



Navigating The Implementation Of The Real Estate (Regulation And Development) Act, 2016: Addressing Challenges And Practical Aspects

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Abstract

The Real Estate (Regulation and Development) Act, 2016 (RERA) is a historic piece of legislation designed to improve consumer protection, accountability, and transparency in the real estate industry in India. This research thoroughly assesses the effects of RERA on the real estate sector since its implementation, emphasizing the effectiveness of the law in resolving persistent problems such project delays, financial irregularities, and disputes between developers and buyers. The act's requirements for escrow account use, required project registration, and severe penalties for non-compliance—all of which work to protect the interests of consumers and encourage on-time project delivery—are among the important features that are examined.

The study also emphasizes important implementation obstacles that stakeholders must overcome, such as states' delayed adoption, differing interpretations of RERA rules, and early compliance barriers. These difficulties have affected the speed and consistency of RERA's implementation around the nation, which has affected the law's overall efficacy.

The report provides insights into the changing dynamics of the real estate market post-RERA, including shifts in investor sentiment and consumer confidence, by utilizing empirical data, case studies, and stakeholder viewpoints. The report culminates in suggestions for fortifying the RERA's regulatory structure, refining procedures for resolving disputes, and raising stakeholder consciousness in order to maintain and optimize its favorable effects on the Indian real estate sector.

KEYWORDS- Transparency, Accountability, Implementation, Compliance, Regulatory Framework.

Background-

Due to the lack of strict laws governing real estate, the industry was having difficulties. Establishing a thorough regulatory agency to oversee the same was vital. During the 2009 National Housing Development and Municipal Administration Ministers Conference, topics covered included land-use policies, financial support for local public bodies, and a roadmap for hovel-free cities, all of which contribute to affordable housing for everybody. The Ministry of Housing and Urban Poverty Alleviation also created a draft Real Estate law as part of the discussion to address the challenges of the land valuation system and urban development regulations. The Ministry of Law and Justice proposed in July 2011 that the legislation be included in the Indian Constitution's concurrent list.

The Real Estate (Regulation and Development) Bill was later tabled in the Rajya Sabha on August 14, 2013. In December 2015, the Union Cabinet accepted twenty significant amendments to the bill based on recommendations made by the Rajya Sabha Committee. The Rajya Sabha and Lok Sabha passed the law on March 10, and March 15, respectively. The Real Estate (Regulation and Development) Act, 2016, also known as the RERA Act, was passed by the Parliament with the intention of safeguarding the rights and interests of consumers by reducing developer misconduct and encouraging standardization of transactions and business practices in the real estate industry. The RERA Act became operative on May 1, 2016.

Around 69 of the Act's 90 sections were notified at the time it was passed; the remaining parts went into effect on May 1, 2017. On October 31, 2016, the Real Estate (Regulation and Development) Act, 2016's general rules were made public by the center via the Housing & Urban Poverty Alleviation Ministry. The Act was enacted in accordance with entries 6 and 7 of the Indian Constitution's concurrent list.

Methodology-

This research employs a doctrinal approach to analyze the Real Estate (Regulation and Development) Act, 2016 (RERA). It focuses on examining and interpreting existing legal texts, including statutes, regulations and legal commentary, to assess the application and implications of RERA provisions. The study aims to provide a comprehensive understanding of how RERA influences regulatory practices, compliance requirements, and legal frameworks within the real estate sector. By scrutinizing legal documents and scholarly analysis, this doctrinal research seeks to uncover insights into the effectiveness, challenges, and potential reforms of RERA in contributing to legal scholarship and policy discussions in real estate regulation.

Legislative intent –

The legislative intent of the Real Estate Regulatory Authority (RERA) is multi-faceted, aimed at transforming the real estate sector to ensure it operates fairly, transparently, and efficiently. Primarily, RERA seeks to protect the interests of homebuyers by ensuring fair practices within the industry. This includes providing homebuyers with timely and accurate information and establishing mechanisms for the effective resolution of disputes between buyers and developers.

To promote transparency, RERA mandates that developers disclose comprehensive project details. This includes project timelines, legal approvals, and financial information, thereby enabling buyers to make well-informed decisions. Such transparency is crucial in eliminating the prevalent issues of misinformation and misrepresentation that buyers often face in the real estate market.

Moreover, RERA establishes stringent guidelines and regulations for real estate developers, ensuring they adhere to quality standards, construction norms, and timelines for project completion. By holding developers accountable for any deviations from agreed-upon terms and conditions, RERA aims to prevent the common problem of project delays and substandard construction quality.

