



## THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016: A REGULATORY SHIFT IN REAL ESTATE REGIME IN INDIA

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### ABSTRACT

At present, the real estate and construction sectors are playing a crucial role in the overall development of India's core infrastructure. It is the second largest employer in the country after agriculture. It comprises of 4 sub-sectors, i.e., Housing, Retail, Commercial and Hospitality.

A real estate transaction involves complex issues such as financing, transfer of ownership or right and interest, applicability of various property laws and tax laws etc., which are beyond the understanding of a common man. This enormous sector had for the most part been unregulated and disorderly with consumers being subject to harassment and unsympathetic practices of the builders.

Despite of Consumer Protection Act, 1986, Indian Contract Act, 1872 and other laws, the hardships of homebuyers as consumers persisted. The real estate industry in India was in dire need of effective regulation, towards consumer protection and the Real Estate (Regulation and Development) Act, 2016 is a good starting point towards change.

**KEYWORDS** : Real estate, Business, Regulations, Demonetization.



### Introduction:

The real estate sector in India assumed greater prominence with the liberalization of the economy, as the consequent increase in business opportunities and labor migration led to rising demand for commercial and housing space.

Real estate involves the purchase, sale, and development of land residential and non-residential buildings. The main players in the real estate market are the builders, landlords, developers, Investors and real estate agents.

The real estate sector is one of the most globally recognized sectors. In India, real estate is the second largest employer after agriculture and is slated to grow at 30% over the next decade. According to data released by the Department of Industrial Policy and Promotion (DIPP), the construction development sector in India has, till March 2016, received FDI to the tune of US\$24.19 billion. Further, private equity investments have also been a vital source of finance for the real estate sector. It increased 26% to a nine year high of nearly Rs 40000 cr. (US\$ 6.01 billion) in 2016.

The delay in possession of their homes has been the biggest concern for the buyers of the real estate properties. For many of the homebuyers, across locations and with almost the builders, the delay has extended to almost six years or more now, with no possession in sight. This laziness on the part of developers builds up a spiral where high prices chase low demand which further leads to the industrial crunch and opens up the way for illegal, unethical and unscrupulous practices in Real Estate sector.

### Legal Safeguards to Buyers:

Buyers are Consumers as defined in the Consumer Protection Act, 1986. Consumers were given legal protection with respect to real estate sector by means of the following legislations Consumer

Protection Act, 1986, Indian Contract Act, 1872, Specific Relief Act, 1963, Indian Penal Code, 1860, Competition Act, 2002.

Despite of all these laws, the hardships of homebuyers as consumers persisted. The existing provisions in our laws are only curative measures against consumer exploitation.

**THE NEW BOSS** – Real Estate (Regulation and Development) Act, 2016 (RERA)

The Real Estate (Regulation and Development) Act, 2016 (RERA) has come into force from May 01, 2017. It seeks to protect homebuyers as well as boost investments in the real estate sector. With the implementation of RERA, homebuyers may finally be able to say goodbye to undue project delays and substandard quality of construction.

### Chief provisions of the Act and their impact

According to section 3 (2)(b) of the Act where the promoter(builder) has received completion certificate for a real estate project prior to the commencement of the Act i.e. May 01, 2017, no registration for the said project will be required.

### Clear Definition of the Property area

For many years' real estate developers cheated consumers by altering the concept of carpet area to suit their convenience. However, under the RERA Act 2017, the term carpet area has been defined in black and white. This brings about more clarity for the buyers to understand what is the size of homes they would be investing in. Carpet area definition under the act includes net usable floor area of an apartment which includes area covered by the internal walls, usable home spaces such as the kitchen and toilets, excluding the area covered by the external walls, areas under service shafts, exclusive balconies, verandahs or open terrace areas. This will give an assurance to homebuyers that they will pay for the actual space that they are getting.

