

# The Real Estate (Regulation and Development) Act, 2016 (Rera)

Anuja Naidu

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## OBJECTIVE OF RESEARCH

The main objective of the paper is to understand the grievances suffered by the buyers due to irregularities caused by the real estate developers in the society. To accommodate the ongoing grievances by the public. RERA was implemented by the government of India which main intention is to provide upmost protection to the buyers in each and every phase of the construction of the project. The main provisions of the RERA and the impact of it on the various participants in real estate business has been given relevance in the research.

## SCOPE

It will cover the key issues led to enforcement of the RERA by giving reference to central and state laws i.e. The Transfer of Property Act 1882, The Madhya Pradesh Nagar Palika (Registration of Colonizers) Terms & Conditions, Rules, 1998 and Madhya Pradesh Land Revenue Code.

## STATEMENT OF PROBLEM

Irregularities caused in the real estate sector by the project developer. Grievances of the buyers subjected to one-sided agreement, alteration in the project, delay in passing possession, second sale and other fore majeure factors. Such non-uniform approach in real estate transactions make the market at national and international level low as the reliability of the players in this sector loosens the confidence of perspective investor

## RESEARCH QUESTIONS

1. What are the grievances faced by the buyers in the real estate sector?
2. How is RERA accommodating to eradicate the suffering of the buyers?
3. What is the impact of RERA on the various participants of the real estate market?

## HYPOTHESIS

Rigorous implementation of RERA will subside

the agonies of the buyers. RERA has come into being, mainly to address the hardship faced by the buyers through the hands of the giant real estate players. In a layman language, it's a buyer's friendly Act as it provides security in every possible aspect while dealing in estate transactions. Therefore, with the advent of RERA transparency and accountability can get established firmly.

## LIMITATION

Region of Madhya Pradesh, India

## METHODOLOGY

The researcher had relied on primary and secondary data sources for the collection from articles and websites.

## I. INTRODUCTION

The real estate sector in India involved more than 76,000 companies across the nation. From the prime years of unorganized progress and execution of funds to planned and organized prodding urban revitalization. It began in the early post-liberalization after the National Housing Policy came into being and the National Housing Board (NHB) was constituted. Due to such establishment, this sector got better legal and financial framework. This has encouraged private sector involvement. By this initiative govt. became an enabler than a provider. The major concerns in this business are the lack of transparency due to delay in construction, quality, litigations, opaqueness in prices and ownership (title). The last two decades there was the heyday in the construction business but the common issue faced by the buyers were the irregularities in transfer of possession by the project developer. For a homebuyer investing bulk amount (life-saving) threatened by indefinite delays and defective titles, which is a cause of fear and worry. Therefore, there was a need for the enactment of the law specially to regulate real estate sector in terms of quality, timely delivery, good titles conveyance and disposal of

disputes within a timescale. In 2016 “The Real Estate Regulation and Development Act” (RERA) came into existence after settling all the disputes. However, the creation of RERA and the recent judicial scrutiny of the unfair and deceptive practices carried on by builders has been worthy. Hence, the position of buyers becomes strong and an aggrieved buyer can seek redressal under the Real Estate Act.

## BUYERS GRIEVANCES

### Main causes

In the last few years, there has been a tremendous rush in the real estate sector and structures are mushrooming in every possible corner in the cities in India. Owing to this increase in growth of the sector and the consumer's zeal to invest in real estate, the builders have occupied the dominant position and the formation of standard form contracts or one-sided agreements, delay, second sale etc has further worsened the circumstances prevailing in the nation.

Hence, the main concerns faced while making an investment in the real estate are as follows-

- i. One-sided development agreements.
- ii. Alteration in projects.
- iii. Delay in delivery.
- iv. Second sale.

### One-Sided based Agreements

It is the sector that has accumulated huge investments and public with the zeal of bringing dreams into reality through spending their earned money towards its realization. Whenever anyone purchases a flat/home, he enters into a development agreement with the project developer.

The development agreement of the project is in the form of a standard form contract, consisting of non-negotiable clauses and most of such agreements includes such conditions which are biased and are covered up with all circumstances favoring the position of the project developer and leaving no stone unturned for further discussion or modification in terms of the agreement.

