
ANALYSIS OF RECENT AMENDMENTS IN THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Ms. Garima Juneja, Assistant Professor at Gitarattan International Business School,
Rohini, Delhi¹

Shraddha Jha, Gitarattan International Business School, Rohini, Delhi²

ABSTRACT

The Real Estate (Regulation and Development) Act, commonly known as RERA, is a significant legislation enacted by the Government of India in 2016³. Its primary objective is to regulate and promote transparency in the real estate sector to protect the interests of homebuyers and promote timely delivery of projects. RERA mandates the registration of real estate projects and agents, establishes a regulatory authority in each state and union territory, and ensures the timely completion of projects through strict guidelines⁴. It also aims to address grievances and disputes effectively through its provisions. RERA provides a structured framework for both developers and homebuyers, thereby enhancing trust and accountability in the industry and has instilled greater transparency and accountability among developers and builders. This has not only enhanced the confidence of homebuyers but has also streamlined the process of project delivery, leading to increased trust between all stakeholders involved in real estate transactions. Various amendments and updates have been made to the act since its inception in 2016 to streamline processes, and strengthen regulatory oversight in the real estate sector and address evolving challenges and improve its effectiveness.

Keywords: Real Estate (Regulation and Development) Act (RERA), Regulatory Authority, Homebuyers, Developers, Promoters, Statutory compliance, Affordable housing, Technology integration, Digital compliance, Streamlined processes, Regulatory amendments, Buyer awareness, Supreme Court judgments.

¹ Assistant Professor at Gitarattan International Business School, Rohini, Delhi.

² Final Year Law Student at Gitarattan International Business School, Rohini, Delhi

³The Real Estate (Regulation and Development) Act, 2016, Ministry of Housing and Urban Affairs, Government of India

⁴ Section 3, Real Estate (Regulation and Development) Act, 2016

INTRODUCTION

With the increase in individualism and nuclear relations there is an evident increase in the need of personal space and individual housing areas. India has seen a notable increase in housing and property in the last two decades⁵. But as the demand increases, of any product, in the market, there is also an increase faced in problems arising in the production and supplying of the product in demand. These can include problems of delayed delivery of projects even after more than half of the total payment taken in advance from the buyers.

Many a times buyers are charged large amounts even unto 80% advance of the total price of the property, all bashed by irregular, unsatisfactory and delayed projects. Many buyers are fooled by giving them high expectations and become prey to fraud and misrepresentation⁶. These challenges led to an utter need of strict regulations and formulations of laws to control the suppliers and to keep a track on projects and payments made and to protect the buyers from frauds and safeguard their rights of property. And hence, the Real Estate Regulatory Act (RERA) was formulated.⁷

OBJECTIVES

The objective of conducting legal research on the new regulations of the Real Estate (Regulation and Development) Act (RERA) is to determine the following aspects of the real estate sector:

1. It determines how the new regulations have enhanced consumer protection by ensuring transparency, accountability, and fair practices in real estate transactions.
2. It deduces the role of developers, promoters, and agents have complied with the ever-changing and evolving regulations stipulated under RERA, including registration requirements, financial disclosures, and project timelines.
3. It analyze whether the new regulations have contributed to the timely completion and delivery of real estate projects.

⁵ Ministry of Statistics and Programme Implementation, Housing Statistics

⁶ Competition Commission of India Report on Real Estate Sector, 2019

⁷ Parliamentary Standing Committee Report on RERA Bill 2013

4. It determines is the effectiveness of the dispute resolution tribunals, Appellate Tribunals and Regulatory Authorities.
5. It discovers the overall impact of RERA on the real estate market as well as consumers, and it's impact on investment trends, property prices, and market dynamics, and analyzing how the new regulations have influenced market behavior and investor confidence.
6. It determines the enforcement mechanisms in place to ensure compliance with RERA regulations, including penalties for non-compliance and the role of regulatory authorities in enforcing the law.

