

Analytical Study of RERA ACT 2016 and Its Impact on Home Buyer & Promoter

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ABSTRACT - Until 2016, apart from the general consumer and property laws in the country, there was no specific statute to regulate and govern real estate sector. Therefore, in 2016 the Parliament of India passed The Real Estate (Regulation and Development) Act, 2016 which seeks to protect home-buyers as well as help boost investments in the real estate industry. The Act establishes Real Estate Regulatory Authority (RERA) in each state for regulation of the real estate sector and also acts as an adjudicating body for speedy dispute redressal. This Act intends to bring transparency, safety and a regulatory mechanism in real estate field. So that the necessity arises to find out the beneficiality of this act.

In this paper, an attempt has been made to analyze the inception, needs, objectives and provisions of this Act. With that the effects on home buyer and promoter of this act has also been studied. As a result of study some key recommendations have also been given.

Keywords: Accountability, Appellate Tribunal, Authority, Redressal, RERA Act, Transparency

I. INTRODUCTION

Real Estate sector for long time remained unregulated in India though it is a most important sector in terms of generating employment after agriculture sector. Lack of regulatory framework resulted in number of malpractices due to which much litigation increased in this sector. From consumer side there are many complaints like cheating, delaying the projects, fraud titles of land, one sided agreement and many more. Therefore mostly Home Buyers demanding for a transparent mechanism which will ensure their safety while investing in the Real Estate sector.

After acknowledging the importance of regulation of Real Estate sector The Government of India through Indian Parliament enacted and enforced Real Estate Regulation Act in may 2016. The Act itself states that it is enforced to ensure transparency and efficiency in Real Estate sector as well as providing safety to the Home Buyers. A separate chapter is dedicated to the Home Buyers named "Rights and Duties of Allottees". The Act also contains provisions regarding Promoter and Real Estate Agents. Overall the Act tries to solve the problems regarding Real Estate sector. It has also provided a Central Advisory Council which consists of representatives of different ministries related with Real Estate sector, National Housing Bank, Housing & Urban Development Corporation, five representatives of State Governments and five representatives of RERA Authority. The main function of Central Advisory Council is to advise and recommend the Central Government regarding the modification in this Act from time to time.

Therefore there is a need to examine the beneficiality of this Act. In this paper an attempt has been made of finding the impact of this Act on Home Buyer and Promoter. With that some key recommendations has also been suggested.

1.1 Chronology:

- 1) May, 2008 Ministry of HUPA first prepared a Concept Paper on regulation of real estate sector and a model law for legislation by States/UTs
- 2) 2011 Conference of Ministers of Housing suggested a central law for regulation of real estate sector
- 3) July, 2011 Ministry of Law & Justice too suggested central legislation for regulation
- 4) June, 2013 Union Cabinet approved Real Estate Bill, 2013
- 5) August, 2013 Real Estate Bill was introduced in Rajya Sabha and was referred to Standing Committee
- 6) February, 2014 Report of Standing Committee was laid on the Tables of both Houses of Parliament
- 7) February, 2014 Attorney General upheld validity of central law for regulation of the sector
- 8) April, 2015 Union Cabinet approved official amendments based on recommendations of Standing Committee
- 9) May, 2015 Matter referred to the Select Committee of Rajya Sabha

- 10) July, 2015 Report of Select Committee tabled in Rajya Sabha
- 11) December, 2015 Real Estate Bill, 2015 incorporating several modifications based on Select Committee report and stakeholder consultations was approved by the Union Cabinet
- 12) 10 March, 2016 The Real Estate (Regulation & Development) Bill, 2016 passed by Rajya Sabha
- 13) 15 March, 2016 Lok Sabha passed the Bill
- 14) 25 March, 2016 President gives assent to the Bill
- 15) Section 2, sections 20 – 39, sections 41 – 58, sections 71 – 78 and sections 81 – 92 notified for commencement with effect from 1st May, 2016.
- 16) Sections 3 to 19, section 40, sections 59 to 70 and sections 79 to 80 notified for commencement with effect from 1st May, 2017.
- 17) The Real Estate Act makes it mandatory for each state (except Jammu & Kashmir) and union territory, to form its own regulator and frame the rules to govern the functioning of the regulator.

1.2 The key Objectives of the RERA Act are:

- To provide Transparency & Efficiency in Real Estate
- To Secure the Home Buyers interest.
- To Establish separate Adjudicating Mechanism.
- To Establish Appellate Tribunal.