One-sided development agreements have become a major concern of buyers. The terms are non-negotiable and a buyer even if he does not agree to a condition, there is no choice of altering it or even deliberating it with the project developer in future. This has often been unfairly exploited by the project developer, which led the purchaser to get bounded into unfair and discriminatory practices.

In the case law of **Pankaj Agrawal v. DLF Home Developers Pvt. Ltd.**<sup>1</sup> (Gurgaon),

the judgment of CCI which aids in stating the defenses available to a buyer stressed out the event came into existence due to one-sided development agreements regarding change in layout plans by the project developer. It gives dominant power to developer as no consent of the buyers/allottees were taken.

### Alterations in the project/structure-

One of the alarming concerns in this sector is the discretionary clause for the alteration in the structure during the post execution of the agreement. This creates a lot of stress among the buyers.

In the case law, **Pankaj Agarwal & Anr. v. DLF Gurgaon Home Developers**, the DLF builders without any intimation to the buyers raised floors in the structure. CCI reacted on the alleged complaint that the builders held a dominant position in the market for its services therefore with an advisory remark stated that the builder should disclose all the steps regarding any structural alterations to the allottees and deal with the situation positively in order to eradicate any objections if any.

### Delay in delivery of possession of flats

Today many of home buyers are aggrieved by the delay encountered i.e. untimely delivery of projects. This delay in delivery of housing projects destroys the sole purpose of investment in the real estate sector and led to transformation of an asset into the liability. At an extent, this oppression of home buyers has been obviated by the Judiciary system of the nation. Some incidents which highlight the injustice dealt out to home buyers and consequent observations by the judicial, as well as quasi-judicial authorities, have been stated below:

In the case law of **Shri Yogesh Sharma & Anr., vs Unitech Limited**<sup>2</sup>. The NCDRC, in this case, interpreted from the situation that the builder should not have accepted the amount and entered into any sort of agreement with the buyers without the approval of the building plans by the authority (Greater Noida Development Authority). If the other party chooses to accept money from the flat buyers and enter into any sort of agreement, undertaking to give possession within a stipulated time frame, without having possession of the land and also not having approval of any building plans, it is only itself to blame for the circumstances in which the construction got awaited due to the approval of building plans.

Delay of possession of flat caused due to force majeure clause, typically became a major

defenses now-days. In all development agreements consist of force majeure clause and it state, that in any of force majeure circumstance the builder won't be liable for the delay caused in the delivery of possession of flat.

### Force majeure

Force majeure refers to any combination of events which adversely affect the performance of duties of either party to a contract in execution as it is not under the reasonable control of the party concerned or trapped under the circumstances

In the case of **Smt Chand Rani v. Smt Kalam Rani**, the Supreme Court described the concept of "force majeure". The phrase "force majeure" is not only mere french version. It is a term of a wider spectrum. Frictions have arisen earlier as to what could legitimately be considered in "force majeure" but through analysis of various rulings, shows that where there is reference made to "force majeure", it would be considered by focusing on the intention of the parties to get immunity from the situations of anything over which he has no control whether mentally, physically or technically. This is the broadest meaning that was given to "force majeure", and even if the condition about "force majeure" in the agreement was not lucid. The use of the word "usual" makes all the distinction i.e. the conditions occurring in the event would be made certain by evidence regarding it being covered under force majeure.

In the case law, **Vishal Arya v. Unitech Limited**<sup>3</sup> – In this case, the complainant was stressing out by the inordinate delay caused due to incompletion of the project which led to non-issuance of the possession of his flat which was booked with the project developer.

The complainant in this case has deposited the full amount of flat with Unitech and as per the agreement, the possession of flat was ensured by March 2009. However, the construction of flat had not initiated by the developer. Aggrieved by this, the complainant prayed either delivery of flat or refund of the amount along with interest and other litigation charges.

In reply, Unitech took the shield of force majeure circumstances as things were beyond its control, therefore, the construction was delayed till date.

In the case, Commission was of the view that there was lacking in the conduct of services of Unitech and they were only enjoying deposited amount and on the account of mental

agony suffered by the buyers, the Commission directed Unitech to pay compensation as the complainants suffered mentally by:-

Refund full amount with an interest @ 10% p.a. and Rs. 2.50 lac (mental agony).

