

# **REAL ESTATE REGULATION AND DEVELOPMENT ACT: A BLESSING OR A SATIRICAL ACT**

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RERD act was passed with an aim to establish Real Estate Regulatory Authority in the country in order to curb the malpractices by the big builders like demand of price rise, incomplete approval and requisite certification, defective title of land, illegal construction by the promoters in order to enhancing greater accountability of the promoter towards the home buyer. The research paper would discuss the provisions like compulsory registration of projects, standard interest rate in case of breach of condition, price only for carpet area, timely allotment and wider definition of promoter as well as its liability.

The paper would also discuss the provision of RERA and good governance. Lastly the paper concludes analyzing the bottom of the pyramid that whether adequate infrastructural facilities are available with the state for its effective implementation as its not that India doesn't have the resources to do so. It is more about whether India has a political will to do so is a question to be pondered upon.

## **INTRODUCTION**

*“It is the inalienable right of the Indian people...to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth”*

**Jawaharlal Nehru**

A home is one such necessity. India is a country where investment in a home remains one of the biggest and most important investments in a person's life, unfortunately many of them became victim of delays and harassment by the developer due to lax regulation.

One of the major problems in India today is highly unregulated real estate law. As a result tactics like demand of price rise, incomplete approval and requisite certification, defective title of land, illegal construction by the promoters are evident in the sector. Cases like DLF and UNITECH denying the allotment of houses to their fully paid customers had grab greater attention to this sector. Property market was in a much needed reforms in two areas:

1. Governance in real estate sector
2. A regulatory body as a watchdog for effective development of the system

As a result the government was forced to enact a central legislation that is REAL ESATE (REGULATION AND DEVELOPMENT ACT), 2016. This paper is an attempt to analyse the existing problems in the real estate sector and how the new act can help to curb such irregularities if implemented in letter and spirit.

The existence of land rights can be traced back from the code of Manu which was the first manuscript giving right to the people to own a house on the basis of caste system. Before independence, India had a population of hardly 25 crores and there was no concept of ownership of flat during those days. The concept of ownership of flat came into existence after 1950 due to construction of flats by the big builders and transferring ownership to the buyer. Later the housing was centralised by the government and was under the regulation by State Housing Boards and development authorities. Further in the year 1970, the government established Housing and Urban Development Corporation (HUDCO) in order to finance urban housing projects<sup>1</sup>. In the yeas 1991 various reforms led to a series of economic measures which acted as a stimulus for the development of real estate sector in India as a result the residential sector constituted the major share of the real estate market. Lastly the 100 percent FDI in Housing allowed by the government of India in the year 2002 lead to the zenith growth in the industry as there was a shift in the stand of housing by the government as a result the residential real estate industry is now largely driven by private players.

### *Why the Act was needed?*

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<sup>1</sup> *Belaire Owner's Association v DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana* [2014] CompLR1(CompAT). Available at <http://www.cci.gov.in/sites/default/files/DLFMainOrder110811.pdf>

Real Estate sector in India is not only the second largest contributor in the economy of the country<sup>2</sup> but also the 7<sup>th</sup> largest country in the world with an area of 32,87,240 kilometre square<sup>3</sup>. Article 25(1) of the Universal Declaration of Human Rights 1948 along with Article 11(1) of the International Convention on Economic, Social and Cultural Rights 1966 affirms the right to food, clothing and housing as a part of human right and all the states must ensure the same to its citizens. According to the IRDA report of 2016 nearly 10,00,000 people buy flats every year (source). Despite of such a magnitude of the sector the real estate sector was largely unregulated in the country<sup>4</sup> as land being the state subject and no specific express entry as housing in List I, List II, and List III of the VII schedule of the constitution. As a result there are no uniform laws in the country governing real estate, thus there exist vast variations not only in terms of procedural laws but a cumbersome requirement of approvals in order to launch a particular project<sup>5</sup> thus the consumers becomes victim of delay and harassment by the developer due to lax regulation.

Another area of concern is there are 22 companies in the real estate sector which are public listed companies which constitutes less than 4 percent of the total real estate market of the country on the contrary, the money sanctioned to them are more than 55 percent of the total money in the market which gave wide domination to these companies, putting consumer at an unfair advantage by these dominant builders. At the end remedies available with the frustrated consumer were under Consumer protection act 1986<sup>6</sup>, Indian Contract act<sup>7</sup> and competition act<sup>8</sup>, 2000<sup>9</sup> which was not sufficient to deal with mega irregularities existing in the sector as a result proved to be time consuming and futile in most of the cases.