HYPOTHESIS

This research paper aids in inferring the following essential questions related to the RERA Act and its recent amendments :

1. Are the new regulations introduced under RERA practically effective in achieving their intended objectives of promoting transparency, accountability, and consumer protection in the real estate sector?
2. How do stakeholders perceive the effectiveness of the new regulations in addressing key issues such as project delays, financial transparency, and dispute resolution?
3. How have the new rules introduced under RERA impacted various aspects of the real estate market in our country, including investment trends, property prices, and market dynamics?
4. What are the specific effects of the new regulations on developers, buyers, agents, and other stakeholders involved in real estate transactions?
5. Have the new regulations influenced market behavior and investor confidence, and if so, in what ways?

RESEARCH METHODOLOGY

To analyze the effectiveness and impact of the new regulations of the Real Estate (Regulation)

Act, 2016, I've opted for qualitative research methodology and focused on exploring and understanding phenomena and textual analysis to gather the data.

HISTORY

The history of Real Estate (Regulation and Development) Act, 2013 can be divided into following major phases:

Pre-Formation Phase (Before 2013)

Before RERA, the Indian real estate sector was largely unregulated, leading to numerous issues including project delays, lack of transparency, quality concerns, and disputes between developers and buyers.⁸ The sector was governed by various fragmented laws under different ministries, creating regulatory gaps.

Hence, the Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th August, 2013⁹. This marked the first formal attempt to create comprehensive real estate regulation in India.

Formation phase

In December 2015, the Union Cabinet of India had approved 20 major amendments to the bill, reflecting extensive stakeholder consultations and refinements to the original proposal. The Rajya Sabha passed the Real Estate Bill on 10 March 2016¹⁰. The Lok Sabha passed the bill on 15 March 2016 and the bill received Presidential assent and became the Real Estate (Regulation and Development) Act, 2016.

The act came into force on 1 May 2016, at that time, it only consisted of 61 of 92 sections notified, which only allowed for the basic framework establishment. It came into full fledged effect from May 1, 2017, across all states of India with the remaining provisions that came into force on 1 May 2017¹¹.

⁸ Rajya Sabha Official Records, August 14, 2013

⁹ Rajya Sabha Official Records, March 10, 2016

¹⁰ Central Government RERA Rules Notification, May 1, 2017

Development phase (Amendments and updates)

- **2019: State-Level Amendments** - The Government of Maharashtra issued a notification on June 6, 2019 amending certain provisions of the MahaRERA typically addressing implementation challenges and procedural clarifications¹¹.
- **2020-2022: COVID-19 Impact Adjustments** - During this period, many states introduced regulatory relaxations and extensions to account for COVID-19 related project delays, though these were largely administrative adjustments rather than legislative amendments.
- **2023: Regulatory improvement** - It helped financial disclosure requirements, with stricter project registration protocols. Improved penalty enforcement mechanisms and standardization of processes across states.
- **2024: Recent Reforms** - In 2024, we've seen amendments to RERA regulations incentivizing developers to focus on affordable housing initiatives¹². This includes fast-tracking approvals, providing subsidies, and relaxation of certain compliance requirements for qualifying projects, there has been enhanced integration of technology for compliance, making regulatory processes more efficient and transparent.

ESSENTIAL LEGAL IMPLICATIONS

A. State-Level Regulatory Authorities:

Section 20 of the RERA Act defines the duties of state governments regarding the implementation of RERA provisions¹³. This includes the establishment of state-level regulatory authorities responsible for overseeing real estate activities within their respective jurisdictions. State governments have the authority to create multiple regulatory bodies and overseeing the functioning of regulatory authorities and ensuring that housing and estate development activities adhere to the provisions of the RERA Act. as needed to effectively regulate the real estate sector. These regulatory authorities

¹¹ Government of Maharashtra Notification No. GR-2019/CR-58/UD-1, June 6, 2019

¹² Affordable Housing Policy Framework, PMAY Guidelines 2024

¹³ Section 20, Real Estate (Regulation and Development) Act, 2016

are tasked with registering real estate projects, maintaining databases, and ensuring compliance with RERA regulations.

B. Establishment of Appellate Tribunals:

Section 43 of the RERA Act mandates the establishment of a Real Estate Appellate Tribunal for each state¹⁴. These tribunals serve as quasi-judicial bodies responsible for adjudicating disputes related to real estate matters. The Appellate Tribunal typically includes a chairperson and other members appointed by the state government, whose qualifications and tenure of members are also specified to ensure impartiality and expertise in real estate matters. These Tribunals provide a platform for aggrieved parties to seek resolution of disputes arising from real estate transactions. Parties can file applications with the tribunal to settle disputes related to various aspects covered under the RERA Act, such as project delays, quality issues, financial matters, and compliance with regulations.

