



REAL ESTATE LAW IN INDIA: A SAVIOR OF THE HOMEBUYERS

Law

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ABSTRACT

The real estate sector had largely been unregulated from the perspective of consumer protection. Though, consumer protection laws were available, the recourse available therein was only curative, but not preventive. This had affected the overall potential growth of the sector due to absence of professionalism and standardization. But now, an Act called "The Real Estate (Regulation and Development) Act, 2016 or RERA has been promulgated to rescue homebuyers. With the advent of RERA gone are the days for the fly-by-night operators, gamblers, developers, builders, property owners, fraudsters, cheaters and easy money makers, to fleece and loot the home buyers. The intent of RERA is loud and clear – satisfaction of homebuyers and providing them value for their money.

The main purpose of this paper is to depict the problems of homebuyers and to high light the chief characteristics of the Act from buyers perspectives.

KEYWORDS

Real Estate, Home Buyers, Consumers, Builders, Regulation.

Introduction

In Real Estate, "Real" means physical. So, it means physical estates and properties such as land, housing, buildings, etc. Real Estate Business is basically the business of property consisting of building on a land, either it be an apartment, office, IT-Park or Parking Area. The business of real estate comprises of buying, selling, or renting land, buildings or housing. The real estate sector is one of the most globally recognized sectors



Real estate business in India

The Indian real estate market is expected to touch US\$ 180 billion by 2020. The housing sector alone contributes 5-6 per cent to the country's Gross Domestic Product (GDP).

In the period FY2008-2020, the market size of this sector is expected to increase at a Compound Annual Growth Rate (CAGR) of 11.2 per cent. Retail, hospitality and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs.

The private equity investments in real estate increased 26 per cent to a nine-year high of nearly Rs 40,000 crore (US\$ 6.01 billion) in 2016.

Buyers in a Quandary

Having one's own house is a priority in everyone's life but it is not an easy task in India among many legal complexities one is involvement of agent between buyer and seller where all three parties want to pull the string in his own direction and another one is timely possession of the property for which amount is already paid.

In Real estate market builders earn huge margins on flats and don't care about the time duration in which the flats are sold, when he gets the money only then he deploys it in the project. Profitability is important than overall cash, so he plays the waiting game and prices remain inflated.

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.

Absence of Regulatory body

In the **Belaire Owner's Association vs. DLF Ltd** case, the Competition Commission of India categorically stated that, "The absence of any single sectoral regulator to regulate the real estate sector in totality, so as to ensure adoption of transparent and ethical business practices and protect the consumers, has only made the situation in the real estate sector worse. It has also been brought out by various sector specific studies that the very establishment of a regulatory mechanism is likely to infuse more investments in the sector, the absence of which has kept investors at bay. Thus, it can be perceived that there has been a crying need for a real estate regulator to ensure transparency and fix accountability.

The Real Estate (Regulation and Development) Act 2016

Traditionally laced with layers of trust deficits, the Indian real estate sector badly needed a glass door. The Real Estate (Regulation and Development) Act 2016 (RERA), passed last year, will bring a breath of clean air in the sector if state governments implement the Centre's policy as it is. All the sections of the Act shall come into force with effect from May 1, 2017. Under this Act builder and homebuyer are referred as promoter and allottee. The RERA Act 2017, makes it a mandate for all commercial as well as residential projects, wherein the land measure over 500 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.

The key objectives of the Act are:

- enhance transparency and accountability in real estate and housing transactions;
- protecting the interest of consumers in real estate sector
- providing uniform regulatory environment to ensure speedy adjudication of disputes and orderly growth of the real estate sector;
- boosting domestic and foreign investment in the Real Estate sector;
- promote orderly growth through efficient project execution and standardization;
- offer single window system of clearance for real estate projects.

