real estate sector. As a result, the home-buyers are worried with respect to the construction quality and the flat purchasing project.¹¹ Obtaining approvals from different government authorities is also one of the biggest issues faced by the builders even after the implementation of RERA Act. On-time delivery of the project has been the aim of the real estate sector since a long time. Lack of single window clearance leads to delay in the launching of the projects by the developers thus leading to non-fulfillment of commitments made including delivery of the project.

Developers are selling the fact that their project is RERA registered and hence it is of higher value and the trend shows that the purchasers are buying that. But it is to be understood that RERA is like any other act and is not a magical wand and due diligence is a must even for these projects. The transparency, the newly established rights including buyer rights, the certainty of possession and carpet area, the right to information or establishment of authority for grievance redressal doesn't make every registered property of RERA as worthy as making an investment is. Much like "all companies in the stock market (regulated by SEBI) are not investment worthy".

¹⁰ Shalini Rohilla Panigrahi & Unnati Goel, *RERA: Critical Analysis of Act, Implementation and Impact the Right to Housing*, Volume 2 Issue 2 NJREL, 15-27 (2019).

¹¹ Shekhar Pawar & Hemanshu Ahire, *Study of Impact in Construction Project Due to Introduction of RERA in Pune*, Volume 2 Issue 7 IJRESM, 370-373 (Jul 2019).

Though there is some lacuna in the implementation of RERA Act, but it has certainly made a positive impact by making a dramatic shift in the real estate. To make safer investments, one needs to have knowledge about the Indian real estate law and regulations. RERA has boosted the confidence of the home-buyers by assuring them that investing in the real estate sector will definitely give them profit. With the presence of regulatory mechanisms in the RERA Act, home-buyer's grievances can be resolved in a speedy and effective way. Presently, the real estate sector has been suffering a lot due to the outbreak of COVID -19. There has been a tremendous decrease in the number of homebuyers investing in the projects. The Central government has laid down certain measures in the form of advisory in order to deal with the situation where both the developer and home-buyers are getting affected at a huge rate. Thus, proper implementation of these measures and following government's guidelines can only help the real estate sector as a whole.

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