C. Rule establishments:

- a) **Important Definitions:** Section 2 of RERA lays down crucial definitions that determine the rules and regulations mentioned in the Act. These definitions help in interpreting and applying the provisions effectively.
- b) **Mandatory Registration:** RERA mandates registration for all real estate projects meeting certain criteria, such as a plot size of at least 500 square meters or involving the construction of eight or more flats¹⁵. This requirement ensures regulatory oversight and accountability in the real estate sector.
- c) **Escrow Account Requirement:** The act requires developers to deposit seventy percent of the money collected from buyers into an escrow account¹⁶. This provision aims to safeguard buyers' investments and ensure that funds are utilized exclusively for the construction of the specific project, ensuring financial accountability and transparency and prevention of diversion of funds to other projects which led to project delays.

¹⁴ Section 43, Real Estate (Regulation and Development) Act, 2016

¹⁵ Section 3, Real Estate (Regulation and Development) Act, 2016

¹⁶ Section 4(2)(i)(D), Real Estate (Regulation and Development) Act, 2016

- d) Limitation on Advance Fee:** RERA imposes a limitation on the advance fee that developers can collect from buyers, restricting it to ten percent of the apartment's total cost¹⁷. This measure protects buyers from excessive financial commitments upfront.
- e) Penal Provisions:** RERA establishes penalties for violations, including imprisonment for developers, agents, and buyers¹⁸. Developers can face imprisonment for up to three years for violations of orders issued by Appellate Tribunals and Regulatory Authorities. Agents and buyers may face imprisonment or fines for non-compliance, with fines accumulating based on the estimated cost of the real estate project. These strict regulatory impositions and penal liabilities ensures compliance as well as serves as a means to protect the interests of homebuyers who have long been vulnerable to practices of unscrupulous nature.
- f) Transparency and Accountability:** One of the key features of RERA is its promotion of transparency and accountability in the real estate market. By mandating registration of projects and agents, establishing regulatory authorities, and enforcing guidelines, RERA aims to create a more transparent and accountable environment for all stakeholders. Overall, RERA has played a significant role in reshaping the real estate sector in India, providing a structured framework, and instilling greater confidence among buyers and investors.
- g) Scope:** RERA covers both residential and commercial properties, including apartments, buildings, plots, and real estate projects . Additionally, after the revocation of Article 370, the new regulations of RERA allows Jammu and Kashmir as subject of the Act along with other union territories. This implies that the scope of this act is huge and inclusive.

ADVANTAGES OF THE AMENDMENTS

Affordable Housing Focus: Recent amendments incentivize developers to focus on affordable housing initiatives, including fast-tracking approvals, providing subsidies, and relaxation of certain compliance requirements for qualifying projects. This addresses the critical housing shortage in the affordable segment.

Stricter Financial Scrutiny: The 2023 updates introduced increased financial disclosures,

¹⁷ Section 13(2), Real Estate (Regulation and Development) Act, 2016

¹⁸ Section 59, Real Estate (Regulation and Development) Act, 2016

requiring developers to maintain greater transparency about project funding and financial health. This helps buyers assess project viability better¹⁹.

Enhanced Compliance Mechanisms: Enhanced technological advancements, digitalization and streamlined processes make compliance easier for genuine developers while making it harder for non-compliant ones to operate.

Broader scope of Regulatory Reach: Stricter project registration requirements and extended jurisdiction ensure more projects fall under RERA's protective umbrella, benefiting a larger number of homebuyers.

Stricter Penalties: The amendments include stricter penalties for non-compliance, creating stronger deterrents against malpractices and ensuring better adherence to regulations.

CHALLENGES

Inconsistency at State-Level: RERA is implemented by individual state governments variably, leading to inconsistent rules and enforcement standards across different states. While some states have been more proactive, others lag in establishing effective regulatory frameworks, thus creates an uneven playing field for developers and buyers²⁰.

Slow Establishment Process: Many states were delayed in establishing RERA authorities and appellate tribunals and even after establishment, these institutions often lack adequate infrastructure, insufficient staff, trained personnel, and resources to handle the volume of cases effectively.