II. THE RERA ACT 2016

Table1: RERA Act Contents

Sr.No	CHAPTER	Heading of Chapter	Sections
1	I	Preliminary	1, 2
2	II	Registration of Real Estate Project and Registration of Real Estate Agents.	3,4,5,6,7,8,9,10
3	III	Functions and Duties of Promoter	11,12,13,14,15,16,17,18
4	IV	Rights and Duties of Allottees	19
5	V	The Real Estate Regulatory Authority	20,21,22,23,24,25,2,27,28,29,30,31,32,33,34,35,36,37,38,39,40
6	VI	Central Advisory Council	41,42
7	VII	The Real Estate Appellate Tribunal	43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58
8	VIII	Offences, Penalties and Adjudication	59,60,61,62,63,64,65,66,67,68,69,70,71,72
9	IX	Finance, Accounts, Audits and Reports	73,74,75,76,77,78
10	X	Miscellaneous	79,80,81,82,83,84,85,86,87,88,89,90,91,92

1.1. Main Provisions of the RERA Act:

- Chapter I of the act gives the definitions mainly of Carpet Area, Apartment, Building, Common Areas, Garage, Immovable property, Promoter, Allottee, Real estate Agent etc.
- Chapter II,
 - Section 3 Prohibits promoter to sell or advertise any plot, apartment or building of real estate project without prior registration with Real Estate Regulatory Authority.
 - Section 4 is related to Application for registration of real estate project. It provides list of documents attached with application. This section also having a clause for creating a separate/escrow account to deposit the amount collected from allottee and this amount only use for that project.
 - Section 5, The RERA Authority grant or reject the application/registration within thirty days.
 - Section 6, The registration granted under section 5 may be extended by the authority on an application made by promoter due to force majeure. Authority may extend the registration not exceed a period of one year.
 - Section 7, The Authority may revoke the registration granted under section 5 with necessary reason like violation of act, unfair practice etc.
 - Section 8, After revocation of registration, RERA Authority can carry out the remaining work by competent authority or by the association of allottee.
 - Section 9, related to registration of Real Estate Agents
 - Section 10, Functions of Real Estate Agent
 - Agent cannot facilitate the sale or purchase of any plot or apartment of project which is not registered with RERA Authority
 - Maintain and preserve books of account, records and documents.
 - Not involve himself in any unfair practice.
 - Facilitate the possession of all the information and documents
- Chapter III, Functions and Duties of Promoter given in Section 11 to section 18 as follows:
 - The promoter creates his web page on the website of the Authority and enters all details of the

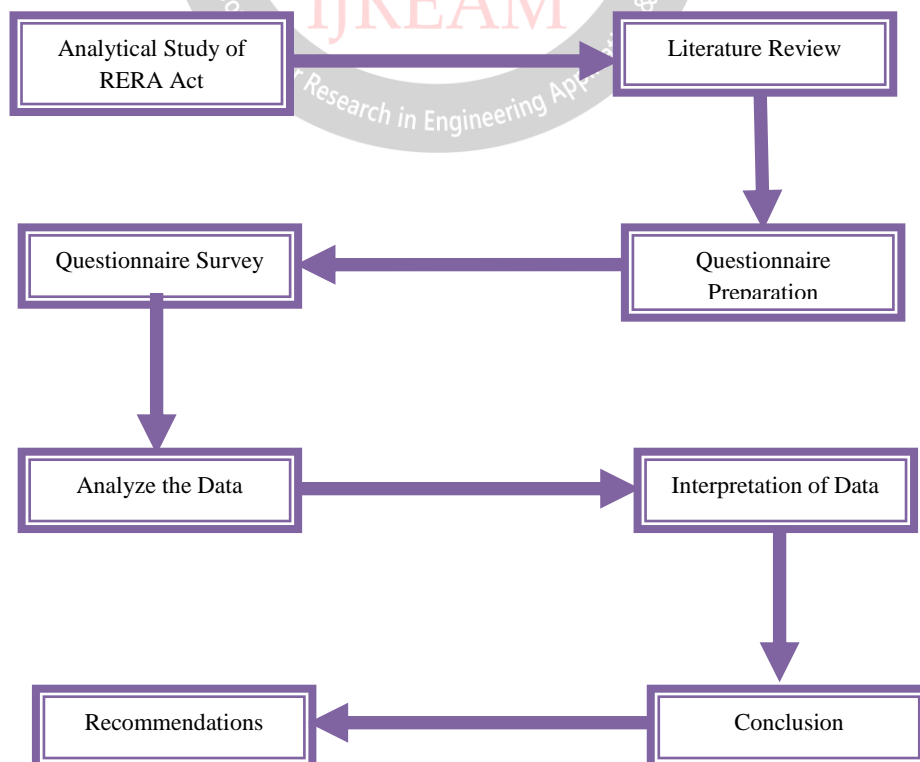
- proposed project for public viewing which includes
- details of the registration granted by the Authority,
 - quarterly up-to-date the list of number and types of apartments or plots, booked,
 - quarterly up-to-date the list of number of garages booked
 - quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate.
 - quarterly up-to-date status of the project.
- The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, sanctioned plans, layout plans, along with specifications, approved by the competent authority and the stage wise time schedule of completion of the project.
 - The promoter shall-
 - be responsible for all obligations, responsibilities and functions under the provisions of this Act till the conveyance of project.
 - be responsible to obtain the completion certificate or the occupancy certificate.
 - be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land.
 - be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees
 - enable the formation of an association or society or co-operative society
 - execute a registered conveyance deed of project, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority,
 - pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, which he has collected from the allottees, for the payment of outgoings.
 - A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building, as an advance from a person without first entering into a written agreement for sale.
 - The Promoter Shall not make any additions and alterations in the sanctioned plans, layout plans of project without the previous consent of allottees
 - In case any structural defect occurs within a period of five years from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days. If promoter fails to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation.
 - The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees.
 - If the promoter fails to complete or is unable to give possession of an apartment, plot or building. Promoter shall be liable on demand to the allottees:
 - in case the allottee wishes to withdraw from the project, return the amount received by with interest
 - in case the allottee does not want to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession.
 - Chapter IV , Rights and Duties of Allottees given in section 19
 - The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans.
 - The allottee shall be entitled to know stage-wise time schedule of completion of the project.
 - The allottee shall be entitled to claim the possession of apartment, plot or building, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter.
 - The allottee shall be entitled to claim the refund of amount paid along with interest from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building.
 - Every allottee, who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make necessary payments within the time as specified in the said agreement for sale.
 - The allottee shall be liable to pay interest for any delay in payment towards any amount or charges to be paid.
 - Every allottee of the apartment, plot or building, shall participate towards the formation of an association or society or cooperative society of the allottees.
 - Every allottee shall take physical possession of the apartment, plot or building within a period of two months of the occupancy certificate issued.
 - Chapter V, Sections 20 to 40 is related with establishment, function and powers of The Real Estate Regulatory Authority.
 - Chapter VI, Sections 41 and 42 is related with establishment and function of Central Advisory Council. This council provides advice and recommendations to Government.

