REASSESSING THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016: A JURISPRUDENTIAL AND REGULATORY CRITIQUE OF IMPLEMENTATION, FEDERAL FRAGMENTATION, AND CONSUMER PROTECTION PARADIGMS

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ABSTRACT

This research paper attempts a critical analysis of the Real Estate (Regulation and Development) Act, 2016, looking at its normative ambitions as well as the shortcomings in the implementation from both doctrinal and theoretical perspectives. RERA sought to create transparency, protect the consumers, and hold parties accountable in India's historically opaque real estate sector. The possibility of several weaknesses in its implementation exists. Issues arising out of issues concern fragmented federalism, structural loopholes, lack of consumer representation, and excessive accountability on developers. It is argued that the centralized structure of RERA and the excessive discretion vested in the States lead to an inconsistent enforcement and regulatory arbitrage, which, in turn, undermines the objectives it set out to achieve. Equally, because it remains outside the umbrella of any urban planning or housing policy, its potential to effect change is virtually negligible. Therefore, the paper concludes that although RERA is to be considered a reform, its implementation still requires extensive repositioning to place it within an equitable and sustainable urban governance context.

Keywords: Real Estate, RERA, regulatory reform, consumer rights, federalism, urban governance.

II. Introduction

A paradigm shift in India's real estate industry was ushered in by the Real Estate (Regulation and Development) Act, 2016 (henceforth referred to as the RERA Act). Enacted for accountability, transparency, and efficiency in a historically opaque and unaccountable sector, RERA created some empowerment for home buyers and provided a framework to manage the social impact of regulated growth. RERA was brought into being by a millions of delaying reviews, numerous information asymmetries, no standardization, no means of consumer protection; this was a uniquely difficult environment strategically. Affordable real estate was often high cost real estate. The RERA Act was firmly redirected towards practices of these systemic defects by engraining regulatory mechanisms, rigid disclosure commitments, and contract fair play. It required registration for real estate projects and, also real estate agents, populated the Real Estate Regulatory Authority and Appellate Tribunal, and established penalties for developers/post and owner developers/builder liabilities. Many would argue that the Rera law as a consumer, friendly agenda has reserves in protections against advance payment caps, escrow account protection, mandatory disclosures, and quick grievance settlement[1]. However, RERA has faced criticism—even in light of its worthy intent. Theorists, legal scholars, and economists have asked serious questions about its structural faults, problems with inconsistent implementation, and possibilities of regulatory capture. A careful examination of the act shows that RERA has gone a long way to bolster the legal format of the real estate business but certainly still contains elements of potential theory inconsistencies and operational inefficiencies that are deserving of attention.

III. Identification of Lacunae

Although RERA was originally intended to be transformative and regenerative, it has some notable defects. There are several provisions in the Act that are conceptually ambiguous, poorly enforceable, and would appear to vest too much legislative authority in the states. These shortcomings, viewed through frameworks of legal and regulatory philosophy, suggest that the Act raises questions of functionality and coherence.

A. Fragmented Federalism and Discretionary Rule-Making

One of the most apparent flaws in the Act is the decentralized implementation approach.

[1] Real Estate (Regulation and Development) Act 2016

Although it is a central law, RERA affords states considerable discretion to make regulations. Consequently, the regulatory landscape is currently fragmented. The stated purpose of securing national uniformity is defeated as states such as Gujarat and Uttar Pradesh have faced backlash for weakening central standards. In terms of the constitution, the almost unlimited discretion under RERA to state governments undermines the supremacy and uniformity of a central act, especially when the issue is concurrent and allows for variations in state standards. Dicey's concept of Rule of Law resonates with this weakness. The emphasis on equality before the law/legal certainty, supposed to evoke stable behaviours, is accompanied by an erosion of the predictability and consistency demanded by the Rule of Law by producing enforceable differing law regimes across jurisdictions.

