
RERA - "OWNING A HOME IS A KEYSTONE OF WEALTH, BOTH FINANCIAL AFFLUENCE AND EMOTIONAL SECURITY"

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CHAPTER 1

INTRODUCTION

"OWNING A HOME IS A KEYSTONE OF WEALTH, BOTH FINANCIAL AFFLUENCE AND EMOTIONAL SECURITY."

The demand for housing has increased, becoming the most crucial aspect of individuals' lives. Access to adequate¹ housing is a priority for the enjoyment of several human rights, including the right to work, health, education, social security, and privacy. Safe and secure housing is a fundamental need. Housing serves as a key input in economic, social, and civic development.

Real estate and infrastructure sectors are the two largest employers in India and have made significant strides in the past decade, garnering attention from policymakers, corporations, and banks. However, the real estate sector has historically lacked regulation, professionalism, standardization, and consumer protection. The absence of appropriate laws and regulations has allowed for the dominance of certain anti-social elements and illegal developments in the housing sector.

The lack of standardization and transparency, coupled with delays in project implementation, has led to cost overruns and credibility issues for builders. Consequently, it became imperative to introduce legislation to govern the real estate sector and protect homebuyers.

In response to these challenges, the Real Estate (Regulation and Development) Act, 2016² was passed, coming into effect on May 1, 2016. This Act aimed to bring accountability and

¹ National Housing Bank 100th Report on Trends and Progress of Housing in India, 2013 (April 2014).

² Arun Kumar, Real Estate as Business, 50 (Books For Change, Bangalore, 2nd Edition, 1982).

transparency to the real estate sector, ensuring timely delivery of projects and protecting consumers' interests.

The Act mandates that developers register their projects with the Real Estate Regulatory Authority (RERA) and deposit 70% of project funds into a separate escrow account. It also prohibits developers from transferring rights and liabilities without consent from buyers and the regulatory authority.

The introduction of RERA has brought about significant changes in the real estate sector, enhancing consumer protection and fostering investor confidence. However, there are still challenges to be addressed, such as regulatory compliance, bureaucratic obstacles, and liquidity issues.

LITERATURE REVIEW

A review of existing literature on the real estate sector in India highlights various perspectives on the impact of RERA. While some scholars emphasize its benefits in ensuring accountability and transparency, others raise concerns about its potential drawbacks, such as delays in project approvals and increased project costs.

OBJECTIVE

The objective of this study is to critically analyse the Real Estate (Regulation and Development) Act, 2016 and its impact on consumers, builders, and contractors in India. The study aims to identify the strengths and weaknesses of the Act and propose recommendations for improvement.

STATEMENT OF PROBLEM

Despite the enactment of RERA, certain challenges persist in the real estate sector, including project delays, regulatory ambiguities, and the exclusion of commercial properties from the Act's purview. Additionally, the Act's retrospective application and its impact on smaller developers need to be addressed.

SIGNIFICANCE OF THE STUDY

This research is significant as it evaluates the effectiveness of RERA in addressing

longstanding issues in the real estate sector and proposes solutions for improvement. The study contributes to the existing body of knowledge on real estate regulation in India and informs policymakers, industry stakeholders, and consumers.

SCOPE OF THE STUDY

The study focuses on the Gautama Buddha Nagar region, where RERA has been implemented, and analyses its impact on consumers and builders/contractors. It examines the strengths and weaknesses of the Act and identifies areas for improvement.

RESEARCH METHODOLOGY

The research adopts a descriptive approach, utilizing both doctrinal and non-doctrinal methods. Data collection involves semi-structured interviews, questionnaire surveys, and analysis of secondary sources such as books, articles, and journals.

COLLECTION OF DATA

Primary data is collected through semi-structured interviews and questionnaire surveys, while secondary data is gathered from books, articles, and journals. The research focuses on analysing the critical aspects of RERA and its impact on stakeholders.

QUESTIONNAIRE DESIGN

The questionnaire is designed to gather insights from builders/contractors and consumers on the effectiveness of RERA. It includes closed and open-ended questions to assess their perceptions and experiences.

RESEARCH QUESTIONS

The research addresses various questions, including the regulatory mechanism for property ownership, the need for a Real Estate Regulator, the impact of RERA on the economy, and steps to improve its effectiveness.

Research Questions

1. What is the regulatory mechanism to check ownership in India?

2. Is there a need for a regulatory authority to check this mechanism?
3. What is the need of Real Estate Regulator?
4. What are the features of Real Estate Act?
5. How efficient is the working of Real Estate Act?
6. Does the escrow of 70% of the money collected from the allottees in any way effect the efficiency of the promoters?