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<sup>2</sup> Girish Shah, 'Real Estate an Big Opportunity in India' (The Week, 19 August 2015)

<[www.theweek.in/columns/guest-columns/real-estate-a-big-opportunity-in](http://www.theweek.in/columns/guest-columns/real-estate-a-big-opportunity-in) accessed 17 August 2017

<sup>3</sup> Hussain Ali, 'Real Estate Regulation and development act,2016: A critical analysis' [2016] ISSN No 2394 504

<sup>4</sup> Except state of Maharashtra due to their "Maharashtra Housing Regulation and Development Act,2012"

<sup>5</sup> MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION, FORTIETH REPORT STANDING COMMITTEE ON URBAN DEVELOPMENT (2008-09) ch 1

<sup>6</sup> It was after the amendment of 1993 that the housing was brought under the purview of services covered by the consumer protection act. The remedy here was curative in nature and not punitive.

<sup>7</sup> Remedy is available under specific relief act under which if a person is entitled to possession may recover it within six months of such title.

<sup>8</sup> Under CCI an remedy can be seeked in a restrictive way that is if the builder is a dominant player which adversely affect the costumer than only CCI can act under section 4 of Competition act that is abuse of dominant position.

<sup>9</sup> S.S.Rana & Co, 'Real estate in India' (S.S.Rana & Co, 15 August 2016)

<[www.ssrana.in/Intellectual%20Property/Real%20Estate%20Law/Real-Estate-Law-in-India.aspx](http://www.ssrana.in/Intellectual%20Property/Real%20Estate%20Law/Real-Estate-Law-in-India.aspx)>

This can be inferred from the case of *Belaire Owner's Association vs. DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana*<sup>10</sup>, wherein CCI has held the largest real estate company of the country liable to pay fine of Rs 650 crores as they abused their dominant position against the interests of homebuyers and held their contracts with homebuyer blatantly unfair and abusive, few of the clauses were<sup>11</sup>: CCI under section 2(u) of the competition act also includes real estate as service given under the act.

1. Changes in the structure of the building unilaterally by the builders
2. Unilateral variation in super area without prior approval of the home buyer who has option either to pay more or accept the reduced area.
3. The common areas like recreational building, sporting club, parking space will be solely owned by the builders.
4. The buyer has to pay extra development charges if needed without prior disclosure.
5. No exit option for the homebuyers.
6. Punitive penalties only in case of default of the homebuyers and same not applicable to the builder.

Further CCI also stated **that** *“The absence of any single sectorial 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”*.

#### ***Another Case:***

In this case the land which was converted by the state government from industrial to residential plot and was further allotted the land to the builders for development of multi-storey residential houses. The builder even accepted hefty deposits from the homebuyers. The land was acquired by the state government under Land Acquisition Act, 1894 from the farmers for the proposed industrial development. Later the allotment of land to the builders was cancelled. The effect of

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<sup>10</sup> *Belaire Owner's Association v DLF Limited Haryana Urban Development Authority Department of Town and Country Planning, State of Haryana* MANU/CO/0044/2011

<sup>11</sup> Raman Kripal, 'Rs 630 cr penalty: How DLF duped home buyers with false promises' (First Post, 20 December 2014) < [www.firstpost.com/business/dlf-beguiled-and-entrapped-home-buyers-says-cci-order-65347.html](http://www.firstpost.com/business/dlf-beguiled-and-entrapped-home-buyers-says-cci-order-65347.html) >

the judgement was that the money of the homebuyers got struck with the builders where as they had to kept paying interest on the loan taken by them from the bank. The only remedy available for them was recovery of their money which was highly uncertain. The Supreme Court even ordered for refund but no time frame or interest rate was provided which is again unjust to the homebuyers as they have no capacity to negotiate with the dominant builders. As a result, there was an imminent demand of a SEBI like regulator even in the field of Real Estate market in order to end decades of malpractices, false representation and misuse of public money.<sup>12</sup>

Though the legislation has been enacted in 2016, its journey could be traced back from the year 2009 when the ministry of Housing, Urban Development and municipal affairs of the state had realised dire need of such a regulation and also propagated to make a law<sup>13</sup> to the central government. Subsequent to this, the Ministry of Law and Justice suggested a central legislation<sup>14</sup> under entry 6<sup>15</sup>, 7<sup>16</sup>, and 46<sup>17</sup> of the concurrent list<sup>18</sup> which was approved by the union cabinet in June 2013. It was further passed by both the houses of the parliament and came into effect on March 26, 2016.