B. Ambiguities in Project Definition and Coverage

Even though "real estate project" is broadly defined under the Act, there are exclusions that fill a legal vacuum. Section 3(2) excludes projects of less than 500 square meters in size or less than eight flats from registration. It is likely that this exclusion was purely to ease administrative drag but it certainly leaves a gap that allows developers to escape certain scrutiny by dividing larger initiatives into a series of smaller projects[2]. This undermines the intrinsic aim of the Act by creating an avenue for regulatory arbitrage. This exception can be classified as a policy capture scenario as lobbying interests perhaps influenced the draughting of certain legislation to ensure exceptions that benefit specific actors according to public choice theory.

C. Inadequate Consumer Representation and Power Asymmetry

RERA, instead of being arguably consumer-focused, establishes no processes for key consumer input in decision making, particularly, in project changes or negotiations for delays. While the Act does establish disclosure protocols, the unequal bargaining position of developers vs buyers is still mainly ignored. Apart from the formalistic enforcement of the contract, legal relations in long-term contracts of which real estate is an example, must account for social norms, collaboration and fairness according to contract theory, acknowledging Ian Macneil's important contribution to relational contracts. In this case, RERA fails to create balance in how

[2] P. Mishra, Law relating to Infrastructure Projects,43 (2" ed.., 2011).

relationships between developers and buyers can work by making buyers passive beneficiaries of the regulatory gifts made by RERA.

D. Delay in Project Approvals and One-sided Accountability

Another significant issue with the Act's unilateral accountability framework. While RERA has deemed delays from regulatory clearances - frequently the major source of delays - as irrelevant, developers retain accountability for delays and quality defects, placing them in an altogether unequal accountability framework while local and state bureaucracies can carry on unhindered[3]. To impose accountability in this selective fashion defeats the standards of administrative law (specifically regarding regulatory control), and the notion of fairness and proportionality. As John Rawls illustrates in his Theory of Justice, there cannot be fairness in a scheme when expected rewards and liabilities are allocated differently.

IV. Application and Analysis

The practical outcomes of RERA have been mixed. While the Act has created more consumer confidence, compliance with registrations and transparency, systemic problems are evident with its practical implementation. This section assesses the effect of the Act on a practical level through theoretical and doctrinal frameworks.

A. Regulatory Efficacy and Enforcement

In urban states like Tamil Nadu, Karnataka, and Maharashtra, RERA has surely enhanced project registration and formalised regulatory compliance. In particular, Maha RERA has received praise for its prompt grievance resolution, comprehensive web portals, and effective enforcement. The authorities in many other states, however, continue to be either completely non-operational, only partially functioning, or under-resourced. For instance, some states lack a permanent regulatory authority, and others missed the deadlines for establishing the appeal tribunal.

The Act's capacity to level the playing field is compromised by this enforcement discrepancy. In regulatory theory, it mirrors the worries about "regulatory capture" and "institutional

[3] LawZilla, T. and Pratap, A.A. (2020) Drawbacks and shortcomings of real estate (Regulation and Development) act, 2016, LawZilla,

bypass." The normative objectives of the legislation are undermined by the inability of a number of RERA officials to act independently from bureaucratic and political influences.

B. Escrow Mechanism and Financial Discipline

According to the Act, 70% of the money received from allottees must be placed in an escrow account and used only for building and land acquisition. The purpose of this clause was to stop fund diversion, a practice that was common in the industry. Although some financial discipline has been brought about by this, the absence of strong auditing and compliance monitoring systems limits its efficacy.

Furthermore, the escrow mechanism is a necessary but insufficient prerequisite for financial reform as viewed through the perspective of economic regulatory theory. Its effectiveness to prevent non-compliance is diminished when there are no punitive deterrents. Developers have discovered methods to circumvent the purpose of the provision by exaggerating land or operating costs in order to manipulate escrow regulations[4].

