

**An Analysis of Protective Measures for the Consumers under the Real Estate  
Regulatory and Development Act**

Neeraj Sharma

Assistant Professor

Institute of Law, Nirma University

**Abstract**

The housing and infrastructure is one of the core components of any developing economy. The healthy development in these sectors are signs of development for the country.

The Real Estate Sector saw a huge turnaround with the Commencement of RERA Act. The Sector which was unregulated and often was in news for wrong reasons saw the hope in the form of Real Estate (Regulation and development) Act, 2016(RERA). Prior to the enactment of RERA, the Consumer Protection Act, 1986 provided curative relief to the buyers. However in the absence of any preventive measures the allottees were left dejected, many a times, due to prolonged litigation. All the malaise in the sector was blamed to the lack of proper regulation.

The Central Legislation aims to provide the standardized and uniform relief pattern across the country. The central government came up with the Real Estate (Regulation and Development) Act, 2016 after looking at the difficulty which the home buyers face in purchasing the apartment from the real estate developers. The difficulty is not just limited to dealing with the promoters but also the real estate brokers. By bringing the real estate developer and agent both under the purview of the new legislation do give some statutory protection to the home buyers. The challenges are still not over. The difficulty that the home buyers face from getting judgment from the RERA authority is again subject matter of concern

**Keywords:** Real Estate, Developers, Housing, Allottees

## **Introduction**

The term 'Real Estate' has not been covered by any legislation. However as per dictionary meaning it means land and anything which is permanently attached to it such as buildings or fences, fixtures, improvements, roads, shrubs and trees (but not growing crops), sewers, structures, utility systems, and walls.<sup>1</sup>

Real Estate has following segments:

1. Residential Space
2. Commercial Space
3. Retails Space
4. Hospitality Space
5. Special Economic Zone

The Real Estate Sector in India is estimated to contribute around 6-7% to GDP of India and is expected to contribute around 13% by 2025<sup>2</sup>.

The Current Act seeks to regulate residential real estate leaving behind the commercial and industrial real estate.

Real Estate (Regulation and Development) Act does not cover all the above segments. Even the segments of Residential space and commercial space or retails space are not covered exhaustively.

The objective of the Act has to be understood from the preamble of the Act. It seeks to regulate the transactions pertaining to the sale of units under Real Estate Project. The Act does not deal with the regulation of the development of land or construction on land<sup>3</sup>.

However the Act is a step towards organizing the real estate sector.

A developer on an average has to take 34 approvals and it takes around seven to eight months for all the approvals<sup>4</sup>. From the developer's point of view, the new legislation adds to regulatory compliance which a promoter has to go through while developing a real estate project. This also poses challenge to the ambitious plan of Housing for all.

## **Important Provisions of RERA**

The Real Estate Act does not explain the term real estate sector as such. However it provides the definition of Real Estate Project under Section 2(zm). The definition stresses upon the fact that project definition includes development of apartment. Even the conversion of land

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<sup>1</sup> Available at <http://www.businessdictionary.com/definition/real-estate.html>

<sup>2</sup> Available at [https://www.business-standard.com/budget/article/from-liquidity-to-stress-fund-real-estate-homebuyers-budget-expectations-119062800413\\_1.html](https://www.business-standard.com/budget/article/from-liquidity-to-stress-fund-real-estate-homebuyers-budget-expectations-119062800413_1.html)

<sup>3</sup> Law Relating to Real Estate Regulation in India by M.V. Durga Prasad, 4<sup>th</sup> Edition, Asia Law House, Hyderabad

<sup>4</sup> Urban Indian Real Estate Promising Opportunities August 2016 by KPMG and NAREDCO

into plot has been included in the definition of project. However there is more to the definition. The purpose of the whole exercise should be selling, without which it will not fall under the definition of real estate project.

The definition of the term allottee has excluded the person to whom the plot, apartment or building is given on rent. Except that, the definition is wider enough to give relief to the prospective consumers.

The Act provides for the wide definition of the term Promoter under section 2(zk). Promoter is one who develops the projects. The reason might be to save the consumer from the clutches of the unscrupulous developers. The enlargement of the ambit of the definition of the term promoter brings clarity to the term and minimizes the possibility of the future litigation. The definition includes even the development authorities and state level co-operative housing finance society. In situations where the builder and seller are different persons, for the purpose of the Act, rules or regulations both of them will be considered to be the promoters.