The act covers both residential and commercial projects<sup>19</sup> with minimum of five hundred sq metres or eight apartments<sup>20</sup> in order to be regulated by the act<sup>21</sup>. As per the statistics 80

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<sup>12</sup> Anshul Jain, 'RERA: Single biggest reform for Indian real estate sector' Business Standard (Ahmedabad, 5 May 2017)

<sup>13</sup> Ministry of Housing and Urban Poverty Alleviation, Government of India, Annual Report (2009, Ch 12) <[www.mhupa.gov.in/writereaddata/UploadFile/AR2008\\_09.pdf](http://www.mhupa.gov.in/writereaddata/UploadFile/AR2008_09.pdf)>

<sup>14</sup> The power to legislate on the state subject by the centre has been derived by article 246 of the Indian constitution read with schedule 7.

<sup>15</sup> Transfer of property other than agricultural land, registration of deeds and documents.

<sup>16</sup> Contracts, including partnership, agency, contracts of carriage, and other special forms contracts, but not including contracts relating to agricultural land.

<sup>17</sup> Jurisdiction and powers of all courts, except the supreme court, with respect to any of the matters in the list.

<sup>18</sup> Listed in Schedule 7 of the constitution of India

<sup>19</sup> Section 2(j) of the act.

<sup>20</sup> The Standing Committee recommended to reduce the area to 100 sq mt and 3 apartments but was not implemented in the act.

<sup>21</sup> As per section 2(a) of the THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016. However projects below 500 sq mt can be regulated if an appropriate state government by a notification in their rules lowers down the area less than the central act.

percent<sup>22</sup> of the real estate in the country consists of residential space and remaining 20 percent constitutes commercial property<sup>23</sup>

### *What is the purpose of the Act?*

The objectives are enshrined in the preamble of the act<sup>24</sup> which clearly states:

1. To establish Real Estate Regulatory Authority
2. To ensure sale in an efficient and transparent manner
3. To protect consumer interests
4. To establish redressal mechanism for both original and appealable.

The act had ousted the jurisdiction of the civil courts by enacting RERA. The regulatory authority will not only be a facilitator to the industry but would also promote the real estate sector by ensuring greater reliability. The act will be applicable to 76,000 companies across the country presently involved in the business as well as innumerable agents and sub-agents dealing in the sector<sup>25</sup>.

### *What are the key provision protecting the homebuyers interest?*

#### ***Compensation:***

Earlier the only legal remedy available to the homebuyers was governed by the contract entered with the builders which gave a very little bargaining power to the homebuyers. They influenced the homebuyers with their mushrooming advertisements flashed in the newspaper and alluring messages on the cell phone indicating their launch of projects, and later neither adheres to the promises given in the newspaper or in their prospectus, leaving a customer in a disguise situation where he has no proper mechanics to recover his money or the possession. Furthermore, even in cases of delay on the part of the homebuyer, the buyer need to pay the

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<sup>22</sup> Girish Shah, 'Real Estate an Big Opportunity in India' (The Week, 19 August 2015)

<[www.theweek.in/columns/guest-columns/real-estate-a-big-opportunity-in](http://www.theweek.in/columns/guest-columns/real-estate-a-big-opportunity-in) accessed 17 August 2017

<sup>23</sup> Section 2(e) of the act defines apartment which defines the commercial property like Offices, hotels, malls, hospitals, godowns to be inclusive.

<sup>24</sup> The Real Estate Regulation and Development Act, 2016

<sup>25</sup> OUR BUREAU, 'New Realty Law in force from today' The Hindu Business Line (Ahmedabad, 30 April 2017) <[www.thehindubusinessline.com/news/real-estate/only-13-states-notify-rules-on-real-estate-act/article9674597.ece](http://www.thehindubusinessline.com/news/real-estate/only-13-states-notify-rules-on-real-estate-act/article9674597.ece)>

interest to the developers while no compensation was paid by the builders if there is a delay in giving possession or in case projects are incomplete.

This lacuna was filled by The Act by exclusively certifying the provisions for the same and has specified two ways of compensation to the homebuyers:

1. Either to get compensation<sup>26</sup> with due interest from the builder
2. Or to rescind the contract and recover the whole amount with due interest on it from the promoters<sup>27</sup>.