C. Dispute Resolution and the Question of Judicial Efficiency

RERA suggests using the Regulatory Authority and Appellate Tribunal to expedite conflict resolution. In reality, though, the majority of cases are still heard in High Courts or consumer courts, which results in overlapping jurisdictional claims. Furthermore, legal ambiguity is exacerbated by the absence of legally binding precedent from RERA Tribunals. Legal pluralism conceives confusion, uncertainty, delay, and 'forum shopping' among multiple adjudicatory fora with no distinct authority boundaries and no distinct hierarchies. Whereas real property is a ready source of collective grievance, if there is a lack of procedural entrepreneurship in foreclosure cases, there may not be meaningful procedures specifically for class-action litigation[5].

D. Balancing Development and Consumer Protection

RERA seeks languid balance in its attempt to allow for both consumer protection and property

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[4] Anant Kumar Anand and Sujata Kumari, 'TMPACT OF RERA AND GST ON THE REAL ESTATE SECTOR IN INDIA' (2023) 3(2) Indian Journal of Integrated Research in Law < https://ijirl.com/wp-content/uploads/2023/04/IMPACT-OF-RERA-AND-GST-ON-THE-REAL-ESTATE-SECTOR-IN-INDIA.pdf

[5] Priyanka Gehlot & Dhruv Bene, Navigating the Regulatory Landscape: Innovations in Policies and Regulations in the Real Sector in India, 4 JUS CORPUS.

development. Critics argue that while consumers are often entitled to protection, in its haste to protect consumers, the Act has placed exorbitant obligations on regards developers while ignoring structure issues for development such as longstanding approval times, antiquated binding municipal and public plans, and challenges in land assembly[6]. For smaller developers, this has moderated competition, and may not supportive competition or innovation. Using Sen's definition of a capacity regarding conditions supportive of development the regulatory action by RERA should not assume financial or economic remedies to recoup action from developers, instead it should engage in removing structural barriers to development as governing action. It is evident the regulatory approach of RERA is narrow and bifurcated externally by structures of government at the level of urban development policy.

V. Criticism

The Real Estate (Regulation and Development) Act, 2016 is riddled with normative, structural, and implementation-based errors, despite being framed as a significant legal reform. A critical analysis of the Act reveals a number of issues that hinder its efficacy and lessen its intended effects, particularly when viewed through the prism of jurisprudential and regulatory perspectives[7].

A. Over-Centralization Coupled with Federal Fragmentation

RERA claims to create a uniform regulatory scheme; however, it allows states to make rules that create substantial rule-making powers. It is this tension that leads to an uneven implementation environment in different states using the same Act, which results in fundamentally different consumer protection, project disclosures, and regulatory rigor. Such imbalance undermines RERA's potential to serve as an all-India reform and undermines the legal certainty that Dicey identifies as a cornerstone for the Rule of Law. The framework does not also provide for federalism to succeed in cooperative fashion. There are jurisdictions where core obligations have been greatly weakened due to the central government's inability to enforce baseline compliance among state actors. This situation demonstrates some of the concerns that institutions theorists have raised, in particular Douglass North who has noted

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[6] Dr. MP Chengpa and Bhavya Nahar, 'Impact of Real Estate (Regulation and Development) - Rera Act, 2016 on the Home-Buyers: Addressing the Unconscionability? (2019) 1 CMR University Legal Compendium shttps://www.cmr.edu.in/school-of-legal-studies/journal/wp-content/uploads/2021/03/Article-12.pdf

[7] Nithi, 'RERA Act: A Critical Analysis' (2020) 11 Pen Acclaims <http://www.penacclaims.com/wp-content/uploads/2020/07/Nithi.pdf

how weak enforcement enables institutions to diverge from their formal rules and leads to poor outcomes.

B. Illusory Consumer Empowerment

While the Act may seem to be protecting consumers, there are numerous structural reasons why consumers are preyed upon consistently. This continues to be the case because collectively, consumers have no bargaining power, access to limited opportunity for consumer participation in decision-making, and inadequate standing for representation in redress. According to relational contract theory, the buyer-developer relationship is not strictly transactional, but rather it is located within a long-term socioeconomic contract[8]. Because RERA's rigid formalism does not take into account any of the underlying relational interactions, the power disparity is not adequately accounted for due to the level of representation by the weaker party in the transaction. By just assuming disclosure solves the disparity of power without community participatory protections, the Act is asserting a model of regulatory paternalism.