CHAPTER 2: "DON'T WAIT TO BUY REAL ESTATE, BUY REAL ESTATE AND WAIT"

HISTORICAL BACKGROUND

The Indian Constitution empowers both the Central and State governments to pass laws on various matters. Property-related issues are provided for in the concurrent list of Schedule VII, allowing both levels of government to legislate. While there is no specific legislation on the ownership and transfer of condominiums at the central level, the rights pertaining to the transfer of property, including possession, ownership, use, and transfer of all immovable properties, are covered by Central legislation.³

However, some states such as Maharashtra, West Bengal, and Delhi have enacted legislation regarding the ownership of apartments, including:

- Maharashtra Housing (Regulation and Development) Act, 2012
- The Maharashtra Apartment Ownership Act, 1970
- The West Bengal Apartment Ownership Act, 1972
- The Delhi Apartment Ownership Act, 1986

In addition to these laws, apartment owners are also regulated through Cooperative Societies.

³ Condominiums are referred to as 'flats' or 'apartments' in India, following the British usage of the term. In this report, the three terms may be used interchangeably.

The Cooperative Societies Act, 1972, is the central legislation governing the functioning of cooperatives. Various states have their own laws dealing with cooperatives, such as:

- The Maharashtra Cooperative Societies Act, 1960
- The Pondicherry Cooperative Societies Act, 1972
- The Karnataka Cooperative Societies Act, 1959
- Delhi Cooperative Societies Act 1972 etc.

Property laws in India are governed by both the Central and State governments under the concurrent list of Schedule VII of the Indian Constitution. While the Transfer of Property Act, 1882, addresses specific transfers of immovable property, it does not comprehensively codify all aspects of property transfer. Notably, it does not adequately address the complex ownership structures of apartment owners in relation to the underlying land.

During the fourth five-year plan (1969-1974), there was a recognized need for balanced urban growth, emphasizing population control in large cities and decongestion efforts. In the 1970s and 1980s, various states enacted legislation regarding urban residents' needs, particularly concerning apartment ownership. Notable examples include:

- Maharashtra Ownership of Flat (Regulation of Promotion of Construction, State Management, and Transfer) Act, 1963
- The Maharashtra Apartment Ownership Act, 1970
- The West Bengal Apartment Ownership Act, 1972
- Delhi Apartment Ownership Act, 1986

These laws established processes for state management, promotion, and transfer of apartments, confirming them as heritable, transferable, and mortgageable properties.

The cooperative movement in India has roots in the pre-independence period, evolving in two stages: pre-independence and post-independence. Post-independence, the Planning

Commission emphasized the development of Cooperative Societies for Economic & Political Development. Post-liberalization saw a further boost in apartment ownership due to the economic stability of the Indian middle class, leading to large cooperatives being involved in real estate development, specifically in the housing sector.

SITUATION PRIOR TO RERA

The real estate sector plays a significant role in providing housing and infrastructure, but it faced challenges such as irregularity, lack of professionalism, insufficient consumer protection, and unethical practices by some builders. Consumers often fell victim to unscrupulous builders who diverted funds, leading to delays and inadequate construction quality.

Before the enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA)⁴, the real estate sector was regulated by various laws, including the Indian Contract Act, 1872, Transfer of Property Act, 1882, Urban Land (Ceiling and Regulation) Act, 1976, and Registration Act, 1908.

Other laws such as the Consumer Protection Act, 1986, the Land Acquisition Act, 1894, and the Specific Relief Act, 1963, also had implications for the real estate sector.

various states had their own laws governing real estate, including Town and Country Planning Acts and Apartment Ownership Acts. Some states had already enacted specific legislation, like the Maharashtra Housing Regulation and Development Act, 2012, and the West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993. However, with the enactment of RERA in 2016, it became the overarching legislation governing the real estate sector, superseding any conflicting provisions in other laws.

EVOLUTION OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate sector, vital for housing and infrastructure development, was largely unregulated until the passage of RERA in 2016. Despite the existence of the Consumer Protection Act, 1986, which provided a forum for consumer grievances, it was not sufficient to address all concerns in the real estate market. Hence, RERA was enacted to regulate this rapidly

⁴ Planning Commission of India, Government of India 'Chapter 19: Regional Development, Housing and Water Supply' (1969 – 1974) 4th Five Year Plan.

growing sector and ensure consumer protection, standardization, and professionalism. It came into effect on May 1, 2016.

Chronology Evolution of Events Leading To The Real Estate (Regulation And Development) Act, 2016 Coming Into Force:

June 4, 2013 The Real Estate Bill, 2013 introduced in Rajya Sabha on August 14, 2013 Bill was referred to the Department Related Standing committee on September 23, 2013 Report of the Standing Committee tabled in Rajya Sabha on February 13, 2014 and in Lok Sabha on February 17, 2014 Union Cabinet approved official Amendments based on Standing Committee report on April 7⁵, 2015 Real Estate Bill, 2013 and official Amendments referred to the select committee of Rajya Sabha on May 6, 2015 Select Committee of Rajya Sabha tabled its Report along with Real Estate the Real Estate Bill, 2015 as reported by the select Committee of Rajya Sabha for further consideration of Parliament on December 9, 2015 Union Cabinet approved Bill listed in Rajya Sabha for consideration and passing on 22 and 23 December, 2015 but could not be taken up Bill listed in Rajya Sabha for consideration and passing on 22 and 23 December, 2015 but could not be taken up