Lastly, RERA establishes an independent regulatory authority tasked with overseeing the real estate market. This authority is responsible for enforcing regulations and resolving disputes efficiently. The creation of this regulatory body ensures that there is a dedicated mechanism for monitoring the real estate sector, ensuring compliance with the Act, and addressing grievances promptly. Overall, the legislative intent of RERA is to create a more reliable, transparent, and accountable real estate environment in India.

Principles on which RERA, 2016 is based-

Fund Security:

According to the RERA Act, at least 70% of the funds received from buyers and investors must be deposited into a dedicated escrow account. These funds can only be used for construction and land-related expenses. Developers and builders are restricted to collecting no more than 10% of the property's cost as an advance before signing the sale contract.

Plan Transparency:

Builders must provide the original plans for all projects they undertake and cannot alter these plans without obtaining the buyer's consent.

Buyer Fairness:

RERA mandates that developers must sell properties based on carpet area rather than super built-up area. If a project is delayed, buyers have the right to a full refund of their investment or can choose to remain invested and receive monthly compensation.

Construction Quality Assurance:

Builders are obligated to address any defects or issues reported by buyers within five years of purchase. These issues must be resolved within 30 days of the complaint being raised.

Developer Authorization:

Developers must register with RERA before marketing, selling, constructing, investing in, or booking plots of land. All advertisements for registered projects must include a unique project registration number.

Overview of the act – certain key provisions-

1. Registration of Projects¹

- **Requirement:** Developers must register their real estate projects with the respective state's Real Estate Regulatory Authority (RERA) before advertising, marketing, or selling.
- **Purpose:** Ensures that all projects are legally compliant and meet specified standards before being offered to buyers.

2. Sale Based on Carpet Area²

- **Definition:** Properties must be sold based on the carpet area, which is the actual usable area within the walls of the apartment or unit.
- **Clarity for Buyers:** Eliminates ambiguity and ensures that buyers know exactly what they are paying for in terms of living space.

3. Timely Project Completion

- **Adherence to Timelines:** Developers are obligated to adhere to the project completion timelines as disclosed during registration.
- **Penalties for Delays:** RERA imposes penalties on developers for any delays in project completion, ensuring accountability and protecting buyers from extended waiting periods.

4. Buyer's Rights and Remedies³

- **Information Accessibility:** Buyers have the right to obtain information about the progress of construction and other project-related details from the developer.
- **Redressal Mechanism:** Provides a mechanism for buyers to file complaints and seek redressal for grievances related to delayed possession, misleading information, or other breaches of contract.
- **Compensation:** Buyers are entitled to compensation or interest from developers for any default or delays in handing over possession as per the agreed terms.

5. Establishment of Regulatory Authorities⁴

- **State-Level Authorities:** Each state and union territory has established its own Real Estate Regulatory Authority (RERA) to regulate and oversee the implementation of RERA provisions.
- **Functions:** Ensures compliance with RERA regulations, resolves disputes between developers and buyers, and enforces penalties for non-compliance.

¹ Real Estate (Regulation and Development) Act, 2016, Section 3.

² Real Estate (Regulation and Development) Act, 2016, Section 4.

³ Real Estate (Regulation and Development) Act, 2016, Section 19.

⁴ Real Estate (Regulation and Development) Act, 2016, Section 20.

6. Disclosure of Project Details⁵

- Promoters are required to provide accurate and detailed information about the project on the RERA website. This includes the layout plan, land status, approvals obtained, project timeline, and any alterations made during the development phase. This provision ensures transparency and enables buyers to make informed decisions.

7. Adherence to Project Specifications⁶

- Promoters must develop the project in accordance with the plans, specifications, and amenities as agreed upon with the buyers. Any changes to these aspects require the prior consent of at least two-thirds of the buyers.

8. Rectification of Structural Defects

- Promoters are responsible for rectifying any structural defects or deficiencies in workmanship, quality, or provision of services within a period of five years from the date of possession, as notified by the buyer.
- **Compensation for Delay:** If the promoter fails to rectify the defects within the specified thirty-day period, the aggrieved buyer is entitled to receive appropriate compensation. The compensation mechanism is provided under the provisions of the RERA Act, which may include reimbursement of costs incurred by the buyer for rectifying the defect or financial compensation for the inconvenience caused.
- **Penalties for Non-Compliance⁷**
RERA imposes penalties on developers for non-compliance with its provisions, including failure to register projects, provide timely updates, or adhere to disclosure requirements. Penalties may include fines, imprisonment, or both, depending on the severity of the offense, thereby ensuring enforcement and deterrence.