Weak Implementation of penalties: While RERA prescribes penalties for non-compliance, enforcement remains inconsistent. Many developers continue to violate norms without facing meaningful consequences, undermining the Act's deterrent effect.

Resistance by Builders and Developers: As the documentation and compliance requirements can be overwhelming for smaller developers, potentially creating barriers to entry, some developers have found ways to circumvent RERA requirements through creative project

¹⁹ Central RERA Rules Amendment, 2023

²⁰ State RERA Implementation Variation Study, Ministry of Housing and Urban Affairs, 2023

structuring, delayed registrations, or by arguing that their projects fall outside RERA's purview, which has made it difficult for the new regulations to apply to pre-existing projects.

Buyer Awareness: Many homebuyers remain unaware of their rights under RERA or how to effectively use the regulatory mechanisms available to them. This limits the Act's protective impact²¹.

Coordination Issues: Poor coordination between RERA authorities and other regulatory bodies like environmental clearance agencies, municipal corporations, and financial institutions creates administrative bottlenecks.

Delay in Dispute Resolution: Despite establishing dedicated tribunals, many RERA authorities face backlogs of cases. The promised quick resolution of disputes often takes months or years, defeating the purpose of having specialized forums²².

Technology deprivation: While recent amendments focus on digital integration, many state authorities struggle with outdated technology systems, making online processes cumbersome for both developers and buyers.

NEW CHANGES IN REGULATIONS OF RERA ACT, 2016

YEAR: 2022

A) RULES FOR PAYMENT:

Equitable Distribution of Fees: RERA mandates equitable distribution of fees between buyers and developers, ensuring fairness in financial transactions related to real estate purchases²³.

Timely Payment Requirement: Buyers are required to make payments on time as per the terms outlined in the agreement. Failure to make payments on time can result in additional interest fees, encouraging timely payment compliance.

Builder's Liability: The builder or developer is held liable for all outgoing expenses until

²¹ Consumer Awareness Survey on RERA Rights, CII 2022

²² NCDRC Annual Report on Real Estate Disputes, 2023

²³ RERA Amendment Rules 2022, Payment Guidelines

possession of the property is transferred to the buyer. This ensures that the builder remains responsible for project-related expenses until the completion and handover of the property.

Limit on Advance Payments: The new rule update imposes a limit on the amount that a customer can pay in advance, restricting it to no more than 10% of the total price of the property unless the sale agreement has been executed. This measure aims to protect buyers from excessive financial commitments upfront and ensures that payments are made in accordance with the progress of the project.

B) RULES FOR POSSESSION:

Safeguards Against Delays and Fraud: RERA aims to protect buyers from delays and fraudulent practices by developers or suppliers concerning possession of the property. The new rule update of 2022 enhances these safeguards to ensure buyer protection.

Interest and Refund Entitlement: If the supplier fails to provide satisfactory possession of the property, buyers are entitled to receive interest in addition to a refund, even if the builder's RERA registration is revoked. This provision aims to compensate buyers for delays or non-compliance by developers.

Timeline for Possession: Buyers are entitled to possession of the property within two months after the issuance of the occupancy certificate²⁴. This timeline ensures that buyers receive possession in a timely manner, thereby reducing uncertainty and inconvenience.

Delivery of Documents: Builders are required to deliver documents for common areas to the appropriate buyer associations within thirty days of obtaining the completion certificate. This provision ensures transparency and facilitates the smooth handover of common area documents to buyer associations for maintenance and management.

C) RULES FOR RENEWAL:

Registration Requirement: Agents and advocates involved in real estate transactions are required to register with their state authorities if they are dealing with projects exceeding 500 square meters or eight units. This registration ensures compliance with real estate regulations

²⁴ Occupancy Certificate Timeline Rules, 2022

and promotes transparency in the sector.

Renewal Process: Under the new RERA rules of 2022, once agents and advocates complete registration with the state RERA, they are not required to renew their license²⁵. This streamlines the process for real estate promoters and agents, reducing administrative burden.

Revocation for Violations: However, if agents or promoters violate any rules or regulations outlined in RERA, their registration may be revoked. This underscores the importance of adhering to the rules and regulations set forth by RERA to maintain registration status and operate legally within the real estate sector.