In order to provide the protection to the home buyers, the Act has looped in even the real estate agents which is defined under section 2(zm). Section 9 of the Act makes it mandatory for the real estate agents to be registered with the Real Estate Regulatory Authority of the State. The Act has laid down the functions of the real estate agents under section 10 of the Act. In order to ensure the compliance and to tighten the noose around the unregulated real estate agents, the Act under section 62 provides for penalty of Rs.10,000/- per day which can be extended upto 5% of cost of the real estate project which the agent has involved himself in selling of the apartments in case of non-compliance of the provisions of the Act.

### **Registration Procedure under the Act**

The Act makes it mandatory that prior to advertising or any booking or any ancillary activity linked with the selling of the components of real estate project, the registration with the Real Estate Authority of the State is mandatory.

The Act has even made it mandatory that ongoing projects for which the certificate of completion has not been received should be registered with the authority. However the Act ousted the smaller projects from the ambit of the Act with the help of Non-obstante clause.

The Act calls for the developer of the project to register the phases of the project, in the cases where the project is developed phase wise<sup>5</sup>.

The Section 4 of the Act extends the umbrella of Protection by making the registration dependent on the fulfilment of various conditions. The conditions include that building plan be sanctioned by the development authority. The timeline of project completion has to be stated in the application itself. The registration can be extended only in the cases of force majeure.<sup>6</sup>

### **Functions and Duties of the Promoter**

The Promoter shall make available to the allottee the information regarding the plans related to the apartment at the time of booking an apartment in favour of the allottee. The Promoter is obliged to furnish the information regarding the stage wise completion of the project. The responsibility with respect to the structural defect does not end with the execution of the conveyance deed.

### **Powers of the Regulatory Authority**

The Authority under the Real Estate Act has been conferred with the wide powers to ensure the compliance of the provisions of the Act. The Authority has been vested with wide powers for different situations. Upon revocation of the registration, the Authority has the power to debar the promoter from accessing its website, to facilitate the remaining development works with the help of association of allottees, to freeze the bank accounts of the project developers and to issue other necessary directions in order to protect the interest of the buyers<sup>7</sup>.

The Authority has been entrusted with the various functions to ensure the development of the Real Estate Sector<sup>8</sup>. The Authority is expected to devise measures to facilitate the amicable conciliation of the disputes between the promoters and the allottees. The Act envisages an advisory role on the part of the Authority to the appropriate government. The Authority should come up with measures to grade the projects on various parameters in order to help

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<sup>5</sup>Explanation to Section 3, Real Estate (Regulation and development) Act, 2016

<sup>6</sup>Section 6, Real Estate (Regulation and development) Act, 2016

<sup>7</sup>Section 7(4), , Real Estate (Regulation and development) Act, 2016

<sup>8</sup>Section 32, Real Estate (Regulation and development) Act, 2016

the consumers and general public. The Robust mechanism to address the grievances of the Consumers is the sole purpose of the Act.

### Implementation Status

The following chart depicts the Registration of Projects and Agents Status among Union Territories in India. The Data has been taken from the Website of Ministry of Housing and Development.