9. Adjudicating Mechanisms⁸

For adjudging compensation under sections 12, 14, 18, and 19, the Authority will appoint one or more judicial officers, who are or have been District Judges, as adjudicating officers. These officers will hold inquiries in a prescribed manner, ensuring reasonable opportunity for the concerned parties to be heard. Complaints pending before the Consumer Disputes Redressal bodies under the Consumer Protection Act, 1986, may be withdrawn with permission and filed before the adjudicating officer under this Act.

⁵ Real Estate (Regulation and Development) Act, 2016, Section 11

⁶ Real Estate (Regulation and Development) Act, 2016, Section 14

⁷ Real Estate (Regulation and Development) Act, 2016, Section 59

⁸ Real Estate (Regulation and Development) Act, 2016, Section 71

Applications for compensation must be resolved within sixty days, with written reasons provided for any delays. The adjudicating officer has the power to summon witnesses and demand document production. If a violation is found, the officer can order the payment of compensation or interest as deemed appropriate.

These provisions under RERA are designed to protect the interests of homebuyers, ensure transparency in real estate transactions, and provide effective mechanisms for grievance redressal and project completion adherence as specified by the respective sections of the Act.

Challenges in Implementation-

- 1) **Regulatory Obstacles:** Enforcing RERA can be difficult for regulatory agencies since the real estate industry is so large and diverse. It can be difficult to properly monitor and ensure compliance. Problems can include a lack of resources, staff that isn't trained properly, and the difficulty of overseeing several projects at once.
- 2) **Stakeholder Compliance:** It can be challenging for developers and other stakeholders to comply with RERA's strict guidelines, which include timely project registration, following financial standards including keeping escrow accounts, and giving accurate project updates. Operational limitations, financial ramifications, and different interpretations of legal regulations can all lead to compliance issues.
- 3) **Consumer Awareness:** The general public's knowledge of their rights and safeguards under RERA is still severely lacking. It's possible that many purchasers are unaware of all the clauses pertaining to project registration, possession dates, and grievance resolution procedures. This ignorance may cause miscommunications, postpone seeking redress, and leave one open to unfair treatment.
- 4) **Procedural and Judicial Backlogs:** RERA's dispute and appeals process encounters obstacles from backlogs in the court system, convoluted legal procedures, and verdict delivery delays. The efficacy of RERA in providing prompt justice and remedies is undermined by these delays, which have an adverse effect on the fast resolution of disputes between buyers and developers.

5) Accessibility

Current Situation

Section 3 of RERA requires every real estate project to be registered under the concerned state's Real Estate Regulation Authority (Authority), with certain exceptions. Buyers can approach the Authority or the Adjudicating Officer (AO) in case of disputes. However, the Authority and the Real Estate Appellate Tribunal vary across states, with no central appellate authority. Disputes must be filed in the state where the project is registered.

Challenges

1. **Limited Offices:** Authority offices are not present in every district, and there is no online mechanism for filing or hearing cases.
2. **Travel Burden:** Buyers from distant parts of the state or other states face significant travel burdens to file or attend hearings.

Comparison with CPA, 2019

The Consumer Protection Act, 2019 (CPA, 2019) offers a more accessible alternative. District Consumer Disputes Redressal Commissions (District Commissions) exist in every district, allowing buyers to file complaints locally. This accessibility may contribute to the backlog of real estate cases in consumer forums despite RERA's implementation.⁹

Potential Solutions

1. **District Offices:** Opening RERA offices in every district, though this may not be feasible and doesn't fully address interstate issues.
2. **Online Dispute Resolution (ODR):** Implementing ODR can provide ease of filing and hearing cases from any location, reducing travel and costs significantly.

In order to effectively address these issues, regulatory bodies, stakeholders, and consumer advocacy groups must work together to improve enforcement mechanisms, increase consumer awareness campaigns, improve stakeholder compliance through education and support, and streamline judicial procedures to guarantee effective dispute resolution under RERA.

The Chain of Appeals

Pecuniary Jurisdiction

Under RERA, the Authority, Adjudicating Officer (AO), and Appellate Tribunal have no pecuniary limits. Disputes must be filed at the same forum and follow the same hierarchy of appeals, regardless of the monetary value involved. In contrast, the Consumer Protection Act, 2019 (CPA, 2019) specifies pecuniary jurisdictions for the District, State, and National Consumer Dispute Redressal Commissions (NCDRC). The NCDRC has ruled that the combined consideration paid by all complainants determines the commission's pecuniary jurisdiction.