The act has not specified any standard rate of interest as it is a subject of state, hence it is left on the state to decide the rate of interest<sup>28</sup> along with the compensation amount<sup>29</sup> as mentioned in the agreement between the parties to be considered by the adjudicating officer in case of default.<sup>30</sup>

### *When to be compensated?*

#### **Interest as compensation:**

- If after the allotment of the house in case of any structural defect contrary to what is promised in the agreement than the promoter has to restore the same within 30 days or compensate to the buyer in failure of restoration<sup>31</sup>. It also protects the buyer's interest even after the project is completed.
- In case of defective title to the land the buyer needs to be compensated without any time barred<sup>32</sup>

#### **Interest as well as rescinding of contracts both as remedies:**

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<sup>26</sup> Compensation to be determined by the adjudicating officer as per the act defined under section 71(1) of the act.

<sup>27</sup> Section 12 of The Act

<sup>28</sup> Section 84(r) of the act which deals with power of appropriate government to make provision for rate of interest.

<sup>29</sup> Compensation amount is determined by the adjudicating officer defined under section 2 (a) of the Act.

<sup>30</sup> Sunil Dhawan, '6 rules in RERA that will stop builders from delaying delivery of your dream home' The Economic Time (Ahmedabad, 4 May 2017).

<sup>31</sup> As defined under section 14 of the Act.

<sup>32</sup> As defined under section 18(2) of the Act.

- According to the act, if there is misrepresentation on behalf of the promoter in prospectus, relying on which homebuyers pays the deposit to the builder but is at a loss than in such cases he has both the option as remedy<sup>33</sup>.
- If the project is unfinished or the promoter fails to give possession on time or is contrary to the promise made in the prospectus or advertisement<sup>34</sup>.

### ***Apartment Funding:***

It is a system to raise funds for the real estate project where in the investor buys various real estate units at a huge discount similar to bulk buying. It has customised conditions for both, builders have the benefit of payable-when-able option while the investor has the option to exit anytime by reselling the assets to the builder at a predefined rate in case if the desired sales is not achieved in a specific time limit. It has two purposes:

1. Instant sale of real estate units.
2. The investor can use fund raised through this in any manner.

RERA eliminates this option of fund raising as under the new provision the promoter has to deposit 70 percent of the amount received from the homebuyer in a separate Escrow account which cannot be used in any other area other than the project for which it is raised. RERA eliminates the instant funding option for their real estate project from other investors as along with this provision, due to GST the cost of purchasing the under-construction flats has increased to 12 percent instead of previous tax regime of 5 to 5.5 percent. So investors are less likely to gain anything<sup>35</sup>.

### ***Carpet Area:***

There are various technical calculation when it comes to the area of the project. Previously this differed from contract to contract between builder and the homebuyers. The contracts are based three areas: Super Area, Built up Area and Carpet Area.

**Super Area:** It includes common facilities which are used by all home buyers like Parking, elevator, lobby, corridors and staircases.

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<sup>33</sup> As defined under section 12 of the Act.

<sup>34</sup> As defined under section 18(1) of the Act.

<sup>35</sup> P.K. Sarkar, Housing Laws in India: Problems and Remedies (1<sup>st</sup> edn, Eastern Law House 2000) 3 (olga tellis case)



**Built Up Area:** It is the area of the house inclusive of storage places and inner wall.

**Carpet Area:** It is the net area used by the homebuyers which is generally 60-65% of the super area. It excludes areas like service shafts, external walls, balcony or veranda area and open terraces.

Before RERA the builders also used to charge the cost of building the common areas from the homebuyers while its maintenance and ownership remained with the builder himself. RERA finely included this aspect in the favour of homebuyers and now builders can only charge for CARPET area. Further it also mandates the promoter to disclose the carpet area at the time of registration of the project.

**Common area ownership<sup>36</sup>:**

Before RERA the common area belonged to the promoter only. Now the RERA mandates the builder to transfer the ownership to the association of homebuyers.

### ***Registration of Projects:***

Previously there was no legal provision of registration of real estate project in any of the statute, only registration of title deed of immovable property<sup>37</sup> was there under Registration act, 1908. Such a provision was not effective enough as in case of failure of registration the only consequence was that the property would lose its evidentiary value and nothing more significant. Thus there was no proper records of the projects with any of the regulatory or information regarding the homebuyers in case of non registration of title deed. The act has established the Real Estate Regulatory Authority, who will be the authority where all the real estate projects compulsorily need to be registered before the commencement of the project as per guidelines provided under section 4 of the Act. Not only the projects the act also covers the real estate agents to be registered under the act as the industry is widely infamous due to their intermediary driven market which has highest risk of fraud.<sup>38</sup>

### ***Separate Maintenance of Escrow Account:***

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<sup>36</sup> A Handbook on Real Estate Investment: A Legal Perspective (First Published 2007, Manupatra 2012) 167 (consumer and real estate)

<sup>37</sup> Section 17 of the Registration Act, 1908 which provides compulsory registration of the immovable property.