- Chapter VII, Sections 43 to 58 is related with establishment, function and powers of The Real Estate Appellate Tribunal.
- Chapter VIII, Sections 59 to 71 is related to Offences, Penalties and Adjudication

Table2: Offences and Penalties

Section	Reason For Penalty	Penalty related to project cost (maximum Fine)
For Promoter		
59(1)	Violation of section 3	Fine upto 5%
59(2)	Not comply orders issued under section 59(1) or Continues violation of section 3	Imprisonment for a term which may extend up to 3 years or Fine upto 10% or Both
60	Provides false information or contravenes of section 4	Fine upto 5%
61	Violation of any other provisions other than section 3 and 4	Fine upto 5%
63	Disobeys any order or directions of RERA Authority	Fine for every day during such default continues, which may cumulatively extend up to 5%
64	Disobeys any order or directions of Appellate Tribunal	Imprisonment for a term which may extend up to 3 years or Fine for every day during such default continues, which may cumulatively extend up to 10% or Both
For Real Estate Agents		
62	Violation of section 9 or section 10	10,000 Rs. Fine for every day during such default continues, which may cumulatively extend up to 5%
65	Disobeys any order or directions of RERA Authority	Fine for every day during such default continues, which may cumulatively extend up to 5%
66	Disobeys any order or directions of Appellate Tribunal	Imprisonment for a term which may extend up to 1 years or Fine for every day during such default continues, which may cumulatively extend up to 10% or Both
For Allottee		
67	Disobeys any order or directions of RERA Authority	Penalty for the period during such default continues, which may cumulatively extend up to 5%
68	Disobeys any order or directions of Appellate Tribunal	Imprisonment for a term which may extend up to 1 years or Fine for every day during such default continues, which may cumulatively extend up to 10% or Both

III. RESEARCH METHODOLOGY


Fig1. Research Methodology

The survey has been carried out by visiting enough number of Homebuyers and Promoters. We asked them question and had one to one interaction with them. On the basis of study of act and their answers and interactions we concluded impact on home buyer & promoter.

3.1 Questions for Home Buyer or Consumer:

- 1) Do you know about RERA Act?
- 2) Did the promoter provide the information regarding RERA?
- 3) How do you like to search the property?
- 4) Are you satisfied with definition of Carpet Area given in RERA Act?
- 5) Is the price of property after REARA are increased?
- 6) Are you satisfied with the rights of homebuyer incorporated in RERA Act?
- 7) Do you check whether the project is registered under RERA or not?
- 8) Developer/promoter is liable for any structural defect after completion of project for five years; do you want to increase this time period?
- 9) Do you know about Escrow Account?
- 10) Where would you file your real estate complaint before RERA?
- 11) After implementation RERA, Do you think now there is a transparency between Promoter and Consumer?