#### Union Territories



Series 1 depicts Registration of Projects

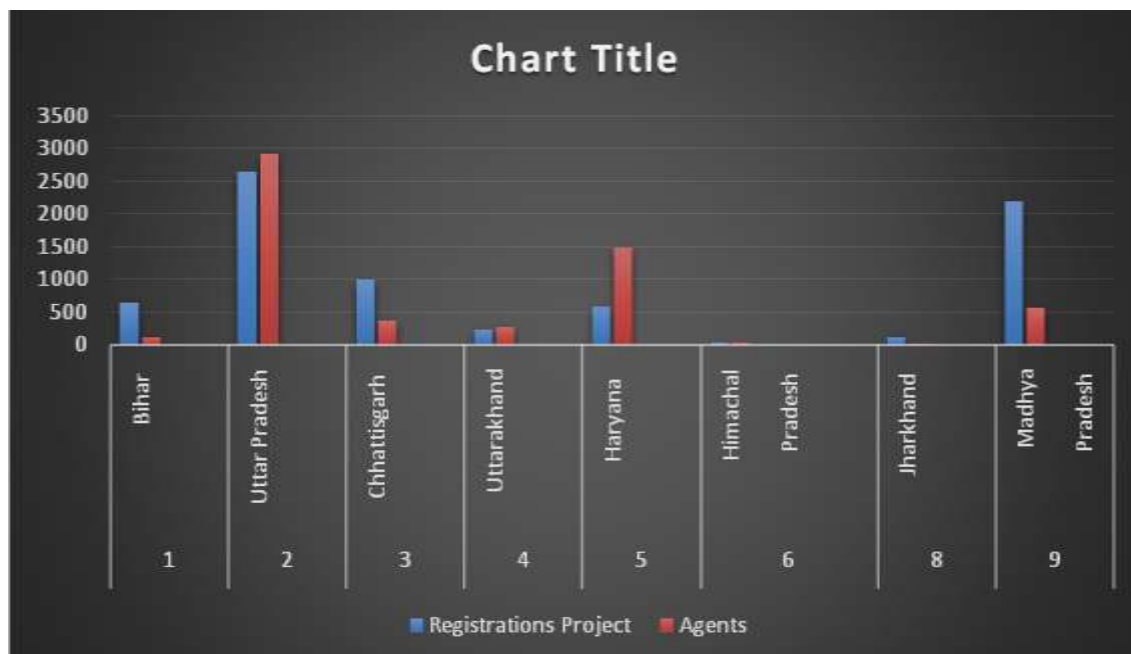
Series 2 depicts Registration of Agent

Source data: RERA tracker available on the website of Ministry of Housing and Urban Affairs, Government of India

The Chart above depicts the registration of Agents is maximum in Delhi. However Dadar Nagar Haveli is having maximum registration of Projects.

The impact of RERA is visible from the fact that Act has enabled the government to maintain a database of Agents which otherwise was unorganized.

Performance of North Indian States



Source data: RERA tracker available on the website of Ministry of Housing and Urban Affairs, Government of India

#### Performance of South Indian States



Source data: RERA tracker available on the website of Ministry of Housing and Urban Affairs, Government of India

### **Conclusion and Suggestions**

The central government came up with the Real Estate (Regulation and Development) Act, 2016 after looking at the difficulty which the home buyers face in purchasing the apartment from the real estate developers. The difficulty is not just limited to dealing with the promoters but also the real estate brokers. By bringing the real estate developer and agent both under the purview of the new legislation do give some statutory protection to the home buyers.

The challenge is still not over. The difficulty that the home buyers face from getting judgment from the RERA authority is again subject matter of concern.

- The functioning of RERA authority need an upgradation in terms of proper staff and infrastructure.
- The comparison of powers of RERA authority and Consumer Forum
- Average time comparison between RERA and Consumer forum judgment

a) RERA covers only one aspect of the Real Estate if we look with precision. There are other laws covering other aspects of Real Estate Law. SEZ Act being one of them. The Hospitality and Retail space could have been covered under the Act. Under Hospitality space regulations regarding Hotels can come. Regulations covering Hospitals could also be incorporated. The Lot of infrastructure activities in terms of roads are also going on in India. It would have been better if these aspects can be covered under Real Estate Law.

b) Though in a free market economy the trade between two parties should be left to them. However in order to bring the Housing within reach of common man the pricing mechanism could have also been determined by the Act.

c) **Nomenclature:** The Real Estate Law could have been imagined as a code rather than an Act.

Real Estate is a huge area when called by this name. The areas covered under the Act are not proportionate to the nomenclature of the Act. In fact West Bengal has come up with a nomenclature which is more fitting with the goals of the Contents of the Real Estate Act.

d) **Menace of the Real Estate Agents :** The law would have done much good if it would have covered other aspects of real estate. Commission of the Real Estate Agent could have been curtailed.

The perusal of the Act determines that the regulation vis-à-vis the Real Estate Agent is with respect to registration only.

The Act could have better regulated the role of real estate agent. The fee charged by the real estate agent is exorbitant most of the times. They work in cartel which makes the situation even worse at times.

e) Renting: The law could have proposed the mandatory reporting of vacant houses on the portal or platform. Nowadays we see that people own more than one houses. At times only the real estate agents are aware of the vacant plots.

f) Registration: Making the registration procedure of the Project or any contractual agreement between the two parties to be delegated to the RERA Authority will be a positive step forward. Also it would offload the Registering authority in the State.

g) Formation of Stress fund: It has been suggested by various entities that a corpus of stress fund can be created. This fund can be utilized to complete the pending projects.

h) Single window clearance: In wake of multiple regulatory procedures the completion of projects take time apart from raising the cost of the project. It will be of immense benefit for both consumer and the developers if there be developed a single window clearance system.

i) Credit Rating of developers: The Act or rules or regulations should incorporate a mechanism to rate the developers<sup>9</sup>. The rating of developers should be based on their past performance and compliances mentioned in the Act or other laws necessary to be complied with. The Parameters under the credit rating can also include CIBIL score.

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<sup>9</sup>Impact of RERA 2016 and its Ramifications - A consumer-Centric Analysis by Raymond Keng Wan NG 6 IJCLP (2018) 1