<sup>38</sup> Dr. Suresh Srinivasan, 'Regulating real estate: RERA to the rescue?' (Advanced edge magazine, June 2017) <[www.advancededge.com/articles/corporate\\_world\\_june2017\\_3.php#](http://www.advancededge.com/articles/corporate_world_june2017_3.php#)>

Money Laundering is also why the real estate sector is infamous for, this was possible as there were no proper records kept by the builders regarding the cash inflow and outflow of the project. It was an industry practice to divert the money received from the homebuyers of one project to another project as a result there were delays in the completion of the project as promised initially by the builder and the ultimate sufferer were the homebuyers as they neither get possession or interest on the money deposited with the builder.

RERA eliminates this practice as it mandates the promoters to maintain a separate escrow account for a particular project and deposit the 70 percent amount<sup>39</sup> in it which can be used only for the development of that particular project and for no other project. Further more money withdrawn has to be in the proportion of the completion of project only after certified by the experts<sup>40</sup>. Furthermore an audit of the money utilized in every financial year by the builder eliminates the flow of black money along with the amended provision of Benami transaction which gives power to the government to confiscate the property if any Benami transaction is been noticed. Furthermore the real estate transaction are now linked with the PAN card and the ADHAAR card which completely curbs the probability of fake identity and the dummy registration which was the prevailing practice in the industry.

#### ***Regulating the mediator:***

No agent can continue to be the facilitator in buying and selling of house on behalf of other until they are registered under the RERA. On registration they will be issued a registration number which needs to be disclosed in every transaction mediated by them. The act further also mandates the real estate agent to maintain separate books of accounts, records of the transaction and also obliges to abide by fair means of trade and no misrepresentation to the homebuyers. It also puts duty on the agent to check the documents if handed over to the purchaser which were promised by the builder in the contract.

#### ***No advance before sale deed:***

Previously the promoters had a practice of calling 90 percent or full payment towards the booking of the house and despite full payment the structure was not being started to be built.

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<sup>39</sup> Section 4(2)(D) of the Act

<sup>40</sup> Experts include Engineer, Architect and a Chartered Accountant

RERA eliminates such high risk of no allotment of house till unlimited delays. The act specifically restricts the advance amount before the construction of house to 10 percent only and rest amount can be availed only once a written agreement of sale has been made between the parties.

***Participation of the homebuyers<sup>41</sup>:***

Previously the homebuyers were never approached despite existence of the contract between the buyer and the promoter before changing the structure of the building or deviating from what has been promised by the promoters. Now any kind of change in the basic structure of the building or change from the prescribed layout than the promoters needs to have approval from 2/3<sup>rd</sup> of the homebuyers and on the agreement by the 2/3<sup>rd</sup> people the change in the structure can be made.

***Single Window Clearances:***

The act gives direction to the appropriate state governments to have a single clearance window instead of plethora of clearances which were required previously in order to facilitate the faster completion of the real estate project and timely allotment of the possession to the homebuyers.

***Real Estate Regulatory Authority<sup>42</sup>:***

Section 20 of the act mandates establishment of the regulatory authority by the appropriate state authority within the period of one year. It must consist of a chairperson and two other members who hold the post for five years or till the age of 65. The act mandates registration of the project within 30 days<sup>43</sup> once application is made to the authority. Further the application disposal in their forum has to be disposed off within 60 days. Prior to the Act there was no such authority with such jurisdiction and powers. It is the function of the authority not only to maintain the database and registration details of the projects but also to display the list of defaulters and incomplete projects of the promoters<sup>44</sup>.

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<sup>41</sup> CCH India, Guide to Realty Laws in India (1<sup>st</sup> edn, Wolters Kluwer (INDIA) PVT LTD 2009) 1 (right to property and consti)

<sup>42</sup> Chat Room, 'Black Money Did Rera Its Head' The Economic Times (Ahmedabad, 5 July 2017) 12

<sup>43</sup> Section 5 of the Act.

<sup>44</sup> Rajkumar S. Adukia, REAL ESTATE Law, Practice and Procedures: A complete encyclopedia on Real Estate Vol.1 (3<sup>rd</sup> edn, Book Corporation 2013) 47 (raft bill 2011)

The authority has the same power as that of a civil court and should abide by the principle of natural justice. The cases decided by the RERA will be appealable to the Real Estate Appellate Tribunal from which it can be appealed to the high court within 60 days of such notice. Furthermore the penalty applicable is 10 percent of the total estimated cost of the real estate project or imprisonment up to 3 years.