⁹ Debnath, Srinjoy. "Srinjoy Debnath Jul 26, 2023 8 min read HUGE BACKLOG OF CASES IN THE REAL ESTATE SECTOR: TIME FOR A RE-LOOK AT RERA." *Nlu Delhi*.

Appeal Process Comparison

- **Consumer Forum:** A buyer or group of buyers with a claim over Rs 2 crore can approach the NCDRC directly. Only one appeal lies to the Supreme Court against the NCDRC's decision.
- **RERA:** Regardless of the amount, cases must start with the Authority or AO. The first appeal goes to the Appellate Tribunal, and the second to the High Court.

High Court Delays

Appealing to the High Court often results in significant delays. Data from the National Judicial Data Grid (NJDG) indicates that, as of 2018, around 13.88 lakh cases had been pending in various High Courts for over five years, comprising more than 40% of total cases. This undermines RERA's objective of quick dispute resolution.¹⁰

Possible Solutions

- **National Appellate Authority:** Establishing an appellate authority at the national level could expedite the resolution process.
- **Excluding High Courts:** Removing High Courts from the appeal process may prevent prolonged legal battles and ensure faster justice.

Enforcement Issues

The next section will address problems buyers face in enforcing orders from the Authority or AO, even when they receive a favorable decision.

Policy Recommendations

To streamline the appeals process and reduce the burden on High Courts, a national-level appellate authority specifically for RERA-related disputes should be established. This would provide a centralized and specialized forum for appeals, expediting the resolution process and ensuring consistency in judgments. Additionally, clear guidelines and standard operating procedures should be issued by the central authority to harmonize interpretations of RERA across different states, ensuring uniform implementation and avoiding discrepancies that can lead to confusion and legal challenges. Comprehensive training programs for RERA officials are essential, along with the provision of sufficient resources to improve the capacity of regulatory bodies. This will ensure that officials are well-equipped to effectively monitor and enforce compliance, addressing the vast and diverse real estate sector's challenges. Mandatory digital compliance reporting by developers should be implemented, requiring detailed updates on project progress, financial status, and adherence to regulations. This information should be made publicly accessible to enhance transparency and

¹⁰ ¹⁰ Debnath, Srinjoy. "Srinjoy Debnath Jul 26, 2023 8 min read HUGE BACKLOG OF CASES IN THE REAL ESTATE SECTOR: TIME FOR A RE-LOOK AT RERA." *Nlu Delhi*.

accountability, allowing buyers to make informed decisions. Strict penalties should be enforced for non-compliance with RERA provisions, deterring developers from violating the rules and protecting homebuyers' interests. Additionally, establishing more RERA offices at the district level or implementing an Online Dispute Resolution (ODR) mechanism would significantly improve accessibility for buyers from different parts of the state or country. ODR would reduce the need for travel, lower costs, and provide a convenient platform for filing and hearing cases. Increasing consumer awareness through targeted campaigns and educational programs is also crucial. Ensuring that buyers are fully informed of their rights and protections under RERA will empower them to seek redressal promptly and prevent exploitation. Finally, fostering collaboration between regulatory bodies, stakeholders, and consumer advocacy groups will enhance the enforcement mechanisms, streamline judicial procedures, and ultimately ensure that RERA's objectives are effectively met.

Conclusion

To summarize, the Real Estate (Regulation and Development) Act, 2016 (RERA) is a crucial piece of legislation that aims to revolutionize the real estate industry in India by prioritizing consumer protection, accountability, and openness. Significant progress has been made in resolving long-standing problems such as project delays, financial irregularities, and disputes between developers and buyers since the adoption of RERA. Customer confidence has increased and timely project completion has been encouraged by the implementation of strict criteria for project registration, required utilization of escrow accounts, and penalties for non-compliance. Nevertheless, there are still issues with the implementation process, such as inconsistent state interpretations, a delayed adoption date, and obstacles in the dispute resolution procedure. Establishing a centralized appellate authority for accelerated dispute settlement, ensuring uniform enforcement through improved training and resources for regulatory bodies, and utilizing digital platforms for transparent compliance reporting are all critical to strengthening RERA's regulatory structure. To fully realize the promise of RERA in protecting the rights of homebuyers and promoting a sustainable real estate market in India, it is imperative to raise consumer knowledge and make dispute resolution procedures like Online Dispute Resolution (ODR) more accessible. Overcoming these obstacles and securing RERA's place in forming an equitable, effective, and responsible real estate ecosystem for all parties involved will need cooperative efforts by stakeholders, regulatory bodies, and legislators.