Points of concern for homebuyers & how RERA has taken care of the above issues have been dealt in below paragraphs :

A lot of homebuyers ended up spending more but actually deriving lesser benefits and useful space because property builders advertised and sold properties based on ambiguous super built up area. Now a property has to be sold based on carpet area only. RERA has specifically defined 'carpet area' to mean net usable floor area of an apartment which includes area covered by the internal walls and

excludes 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.

Homebuyers did not have a point of contact to check the progress of the project invested in. Now the property developers to maintain a website and provide details of the registration granted by RERA, quarterly updates on number and type of apartments or plots booked, approvals granted, the status of the project, etc. This will ensure that the homebuyers are kept informed on each and every aspect of the development and are no longer deceived by the developer.

Home buyers had to pay booking charges to block their investment and later pay the full consideration not knowing where and how their funds being utilized. Now 70% of the project money received from buyers for a particular project to be transferred into an escrow account. This is likely to diminish the buyer risk to a certain level and will make sure that developers are not able to invest in numerous new projects with the proceeds of the booking money for one project, thus delaying completion and handover to consumers. Withdrawals to be in proportion with the completion of the project and it need to be certified by the engineer, architect and chartered accountant.

There was no redressal mechanism for either delay in obtaining occupancy certificates/ possession or for the realisation of sub-standard development in the future. Under RERA, regulatory bodies and appellate tribunals have to be set up in each state to solve builder-buyer disputes within 120 days. Besides, promoters will not be able to change a project's design without buyers' consent. Promoters must have the consent of two-thirds of the buyers in a project before making any change in the number of units or other structural changes. RERA also states that any structural or workmanship defects brought to the notice of a promoter within a period of five years from the date of handing over possession must be rectified by the promoter.

One of the major benefits for homebuyers due to RERA Act is that if the project completion is delayed, the developer will have to return the money taken from the buyer with interest or pay the same interest as the EMI paid by the buyers. In case of delay, developer will pay interest to home buyers at State Bank of India's highest marginal cost of lending plus two percent.

Added benefits to Home buyers:

Earlier, the developer would summon the Printer and order printing of the brochures with catchy English word and portray of pictures in colors launch bookings. This nonsense will now be stopped. No one can advertise, market, offer for sales any apartment or building unless the Project is first registered with RERA.

The RERA Act also mandates all real estate agents to register under this Act. It prohibits any real estate agent to facilitate any real estate business such as the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot or apartment or building in a real estate project or part of it, without obtaining registration under this section.

If any real estate agent fails to register with the authority, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings of the real estate project, for which the sale or purchase has been facilitated.

Promoters are now required to make a positive warranty on his right title and interest on the land, which can be used later against him by the home buyer, should any title defect be discovered. Additionally, they are required to obtain insurance against the title and construction of the projects, proceeds of which shall go to the allottee upon execution of the agreement of sale.

The Act prescribes a standard model sale agreement to be entered into between promoters and homebuyers. Typically, promoters insert punitive clauses against home buyers which penalised them for any default while similar defaults by the promoter attracted negligible or no penalty. Such penal clauses could well be a thing of the past and home buyers can look forward to more balanced agreements in the future.

Conclusion:

The Real Estate (Regulation and Development) Act, 2016, looks promising at first glance, with features such as simplified measurements of square footage, mandatory disclosure of information, and legal recourse for buyers left in the lurch by delays or substandard workmanship.

While the idea behind the RERA might have been noble and it came as the savior of homebuyers and all states to have notified their RERA rules by July 31, 2017, but only 16 out of 29 states have complied with this deadline. Another problem is that almost all states have managed to dilute that core purpose to a large extent and this is not certainly in favor of homebuyers. State governments have tweaked the regulations in the interest of real estate developers mainly by excluding ongoing real estate projects, which account for a majority of realty projects in the country. Another issue of concern is most of builders and their respective projects have not been registered with RERA although the deadline was July 31, 2017.

Somehow disadvantaged homebuyers are being made capable to cope up with these entire quagmire and the RERA is seen as a ray of hope for homebuyers to save them from unscrupulous builders.

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