In the case law, **Suman Nandi & Anr. Vs. Unitech Limited & Anr**<sup>4</sup> – Here possession of the apartments not been handover to the allottees. The project developer took the plea that the construction was not completed due to a shortage of labours as they were employed in the commonwealth games in 2010.

The court took the observation of the fact that the buyer's agreement was for the years between 2006 till 2010. And if the builders have intended to comply with the conditions of the agreement then they would have done before the commonwealth games. NCRDC considered that the plea of force majeure was bogus.

This conduct of the builders showcased the negligence and deliberate delay in transferring the possession to the bona fide buyers. Therefore the plea stands rejected and ordered for the compensation directly to the complainant on the account of delay in possession of the apartment. In the case of **Satish Kumar Pandey & Anr. v. Unitech Ltd.**<sup>5</sup>, denounce the manner practiced by the builder charging compound interest @ 18% per annum in case of any delay on the part of the buyer in making payment to the concerned party of the project but in the event the builder does not justify his part of the contract by defaulting in giving timely possession to the buyer then he will be paying less than 3% per annum of the capital investment. Therefore the terms considered to be illogical and biased.

<sup>1</sup> Case No. 13 of 2010

<sup>2</sup> Consumer Case No. 267 OF 2014

Complaint No. 9/322

<sup>31</sup> FE Online (2017) 5 ways RERA will impact developers – The Financial Express, The Financial Express.

<sup>32</sup> Jha, D. (2017) 'Haryana's RERA bill not in our favor: Gurgaon homebuyers', Hindustan Times, 9 May.

<sup>33</sup> K Mehta, V. (2016) How RERA, GST will impact real estate sector and homebuyers – The Financial Express, The Financial Express

<sup>4</sup> CC No. 277/2013

<sup>30</sup> Ghosh, S. (2016) 'RERA takes effect; to address homebuyers' grievances', Hindustan Times, 4 May.

<sup>29</sup> The Indian Express (2017)

<sup>28</sup> The Economic Times

<sup>34</sup> Business Today (2017)

### Disadvantages due to delay in delivery of possession

### of the structure

In this case law, **Bhattacharjee vs Delhi Development**

**Authority**<sup>6</sup>, the Delhi High Court highlighted on the disadvantages occurs due to delay in delivery of possession to the buyer.

The court stated a remark that, by the delay in the delivery of possession leads to mounting of expenses including the interest on investment, charges related to supervision, watch and ward charges and overheads of administration. The land cost also keeps on accelerating in view of the inflationary factors. If possession is not taken over by the buyers, it ultimately affects the cost price as it escalates in the same duration as well as structures lying ready to be used to get depreciated and deteriorated by natural consequences. If they are occupied, then they are well maintained by the buyers in a better manner and otherwise gets wear and tear as want of maintenance gets avoided. However, the creation of RERA and the recent judicial scrutiny of the unfair and deceptive practices carried on by builders has been worthy. Hence, the position of buyers have become strong and an aggrieved buyer can seek redressal under the Real Estate Act.

### Second sale

Second sale is also one of the prevailing issues in the real estate business which has affected the buyers. Though laws are very clear in defining sale, its requirements, authorities, procedures and circumstance for its invalidity or fraud in transfer of property but in India many disputes have been raised over the defective titles borne by purchaser. The defense the purchaser urge in the court by claiming himself as a bonafide purchaser which subsequently enters into more complexities of the case. Due to this, many a times builders or project developer flee from the clutches of the regulatory framework with the large sum of money. This has encouraged more such wrongdoings in the society.

### RERA

India's real estate and infrastructure sector is a noteworthy bestowed to the national market economy. Over the prior seven decades, its expedition of conversion and consolidation has been noticeable with several transformative tendencies, accountable for ever-changing the country's landscape.