C. Uneven and Weak Enforcement Infrastructure

The regulatory enforceability of the Act is put in serious jeopardy when all RERA agencies and appellate tribunals are operable in a disparate manner across the states. There is backlog, delay, and forum shopping occurring as many of the governments have not appointed permanent authorities or fully operational tribunals. This a clear case of "regulatory fatigue" and reinforces the regulatory theory critique that without an effective enforcement regime, laws, no matter how well-meaning, are worthless[9]. Furthermore, the continued presence of RERA-related matters in civil and consumer court creates judicial entanglement, because the new tribunals are unable to help alleviate the burden of regular courts. This is in violation of the principle of institutional specialisation and administrative efficiency, and nullifies the purpose of fostering alternative procedures for conflict resolution.

D. Asymmetrical Allocation of Risk and Responsibility

[8] Sunil Tyagi and Deiksha Kapur, 'FDI in Real estate Development Sector- the hindrance in the blessing (2008) 1(13) National Reality <https://zeus.firm.in/p-content/uploads/FDI-in-Real-Estate.pdf

[9] D. Santhosh Kumar and Ramesh Kumar Miryala, 'Impact of RERA on home loan borrowers in India' (2021) 24(4) International Journal of Indian Culture and Business Management.

RERA imposes harsh demands on developers, relating to timelines for project completion and accountability for defects. However, RERA is silent on delays due to faults or issues unrelated to the developer, such as state authority approvals, zoning law problems, or natural disasters. This creates an uneven accountability structure where developers are liable to account for state authority induced systemic failures. This inequity distorts the balance of justice from a fairness and proportionality viewpoint, both of which are key tenets of administrative law. Using John Rawls' idea of fairness, accountability and entitlements ought to be distributed equally. RERA's current design denies the idea of systemic equity by over-burdening developers without placing the same requirement upon government authorities to issue approvals in a timely manner[10].

E. Exclusionary Exemptions and Loopholes

Section 3(2)'s exemption for projects under 500 square meters or with less than eight flats creates a serious regulatory gap. This section allows developers to divide projects in a way that facilitates avoiding scrutiny. Such a structural gap amplifies the risk of non-compliance and market manipulation to the extent that it is likely to exist in peri-urban areas with many small projects. Public choice theory would likely condemn such statutory carve-outs as evidence that particular interests have influenced statutes that result in laws that protect particular economic actors. The law's universality is undermined by loopholes that support regulatory arbitrage in a way that undermines consumer confidence in the system.

F. Lack of Integration with Broader Urban Planning and Housing Policies

The Act is segregated from broader urban development objectives because it only considers development interactions between developers and buyers. There is also disconnection with overall infrastructure regulators, environmental regulators, and municipal urban planning authorities. As a result, RERA becomes a siloed structure that captures a small sliver of the many actors in the complex real estate development ecosystem. Using systems theory, it is understood that for legal reforms to have enduring effects, they must be holistic and work together with other relevant policy frameworks. RERA lacks the ability to do this because of

[10] Nikhil Neve and Hemanshu Ahire, Proposing a Model for Effective Construction Site Logistics Management in Pune Region' (2019) 2(7) International Journal of Research in Engineering, Science and Management <https://www.ijresm.com/Vol.2 2019/Vol2 Iss7_July19/1|RESM V2 17.73.pdf

its narrow focus and disjunctive structure.

VI. Recommendations

To bridge the structural and operational gaps within the RERA framework, the following recommendations are proposed:

1. Mandating Minimum Compliance Standards Across States

The central government must establish binding regulatory baselines that no state can dilute. This would ensure uniform consumer protection and project accountability. Harmonization of state rules through intergovernmental consultations and model regulations would bolster the spirit of cooperative federalism.