### Registration

**1. Real Estate Projects** - The RERA Act 2017, makes it a mandate for all commercial as well as residential projects, wherein the land measure over 500 sq. mt. or the project comprises of eight apartments or more to formally register the project with the regulatory authorities, before going in for a public launch of the project where the promoter of the project has not received the completion certificate before the commencement of the Act. Quarterly updates on the status of the project to the authority are also mandatory now.

Failing to do so will attract a penalty which may extend up to ten per

cent of the estimated cost of the real estate project and if the promoter violates the rules continuously then he shall be punishable with imprisonment up to 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 both.

Without registering the real estate project, the promoters are also prohibited to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot or apartment or building in any real estate project or part of it, in any planning area within the state.

**2. Real Estate Agents-** The Act mandates all real estate agents to register under this Act. Without obtaining registration under the Act, no real estate agent can facilitate the real estate business. Failing to do so, the real estate agent shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to 5% of the cost of plot, apartment or buildings of the real estate project, for which the sale or purchase has been facilitated.

**Real Estate Regulatory Authority and Appellate Tribunal**

According to RERA appropriate state or UT government shall establish Real Estate Regulatory Authority to regulate and promote real estate sector. While protecting the interest of allottees, promoters and real estate agents, the Authority shall make easy proficient, lucid and vital modes of business activities in the real estate sector. For speedy dispute redressal of registered real estate projects, RERA authority shall also set up speedy dispute redressal mechanism. Any aggrieved person either he/she is a buyer, promoter or agent, may file a complaint with state’s RERA or the adjudicating officer with respect to any registered real estate project, for any violation or breaching of the rules and regulations of this Act.

**The chief tasks of the RERA Authority shall be as follows:**

- 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 aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court.

**Financial control on promoters**

RERA mandates that promoters can’t ask more than 10 per cent of the property’s cost as an advanced payment booking amount before actually signing a registered sale agreement. 70% of the amount so realized shall be deposited in separate account (Escrow account) to be maintained in a scheduled bank to cover the cost of construction and the land cost. In fact, the Act also provides that the amount can only be withdrawn after it is certified by the architect, engineer and a certified chartered accountant to ensure that the withdrawal is in proportion to the percentage of completion of project.

**Continual disclosures by promoters:**

After the implementation of the Act, home buyers will be able to monitor the progress of the project on the RERA website since promoters are required to make periodic submissions to the regulator regarding the progress of the project.

Without the previous consent of at least two third of the allottees, the promoter cannot add or alter the sanctioned plans, layout plans and specifications. The promoter will have to pay interest on the

amount given by the allottee in case of delay and will also have to return the full amount with the interest if the allottee wishes to withdraw from the project if the promoter fails to provide him any remedy

**Conclusion**

In the past one year, there have been a few positive and potentially long-lasting changes in the Indian real estate. 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.

RERA Status : As on Aug.03 2017		
1	Andhra Pradesh	Notified
2	Bihar	Notified
3	Chhattisgarh	Notified
4	Gujarat	Notified
5	Haryana	Notified
6	Karnataka	Notified
7	Kerala	Notified
8	Madhya Pradesh	Notified
9	Maharashtra	Notified
10	Odisha	Notified
11	Punjab	Notified
12	Rajasthan	Notified
13	Tamil Nadu	Notified
14	Uttar Pradesh	Notified
15	Uttarakhand	Notified
16	Arunachal Pradesh	Not Yet Notified
17	Assam	Not Yet Notified
18	Himachal Pradesh	Not Yet Notified
19	Jharkhand	Not Yet Notified
20	Manipur	Not Yet Notified
21	Meghalaya	Not Yet Notified
22	Mizoram	Not Yet Notified
23	Nagaland	Not Yet Notified
24	Sikkim	Not Yet Notified
25	Telangana	Notified
26	Tripura	Not Yet Notified
27	Goa	Not Yet Notified
28	West Bengal	Not Yet Notified
Except for the State of Jammu and Kashmir		
All 7 UT's have notified		

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. It could lead to the exclusion of a large number of small housing projects, which also have great share in the market.

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

registration under RERA and buyers too were skeptical to put their 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. It is a good reason for homebuyers to cheer.

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