Compliance Requirements: The RERA rules updated in 2022 may specify specific requirements that individuals must adhere to in order to comply with renewal rules and prevent legal violations or suspension of registration. These requirements may include ongoing compliance with RERA regulations, timely submission of documents, and adherence to ethical standards.

YEAR: 2023

Although they were not major amendments to the original Act itself, RERA introduced several regulatory changes in 2023 including "increased financial disclosures, stricter project registration requirements, extended jurisdiction, standardized carpet area calculation, and stricter penalties for non-compliance" aimed at creating better oversight of the real estate sector²⁶.

Additionally, there were new RERA rules introduced for builders in 2023 that required "stricter regulations, ensuring transparency, accountability, and fair practices" to better protect homebuyers' interests.

However, these were mere regulatory updates and rule changes rather than formal amendments to the core RERA Act of 2016. The changes focused on strengthening implementation and enforcement mechanisms rather than modifying the fundamental structure of the legislation and the updates were part of ongoing efforts to improve real estate sector regulation.

²⁵ License Renewal Exemption Guidelines, 2022

²⁶ Enhanced Oversight Regulations, RERA 2023

YEAR: 2024

AFFORDABLE HOUSING: Through expedited approvals and relaxed compliance for qualifying affordable housing projects. Recent amendments incentivize developers to focus on affordable housing initiatives, including fast-tracking approvals, providing subsidies, and relaxation of certain compliance requirements for qualifying projects. This addresses the critical housing shortage in the affordable segment.

IMPROVE TECHNOLOGICAL INTEGRATION: Better digital compliance mechanisms. Recent amendments focus on digital integration with advancement in technology and digitalization in India, many administrative process have been digitalized, making it more accessible and transparent for buyers²⁷. It also increases accountability of developers and make them answerable towards the buyers and system as a whole.

STREAMLINE PROCESSES: Making regulatory procedures more efficient and aiding in speedy dispute recoveries and technological innovations. The buyers are more influenced due to the streamlined process of the administration.

However, the core legislation remains unchanged, but the implementing rules and procedures have been updated.

LANDMARK JUDGEMENTS

1. JANTA LAND PROMOTERS PRIVATE LIMITED VS UNION OF INDIA AND OTHERS ON 16 October, 2020

In the landmark case of Janta Land Promoters Private Limited vs Union Of India And Others dated October 16, 2020, several key issues raised were :

- Whether a single member of the Real Estate Regulatory Authority (RERA) can validly pass orders on complaints under the RERA Act 2016, and whether Regulations 7 and 8 of the Punjab RERA Procedure Regulations are valid?
- Whether a single member of the RERA Appellate Tribunal can validly pass orders in

²⁷ Technology Adoption Guidelines for Real Estate, 2024

appeals.

- Whether all complaints under the RERA Act should be entertained by the Adjudicating Officer (AO) under Section 71, and the validity of the Authority's circular dated November 21, 2018.
- Whether Appellate Tribunal orders declining to waive pre-deposit requirements are valid, and if the High Court can direct the Tribunal to entertain appeals without pre-deposit.

The court's judgement was as follows:

- a) A single member of the Authority cannot validly pass orders as Section 21 of the Act mandates the Authority must consist of a Chairperson and at least two whole-time members and the regulations 7 and 8 of Punjab RERA Procedure Regulations were struck down as ultra vires the Act
- b) A single member of the Appellate Tribunal cannot validly pass orders as, Section 43(3) mandates each bench must have at least one Judicial Member and one Administrative/Technical Member. Therefore, orders passed by single-member Appellate Tribunal were set aside for want of jurisdiction.
- c) The Court clarified the division of powers and stated that while Authority's power includes refunding of amounts, paying interest on refunds and for delayed possession, penalties; Adjudicating Officer's jurisdiction includes compensation claims under Sections 12, 14, 18, and 19.
- d) Pre-deposit requirements under Section 43(5) are mandatory and cannot be waived and Appellate Tribunal has no power to waive statutory pre-conditions; even High Court cannot override statutory provision

All complaints were remanded to properly constituted Authority, as a one-time measure, petitioners were granted time until November 16, 2020, to make pre-deposits and the authority was directed to issue fresh circular consistent with the judgment with amounts deposited pursuant to invalid orders to be refunded.