#### ***Central Advisory Council:***

The Act mandates to form three authorities under it:

- ✚ REAL ESTATE REGULATORY AUTHORITY
- ✚ REAL ESTATE APPELLATE TRIBUNAL
- ✚ CENTRAL ADVISORY COUNCIL

As per the act the central government can make a Central Advisory Tribunal whose function would be to advise the central government on development of the sector and to review the compliance mechanism of all the regulators and Home minister would be deemed chairperson of such council. Before RERA the cases on right to housing were filed on the basis of local laws, special laws and state laws. Apart from this there were various Supreme Court judgements where the court laid down various principle relating to Right to residence:

#### ***Olga Tellis V Bombay Municipal Corporation***<sup>45</sup>:

*“Right to life includes right to residence. Right to residence is a part of life enshrined in Article 21”*

#### ***Belaire Owners Association vs. DLF Limited & Ors***<sup>46</sup>.

In this case, the biggest real estate developer in 2010 the association of homebuyers of the high end Belaire project in Gurgaon were not given possession as agreed initially by the builder furthermore they even unilaterally increased the number of floors of the apartments, aggrieved by this the flat buyers approached CCI under abuse of dominance position by imposing arbitrary and unfair condition on the homebuyers which adversely affected the rights of the

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<sup>45</sup> AIR 1986 SC 180;(1985)3 SCC 545.

<sup>46</sup> Ashwini Kumar Hooda, ‘WHAT’S THE CARPET AREA?’ The Economic Times Wealth (Ahmedabad, 17 July 2017) 5

homebuyers. Which was further appealed to Supreme Court and Supreme Court ruled that any dominant player in the real estate sector and enter into a biased agreement than such agreement can always be revised.<sup>47</sup>

### **In Amrapali Sapphire Flat Buyers Welfare Association vs. Amrapali Sapphire Developers Pvt. Ltd.**

It was a consumer complaint filed by the association of homebuyers who had an interest in the apartment developed by the Amrapali Sapphire Developers. NCDR upheld the rights of the homebuyers to approach the NCDR and directed the builder Amrapali who took money from homebuyers and neither gave them money back nor gave them possession. It was filed directly to the NCDR instead of district and state forums.

So the association of the homebuyers approached the apex consumer forum which was objected by the builder by approaching supreme court stating that the price of the house is less than 1 crore which debar the homebuyers to approach the NCDR as there is no pecuniary jurisdiction neither the homebuyers have the locus stand to approach NCDR as each has separate. The Supreme Court rejected the appeal of the builders and gave accent to the association of homebuilders to jointly approach NCDRC<sup>48</sup>.

### **WHAT IS THE IMPACT OF THE POLICY ON ECONOMY?<sup>49</sup>:**

Construction is not only a pivotal activity in India but also the biggest depositor of black money. It is one of the source of corruption. Till now majority of transactions of transfer of real estate property are unreported. It is the most convenient sector to camouflage the black money. Thus and in order to curb such practice government initiated various reforms like RERD, Benami Transaction amendment act and GST which pushed the sector towards shrink. Not only this the government also amended Section 269SS of Income Tax Act in 2015. Presently while dealing with immovable property if the buyers accepts cash rupees of more

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<sup>47</sup> Our Bureau, 'Buyers may Get Freedom from Builders Whims' The Economic Times (Ahmedabad, 15 August 2017) 1

<sup>48</sup> The consumer protection act states to approach to the district consumer forum first and then to NCDRC.

<sup>49</sup> Sachin Dave Kailash Babar & Shilpy Sinha, 'Lenders Face a Reality Check Over Realty Law' (Ahmedabad, 4 July 2017) 1

than 20,000 than the seller will be penalised with 100 percent amount of the transaction in order to eliminate the underground economy.

Because of such major policy change there is a decrease of 11 percent in sales compared to last year, further the launches of real estate projects this year is also 41 percent less than before which is lowest in the past 7 years. But this are temporary hiccups, proper regulation in this sector will bring good governance in the sector.

### **DILUTION BY THE STATE:<sup>50</sup>**

The act mandates all the states to have their own rules and establish a regulator by 1<sup>st</sup> May 2017 in their states in compliance with the central act. But till now only 23 states and union territory have notified its rules. The central government gave deadline till 31<sup>st</sup> July to register the real estate projects with RERA Unfortunately the state could not build sufficient infrastructure in order to efficient working of the provision on time except Maharashtra who has a regulator since 1<sup>st</sup> May 2017 and has their own website to upload the requisite document and has appointed interim chairman. Due to different rules by different state governments the implementation of RERA brings lot of discrepancies in context of smooth functioning of the system. Further six states like Goa, Telangana, Himachal Pradesh, Tripura, Kerala and West Bengal has only formed the draft rules and are remaining to be notified. Till now only Gujarat, Maharashtra, Madhya Pradesh and Punjab are able to make permanent regulatory authority.