In the year 2000, 100% FDI in the construction sector for estate projects for development was introduced. That steps such as 'Amrut' to grow 500 Indian cities, 100 Smart Cities mission and 'Housing for All' being launched by the

govt. of India. However, one of the biggest reform taken in Indian real estate has been the implementation of the Real Estate (Regulation Act, 2016 (RERA)). To bring transparency and to motivate fair practices in the real estate sector enactment of the act is required to regulate parties involved in this business. In 2016 "The Real Estate Regulation and Development Act" (RERA) came into existence after settling all the disputes raised in the parliament since 2013. The main agenda behind the act implementation was based on giving security to buyers and to encourage growth in the investment in this sector. Reason for triggering RERA India is suffering slump since 2012 in the real estate market. The factor is as follows:-

- Second sale.
  - Unemployment.
  - Recession.
  - Tax issues (non-clearance) and arbitration.
  - Piling up of inventories.
  - Unstable prices
  - Low yields (rent) and many more such aspects
- Due to these factors, there was a slowdown in the demand for the property as a result of a slowdown in recovery for real estate builders.

The major concerns in this business are lack of transparency due to delay in construction, quality, litigations, opaque in prices and ownership (title). The last two decades there was the hike in the construction business but the common issue faced by the buyers was the non-completion of work as per deadlines of the project. For a homebuyer investing bulk amount (life-saving) threatened by indefinite delays are a cause of fear and worry.

Parties involved in this business such as agents, brokers etc many a times took undue advantage of the buyers by giving false information regarding the quality of construction as well as its completion. Oral assurance of documents which are not complete or missing important issues make this sector vulnerable to risk in investment.

This is a good time for serious investors and end users to evaluate and scrutinize property sector in India. Other should also keep in mind while deriving a conclusion for future earning by critically analyzing location and connectivity specifications, along with characteristics, amenities and social infrastructure, brand credibility, and prior track record. This will give the inherent gain to serious participants in the current environment.



### **Purpose**

This act was passed in order to bring fairness for the participants in real estate business through Establishment of real estate regulatory authority Establishment of Appellate authority to hear appeals from real estate regulatory authority Superintending of the authority on the sale of plot, apartment, buildings, real estate project as may be the case.

- Transparency in dealings.
- Protection of consumer interest.
- Speedy dispute redressal machinery.

### **Impact of RERA on new projects**

Those projects will be registered under RERA more than 8 apartments or size of over 500 sq. mt.

The project<sup>28</sup> developers have to get themselves registered one step of construction (independently) with the State Tribunal. Now builders have to register their new assignments, giant players can't pre-launch any project in the mid. Pre-launches considered being the major source for raising the capital. It signifies that project developers now have to get their capitals at higher rates from the consumers. To prevent hardship on the consumer, RERA has fixed a cap on the deposit amount taken from the prospective buyers. Under RERA a project developer can take equivalent to 10% of initial deposit. There is a ban imposed on projects which are advertised without registration in RERA.

The Act also sorts two key issues suffered by buyers and they are:

- i. Delay
- ii. Quality

In both cases, if a developer is found to be indifferent from the RERA norms, he is deemed liable to compensate the consumer for such loss. The compensational amount is settled in the initial agreement signed between the parties. It also specifies the amount of interest payable by the builder in case of construction delays.

### **Impact of RERA on ongoing projects**

As per those developers under execution mode already, may face a little difficulty in order to compile under RERA. As per Act, the ongoing assignments priorly registered through regulatory authority before taking further steps for its completion. Unless they are not registered, not allowed to promote or advertise their businesses. At an extent though this may cause the delay in construction and sale of properties but in a long run, it ensures protection to the buyers. This act makes compulsory obligation over the builders

for granting occupation or completion certificate to the buyers before giving over the possession to the buyer. Concerns related to the timely issue of certificates and extension of time granted for assignments completion are forecasted. Such issues, for the time being, can be left over to the authorities to decide better way for ensuring transparency in the light of facts and circumstances.

### **Impact of RERA on builders**

Under RERA<sup>29</sup> project developers are mandated to get all critical information registered regarding the project in case of failure penalty gets imposed. This includes:

The layout of the project, Developer/promoter details, Status of land title, Status of statutory approval All agreements involvement, Full information of the brokers, Information regarding architects and contractors in the project.

The project developer is bound by a five-year agreement with the consumer for quality assurance in case if quality issue took place it will be repaired. Within three months of the project completion, the developer has to make a "Residents Welfare Association". Through RERA buyers can claim for refund in case of any delay or dissatisfaction with the property. In case many consumers claim refund all together, it will affect developers badly as liquidity in real estate is very low.