2. M/S IMPERIA STRUCTURES LTD. VS. ANIL PATNI AND ANR. ETC. ON 2 NOVEMBER, 2020

In the landmark case of M/S Imperia Structures Ltd. Vs. Anil Patni And Anr. Etc., several key issues were raised:

- Whether consumers who booked apartments could seek remedies under the Consumer Protection Act, 1986 after the Real Estate (Regulation and Development) Act, 2016 (RERA) came into force?
- Whether apartment buyers qualified as “consumers” under the Consumer Protection Act when apartments were allegedly booked for commercial/investment purposes?
- Whether delays in construction due to demonetization, labor shortage, and regulatory approvals constituted force majeure events excusing the developer’s obligations?
- Whether RERA provides exclusive remedies for real estate disputes or if Consumer Protection Act remedies remain available concurrently.

The court’s judgement was as follows:

- a) Supreme Court dismissed the Appeals and affirmed National Consumer Disputes Redressal Commission’s orders and the Consumer Protection Act remedies remain available even after RERA’s enactment.
- b) Section 88 of RERA states its provisions are “in addition to and not in derogation of” other laws.
- c) Section 18 of RERA provides remedies “without prejudice to any other remedy available”.
- d) It also determined that, Section 79 of RERA bars only civil courts, not consumer forums as the consumer forums are quasi-judicial bodies, not civil courts within the meaning of RERA’s bar.
- e) The Supreme Court further confirmed that all complainants were genuine consumers who purchased apartments for self-use and rejection of alternative

accommodation offer indicated genuine intent for personal use, and developer failed to provide evidence supporting force majeure claims.

The Supreme Court allowed refund of full amounts deposited by complainants with 9% simple interest from deposit dates of the cost of ₹50,000 per complainant for litigation costs and an additional ₹50,000 per case imposed by Supreme Court and default Interest of 12% per annum if amounts not paid within 4 weeks

CONCLUSION

The Real Estate (Regulation and Development) Act, 2016, and its subsequent amendments represent a significant step forward in regulating India's real estate sector. While challenges persist, the Act has undeniably transformed the industry from an largely unregulated market to one with structured oversight and consumer protection mechanisms. The continuous evolution through amendments demonstrates the legislation's responsiveness to emerging challenges and changing market dynamics.

With few developments such as establishment of periodic review mechanisms to assess the effectiveness of amendments and identifying of areas requiring further refinement and integration of emerging technologies such as artificial intelligence and block chain could further enhance transparency and efficiency in real estate transactions.

The success of RERA lies not only in its comprehensive regulatory framework but also in its potential for continuous adaptation and improvement. As the real estate sector continues to evolve, particularly with the integration of technology and changing consumer expectations, RERA's framework provides a solid foundation for future enhancements. Ultimately, RERA has achieved its primary objective of promoting transparency, accountability, and consumer protection in the real estate sector. While perfect implementation remains a work in progress, the Act has established India's real estate market on a path toward greater professionalism, reliability, and trustworthiness.

REFERENCES

1. The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, Ministry of Housing and Urban Affairs, Government of India.
2. Central Government RERA Rules Notification, Ministry of Housing and Urban Affairs, May 1, 2017.
3. RERA Amendment Rules 2022, Payment Guidelines, Ministry of Housing and Urban Affairs.
4. Technology Adoption Guidelines for Real Estate, 2024, Ministry of Housing and Urban Affairs.
5. Sharma, R.K. (2018). Real Estate Law in India: A Comprehensive Guide to RERA. LexisNexis.
6. Bhattacharya, A. (2017). "RERA: A Paradigm Shift in Indian Real Estate Regulation." Indian Journal of Law and Economics.
7. Mehta, S. & Gupta, R. (2019). "Implementation Challenges of RERA: A State-wise Analysis." Journal of Real Estate Research.
8. Ministry of Housing and Urban Affairs. "RERA Portal": <https://rera.gov.in> (Accessed: August 2024).
9. MahaRERA Official Website. "Maharashtra Real Estate Regulatory Authority": <https://mahareraonline.mahaonline.gov.in>
10. Gupta, A. "RERA Amendments Focus on Affordable Housing." The Economic Times.