Further the Appellate tribunal is established only in Madhya Pradesh till now. Thirteen states and union territory has established interim regulators. The act mandates the state government to either make the regulator or in absence of regulator the housing and urban development ministry is deemed as an interim regulator. But again applying to them in hardcopies by the promoters is neither easy nor litigation proof.

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<sup>50</sup> Dheeraj Tiwari & Mohit Bhalla, 'Commercial Realty Buyer can Drag Co to Bankruptcy Court' The Economic Times (Ahmedabad, 9 August 2017) 14

Due to this the new project has completely been standstill in the entire country Because of all this there is a construction de-growth of 3.7 percent in the contribution of real estate market in GDP.<sup>51</sup>

#### ***Standard agreements:***

He major issue with the homebuyer before RERA was the agreement of sale which was developer oriented. Maharashtra had specifically dealt with this issue and also have given a model agreement of sale between the developer and the buyer. It specifies the exact amount of money that a homebuyer need to pay to the developer at each interval. Further even in case of delay by any of the parties than the interest rates are also similar. Further it only provides one case where the promoter can terminate the contract that is if the defaulter fails thrice and that too 15 day prior notice has to be given to the homebuyer before such termination<sup>52</sup>.

#### ***Delay in Registration:***

Despite there being an extension of three months in order to comply with the central act the states are still extending their deadlines as neither proper mechanism is established nor draft rules are notified. Goa and Gujarat are the first state to extend the deadline till October for registration of ongoing projects. Uttar Pradesh extended the deadline till 15<sup>th</sup> August than after a penalty will be applicable till September. There are states like Karnataka who notified their rules on 11<sup>th</sup> July and the website has been launched in the last week of July which makes impossible for the developer to register the project by 31<sup>st</sup> July. Karnataka is also silent about registration fees which a promoter needs to pay. Further such delays by state government has made difficult for the promoters to register their projects and are forced to breach the central law of registering within 90 days as well as restricting them to advertise or market their project.

#### ***No relief if builders at no fault:***

Sometimes a project cannot be completed on time due to awaiting clearances from the various departments of the government like electricity, water supply, Gas supply. As a result they

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<sup>51</sup> Vandana Ramnani, 'RERA report card: Rules notified by only 18 states; regulatory authority set up in 2' (moneycontrol.com, 1 June 2017) < [www.moneycontrol.com/news/business/companies/rera-report-card-rules-notified-by-only-18-states-regulatory-authority-set-up-in-2-2294189.html](http://www.moneycontrol.com/news/business/companies/rera-report-card-rules-notified-by-only-18-states-regulatory-authority-set-up-in-2-2294189.html)

<sup>52</sup>Press Trust of India, 'RERA to Bring an End to 'Apartment Funding' Route:JLL' (Ahmedabad, 17 July 2017)

cannot give it to the homebuyer on time. The act fails to provide a measure to the developers to approach the regulator in such situations. The act becomes non-implementable in several ways in regards to how a common area to be treated, keeping the money into separate account.

### ***Ongoing Projects:***

Further the central act makes it mandatory those projects who are yet to get Occupation Certificate to be covered under RERA<sup>53</sup>. All the states abide by it except Karnataka who exempted the ongoing project if any of the 4 condition is fulfilled.

These four criteria are as follows:

- In respect of layouts where the streets and civic amenities sites have been handed over to the local and planning authority.
- With regards apartments where common areas have been handed over to the registered association, majority of which are allottees.
- Where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of completion/occupation certificate.
- Where all development works have been completed as per the Act and certified by the competent agency and sales/lease deeds of 60% of the apartments/houses/plots have been registered and executed.
- Where partial occupancy certificate is obtained for the completed part of the project.

Such condition is a threat to the buyer and it is more builder oriented. It defeats the purpose for which the RERA is established.

Further the rules notified by the government of Gujarat exempts those ongoing projects launched before rules are enacted by the government. This again creates uncertainty for those disputes before the act was enacted. Further the act excludes the existing dispute in the courts

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<sup>53</sup> 2009Pankaj Anup Toppo, 'Slight Deviation from the Path' (knightfrank, 26 July 2017 <[www.knightfrank.com/blog/2017/07/26/slight-deviation-from-the-path](http://www.knightfrank.com/blog/2017/07/26/slight-deviation-from-the-path)



which is a disadvantage to affected parties<sup>54</sup>. Further there is no short term solution for ongoing projects before RERA is fully functional.