Apart from disclosing information regarding a project to buyers, they also have to indicate the exact size (i.e. carpet area) of the estate. They cannot state now about the super-built area (i.e. common area, verandah, etc.) as information regarding the size of the property. Due to this, they can't charge the buyer for the super built-up area. Therefore, these charges will be included as an enhanced carpet area price. Also, it is anticipated that

cost for project developers will rise as they can only start selling estates after getting the approval from the authorities. Consolidation in the market will take place and thus, only a few players will remain after it. At present, the project developers are postponing their new projects for understanding the effect of RERA act and focusing on completing the prior projects. It signifies that there will be fewer new projects arrival due to uncertainty in business. There were approx 70% fewer launches in the half of 2016 as compared to the period of 2015.

### **Impact of RERA on the buyers**

RERA<sup>30</sup> has been implemented to protect the interest of prospective property buyers for assurance of transparency in the sector by enacting regulation for project developers which are:  
Project developer to disclose the status of construction on the authority website-quarterly basis.  
The consumers can file a complaint -authority.  
The complaint to be solved-120 days.  
Developers cannot change any aspect without prior approval from all the buyers.  
All these rules, are expected to boost investor confidence. With RERA implementation have affected many unsold estates.

### **Impact of RERA on agents and brokers**

Traditionally the agents (Indian) are deemed as a part of the unorganized sector but due to the implementation of this act, it has become mandatory for the middleman to register themselves to facilitate the transparent transaction. Through registration<sup>31</sup>, brokers will be selling estates which would be registered with the authority. In case if any mishandling/ misguides in information done by brokers then as per the severity of offense punishment would be given. An issue which concerns broker that in case the builders has performed any act against RERA terms then brokers would also be held responsible for such conduct. Another concern came to light that many brokers would become jobless as agents have to pay fees in order to get themselves into registration.

### **Macroeconomic impact of RERA**

The RERA<sup>32</sup> along with Goods and Services Tax implementation is seen as an optimistic step for the sector. The main issues related to estates are tackled now with the advent of this act which brings transparency and accountability. The impact of RERA can be felt in Uttar Pradesh, as the website was initiated more than 3000 complaints were registered in a single day from Noida region alone. However<sup>33</sup>, the response in some states was not satisfactory. In Haryana, buyers have grievances that they are excluded from it as they have already moved into the property. Thus no complaint about lack of services or amenities can be done on developers. The full impact of RERA will be understood after a year since each state is in the mode of setting independent legislation and a standardized guideline for its success.

## **II. CONCLUSION**

With the changing time, laws get amended and made to fulfill the lacking of the system. But despite making rigorous efforts for making the framework transparent to all the classes of the society still the progressing foot of corruption in the form of manipulation and fraud makes the surrounding unreliable in every dimension.

Real estate sector has contributed in the last two decades' prosperity for modernizing the Indian infrastructure and along given a standardized living-style with utmost facilities to the buyers. Therefore, to maintain the fairness in the market, the govt. of India has enacted a specialized law for the real estate sector which is none- other than RERA. To bring transparency and accountability in this system the act extends to under-construction projects and execution of new projects including residential and commercial. All parties who are directly or indirectly involved in this sector are brought before this act. All the states in the country have to set up an Appellate Tribunal to bring justice to homebuyer's grievances. Before initiation builders have to register their projects with the tribunal. The process of registration involves full detailing of designs and deadline of the project. In case the work not completed on time then they have to compensate the prospective buyers. Depends upon the facts and circumstances for imposing penalties or criminal charges. The practice of transferring of funds for launching other new assignments without completion of prior work has resulted in the postponement of deadline dates. Under RERA, executors have to set aside 70% of funds (initial) in an Escrow account for old projects. This gives assurance that lack of funds will not come across as a problem in

future for projects. With the advent of RERA,

irregularities will be clutched beforehand in order to prevent damage to the bonafide buyer. RERA, not only setups a regulatory framework but also consist all the circumstances like registration of developers as well its agents, phase-wise completion of the construction, penalty provisions, updates on websites etc.

Through this law, the consumer will be more secure and protected than before and there would be comparatively fewer complexities and irregularities in the conveyance of the immovable property. As transparency and fairness with the public is the sole purpose of the act.

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