2. Institutionalizing Consumer Participation Mechanisms

The Act should be amended to provide for formal consumer representation in key decision-making processes, such as project extensions, material alterations, or settlement negotiations. Mechanisms like buyer associations, voting rights on project changes, and representation in the appellate process should be institutionalized to ensure participatory justice.

3. Strengthening Regulatory Infrastructure

A time-bound mandate for the establishment of full-time regulatory authorities and appellate tribunals must be enforced across states. Capacity building through training, recruitment, and digital infrastructure is essential to enhance the institutional competence of RERA bodies.

4. Balanced Liability Framework

RERA must be amended to account for delays caused by government inefficiencies. A shared accountability model that factors in municipal and planning authority roles in project approvals would create a more balanced regulatory ecosystem. Developers should be compensated or relieved in genuine cases of state-induced delays.

5. Removing Arbitrary Project Exemptions

Section 3(2) must be revisited. The exclusion of small-scale projects from registration should be limited and justified through impact assessment studies. Alternatively, a lower compliance threshold with simplified norms could be created for smaller developers rather than a blanket exemption.

6. Integrating with Urban and Housing Policy

The regulatory framework should be integrated with broader urban planning, affordable housing, and sustainability goals. RERA should collaborate with Smart City Missions, Housing for All programs, and infrastructure bodies to align real estate development with long-term urban resilience.

7. Establishing Binding Precedents and Streamlining Jurisdiction

To avoid forum shopping and judicial inconsistency, the RERA Appellate Tribunals should be empowered to issue binding precedents. Further, clearer demarcation of jurisdiction between consumer courts and RERA authorities should be codified to prevent procedural ambiguity.

VII. Conclusion

Undoubtedly, one of the most significant legislative initiatives of India's post-liberalized era is the Real Estate (Regulation and Development) Act, 2016. RERA exempted a long-stagnant industry plagued by consumer exploitation, regulatory neglect, and opacity while institutionalising accountability, transparency, and order. It is admirable that RERA would seek to renew the consumer trust that builders had fractured through a dedicated adjudicatory framework, financial safeguards, and institutional control. In an industry where consumers' bargaining power, information asymmetry, and rights have historically favoured builders and middlemen, RERA, at least normatively, reaffirms the need to defend consumer rights. Despite the Act's formalising of reformist objectives, a detailed and critical assessment reveals that RERA's conceptual architecture and operational design have various flaws that compromise its ability to achieve substantial change. RERA illustrates, to a significant extent, the age-old challenge of modern regulatory statutes: they share an ambition but fail to implement in practice. This is primarily evident in its incoherent federal implementation, uneven enforcement across states, and over-reliance on formalistic compliance processes ultimately insufficient for grappling with buyers' and developers' complexities.

Issues of plurality of law unaccompanied by harmony are also brought out by the over-centralized drafting of RERA relative to the very wide discretion vested in states. This leads to a splintered regulatory system where the protections and rights of homeowners become dependent on where they are, hence negating the purpose of common legal protection in one legal framework. Furthermore, the narrow regulative approach undermining wider developmental interests is also highlighted by the lack of integrative urban planning links, such as partnerships with municipal governments, environmental permits, and infrastructure planning for development.

Theoretically, RERA is a case of a law more focused on static compliance than on dynamic responsiveness. Public choice theory holds that regulatory loopholes and diluted state regulations are signs of elite bargaining and policy capture, where the interests legislation was meant to regulate partially shape its configuration. Administrative law theory laments the one-sided accountability between state agencies and private developers, claiming proportionality and fairness are compromised when one side of the regulatory equation is made to bear the blame for systemic inefficiencies.

Thus, while the RERA Act provides the major framework for governing real estate in India, it is merely the start of a more complicated and longer journey. Legislative audacity, administrative nimbleness, and above all, a resolve to ensure that the promises made to citizens, developers, and homebuyers are not hollow but fulfilled legally and institutionally too, are the preconditions of the future. It is only under these conditions that the Act can fulfil its potential to transform and be a true cornerstone of sustainable and equitable urban governance in the twenty-first century.