***No relief to homebuyers if the company gets bankrupt:***

In the recent order of NCLT bench of Allahbad Court to start the winding up procedure against the infrastructure giant Jaypee infratech for defaulting on a 526 crore loan of IDBI bank. 30,000 homebuyers were in a jeopardy as their interest on loan still continues and neither can they get the flat nor refund of their money until the winding up process is complete<sup>55</sup>.

Though the central government allowed the homebuyers to approach the Insolvency Resolution Professional appointed by NCLT under the new Insolvency and Bankruptcy Code they are deemed to be the financial creditor but as they are unsecured one and there is no clear statute which gives preferential payment to the homebuyers, putting their investment as highly risky which can also result in no refund. In such a scenario neither RERA or the Bankruptcy Law has any remedy for them. The only solution in such circumstances is that more capital is raised by increasing the area wherein additional units are created to sell the houses and give the possession to the homebuyers.

***Banks implication***<sup>56</sup>:

Banks in consultation with the Reserve Bank of India decided to extend loans to the real estate developers only if they are registered under RERA in order to securitize their investment as it would weed out fly-by-night operators from the market<sup>57</sup>. Adhering to the RERA norms will also safeguard banks interest, however the law doesn't protect other creditors to interest like banks and financial institution in case of default. Recently the parliamentary committee on subordinate legislation recommended the respective state governments to include the ongoing

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<sup>54</sup> Anil Sachidanand, 'Home Sweet Home' (The Week, 30 July 2017)<[www.theweek.in/thewallet/economy/home-sweet-home.html](http://www.theweek.in/thewallet/economy/home-sweet-home.html)>

<sup>55</sup> Our Bureau, 'Noida Homebuyers Can Seek Relief Under Insolvency Law, Says Jailtey' The Economic Times (Ahmedabad, 17 August 2017) 6

<sup>56</sup> Saloni Shukla & Kailash Babar, 'Banks to Shut Out Builders Without RERA Listing' ET Markets (Ahmedabad, 8 August 2017) 1

<sup>57</sup> Vidya Ram, 'RERA rules CREDAI's London meet' The Economic Times (Ahmedabad, 15 August 2017) 14

projects under the act as well as to amend the laws in such a way that it will leave no ambiguity regarding the definition of “Ongoing Projects<sup>58</sup>.”

The main concern for the committee was that despite the central government clearly obliging to register the projects who has not yet received the completion certificate before the commencement of the act, few states notified rules in dilution to it favouring the builder and suppressing the consumer interest especially when it comes to Ongoing projects, Penalties and structural defect. The committee also stated that the rules enacted by the Haryana and Uttar Pradesh exempted majority of the ongoing project in NCR region from the purview of the act.

## CONCLUSION

RERA though a much needed reform in the sector seems to be at a bad start. Further few areas are completely ignored by the government which also need to be under the purview of the act. Dilution by the state government on key provisions of the act defeats its purpose and makes the act mundane. Due to all this India scored low on regulatory index as no proper enforcement mechanism is done. It is just a beginning but in order to regulate the sector with transparency laws needs to be amended in letter and spirit and has to continuously evolve for the betterment of the people. The vision of the legislators can be fulfilled only if the states abide by it in letter and spirit within the prescribed time limit but unfortunately extension of it by the state government is not a good sign as it puts an sector into standstill. Other than this loopholes there can still be scope of amendments like interests of the other stakeholders are completely avoided.

However it cannot be denied that the enactment of the act is in itself an landmark decision which will promote more planned real estate development in the country and would protect the interest of the consumers as well. Further Maharashtra is the only state who adhered to the deadline given by the central government and it is an lesson for other states to follow for good governance and growth of the sector and end an utter chaos of the sector.

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<sup>58</sup> Our Bureau, ‘House panel raps States for diluting RERA’ The Hindu Business Line (Ahmedabad, 11 August 2017)

### **SUGGESTIONS:**

- Maharashtra is in consultation of bringing the Completed projects or who has got occupation certificate also under the purview of RERA. This model can be adopted by other states also in order to fill in the gap of the act.
- To establish an interim measure till all the projects come under the purview of the RERA.
- Restriction on state government in terms of dilution such that the main purpose of the act is not defeated.
- Central government should give an deadline to all state government by which they have to establish both RERA as well as appellate tribunal.
- To specify the rules in such a minute detail that no gap is left which can be misused by the promoters.