3.2 Questions for Promoter:

- 1) There was any need to establish RERA Authority?
- 2) Do you think RERA is Promoter friendly?
- 3) Should promoter permitted to market, advertise or sell the units before the registration of project?
- 4) The registration fees decided by RERA, is reasonable?
- 5) Do you think the registration process is tedious?
- 6) Do you think that the quarterly updation of project is necessary?
- 7) RERA Act gives definition of Carpet Area are you satisfy with that?
- 8) Escrow / Separate Account is useful or not?
- 9) RERA prohibits developers from making any alterations to the sanctioned plan of the project, without the prior consent of the home buyers. Is this clause is necessary?
- 10) Do you think that penalties laid by RERA for promoter are harsh or not?

IV. IMPACT ON HOME BUYER AND PROMOTER

- The RERA Act standardizes the definition of carpet area, due to that in real estate sector now there is standardization in calculation of carpet area. Due to that now the promoter can charge

only on net usable area. This impact on pricing of real estate sector related to homebuyer.

- No promoter shall advertise or sell any plot or building without registering under RERA Act, due to that the promoters are not able to launch fake projects. This gives safety to homebuyers from getting indulge into fraudulent projects.
- RERA Authority grant or reject the registration of project within thirty days, due to that no project of the promoter will be kept on hold by the Authority.
- If the promoter involved in any kind of unfair practice or irregularity the RERA Authority have the power to revoke the registration of project. This gives safety to homebuyers.
- If any project registration is revoked by Authority to protect interest of homebuyer, Authority or Association of allottees may carried out remaining development work of that project consulting with appropriate government.
- The promoter has to quarterly update the status of project, due to that the homebuyer or consumer will get time to time information about project.
- The promoter kept seventy percent amount in a separate/escrow account collected from homebuyer. The promoter is bound to spend this money only for the respective project in proportion of completion of project. This protects the interest of homebuyer.
- The promoter shall not accept a sum more than ten percent of the cost of project as an advance until he executes agreement for sale with homebuyer.
- In case of any structural defect occurs within a period of five years, it shall be the duty of promoter to rectify such defects without further charge within thirty days. Due to this the promoter are required to use standard quality material for project.
- If the promoter fails to give the possession on the date given by him, promoter should return amount and compensation to homebuyer if homebuyer wants to withdraw from project. Or if homebuyer does not want to withdraw from project the promoter shall paid interest for every month of delay till give the possession, as case may be.
- The Government gives a platform to homebuyer for their complaints related to real estate sector by establishing RERA Authority and Real Estate Appellate Tribunal.
- The RERA Act provides offences and penalties for the violation of any provision given in Act by promoter, allottees and agents.
- In case of default in payment by the buyer or default in completion of the project by the builder,

the rate of interest to be paid shall be the same for both parties.

V. CONCLUSION

The Real Estate Regulatory act 2016 is a unique legislation made by the central government of India. The RERA brings new era in real estate sector for homebuyers and promoters. The RERA act will help the consumers to get possession of their units in a timely manner with better Conditions. RERA will also bring accountability for not only developers but also for material suppliers and contractors to deliver high quality work as per sanctioned plan and specifications. RERA has made homebuyers king of the industry. This regulatory body has made real estate industry more transparent. RERA's future success will depend on its effective and uniform implementation across India.

VI. RECOMMENDATIONS

1. Promote the Act as like Consumer protection Act. Slogan suggested for promotion of RERA Act is "Our Home Our Rights".
2. Reduce the fee of Registration of project
3. Provide single window system under RERA Authority for the promoters to take various permissions for projects from various competent authorities.
4. Defining the 'minimum standard of quality of construction',
5. Empowering Regulatory Authorities with the powers of civil courts as has been done for Appellate Tribunals,
6. Empowering Regulatory Authorities and Adjudicating Officers to impose penalty on lodging the frivolous complaints,
7. A mechanism or system may be developed for grading the developers.

REFERENCES

- [1] THE REAL ESTATE (Regulation and Development) ACT 2016, No.16 of 2016, published on 25th March 2016, Published in The Gazette of India PART-II by Ministry of Law and Justice (Legislative Development), Signed by Dr. Reeta Vasishta, Additional Secy. to the Govt. of India.
- [2] Annual Report 2017-18, published by MAHARERA.
- [3] Book published on RERA ACT 2016 by The Institute of Company Secretaries of India
- [4] Economic Times of India
- [5] The Hindu
- [6] <http://mohua.gov.in>