Bill listed in Rajya Sabha for consideration and passing on 22 and 23 December, 2015 but could not be taken up The central Government notified the entire Act which came into force on May 1, 2017 vide Notification No. So 1216⁶ (E) dated 19.4.2017

THE NEED FOR A REAL ESTATE REGULATOR

There is a pressing need for a regulatory body in the real estate sector similar to SEBI in the financial market and TRAI in communications. Ordinary middle-class individuals often shy away from unnecessary legal battles and prefer to maintain a distance, eagerly awaiting the outcomes. Despite the considerable demand for affordable housing in India, developers sometimes engage in unfair practices that remain unchecked due to the absence of appropriate regulations. Frequent and arbitrary changes in layout plans, manipulation of built-up and carpet areas, poor construction quality, and delays in handing over possession without valid reasons

⁵ Friends Colony Development Committee v. State of Orissa (2004) 8 SCC 733.

⁶ Emerald Court Owner Resident Welfare Association v. State Of U.P. And Others, (2012) 11 SCC. 75.

are some common issues. These problems often arise due to unrealistic provisions buried in the agreements signed by developers and buyers, which buyers rarely scrutinize.

The Real Estate Act mandates the registration of all projects of 500 square meters with the proposed regulator to protect homebuyers from unfair practices. The Act also stipulates that builders must commit to a specific timeframe for project completion and adhere to it. Failure to meet the deadline incurs penalties equivalent to the charges levied on homebuyers by the builder, thus fostering greater accountability.

However, the Act overlooks issues with municipal and other authorities who fail to authenticate projects in a timely manner, leading to project delays. It's common for developers to blame approval agencies for these delays, submitting improper or incomplete documents deliberately. The Act also fails to address concerns about possession handover timelines, leaving it open-ended based on promises made by developers, which could lead to delays due to fund diversion.

Another significant provision of the Act is the requirement for developers to maintain a separate escrow account, where 70% of the project funds are kept exclusively for that project's use, thus preventing fund diversion. Despite potential dissent from developers, the Act shifts the focus onto them, making them accountable for raising funds. Established players have access to various funding sources like bank loans, non-banking financial companies, private equity, etc., but the cost of such funding may temporarily weaken their credit profiles⁷.

The Act prohibits the sale of projects without registration with the Real Estate Regulatory Authority (RERA), ensuring that projects meet all necessary approvals and certificates before funds are raised from buyers. This provision, coupled with the requirement to deposit 70% of sale proceeds in a separate account, aims to ensure timely project delivery and prevents fund misappropriation. Moving forward, the Act is expected to instil confidence in investors and buyers, thereby reviving the real estate sector and contributing to India's economic growth. The Central government must take necessary measures to protect the real estate sector from neglect and combat fraud against buyers, thereby fostering its growth.

STATUS OF BENAMI PROPERTY

The real estate sector is vital for India's infrastructure development, providing housing,

⁷The Societies Registration Act, 1860 Section 3.

commercial, and industrial estates that benefit both individuals and the economy. However, Benami deals have been a significant source of generating black money in real estate transactions. The Benami Transactions (Prohibition) Amendment Act, 2016,⁸ aimed to curb such practices by establishing tribunals to adjudicate Benami cases and penalize offenders. Benami transactions involve properties held by individuals on behalf of others who are the true beneficiaries. This practice allows black money to be converted into white, with the actual owners enjoying the benefits while remaining hidden. Such transactions contribute to inflated property prices, fictitious ownership, and erode confidence in the lending system. The government's initiative to demonetize Indian currency in 2016 further aimed to curb black money by establishing adjudicating authorities and appellate tribunals to deal with Benami transactions. The amended Act prohibits transactions except in specific familial relationships, aiming to deter the use of Benami properties for illegal purposes.

IMPACT OF RERA ON GST

Before the implementation of the Goods and Services Tax (GST), the construction sector was subject to various indirect taxes like Central Excise Duty, VAT, and Service Tax, leading to a cascading effect on prices. However, under the GST regime, the tax structure has changed significantly. For completed projects, no GST is levied if the project has obtained a completion certificate. For projects under construction, there has been confusion regarding tax liability, with developers sometimes asking for full payment before GST implementation to avoid higher taxes afterward. However, the Ministry of Finance clarified that construction projects under GST would have a lower tax incidence compared to the previous regime.

Under GST, developers can avail full input tax credit, reducing the tax burden on construction materials. However, stamp duty remains outside the purview of GST, and clarity is needed regarding its treatment. Projects under affordable housing schemes continue under the existing tax structure.

IMPACT OF RERA ON FDI

The real estate sector plays a crucial role in fulfilling housing and infrastructure needs in India. However, the lack of regulation has led to concerns about professionalism, standardization, and

⁸ Consumer Protection (Amendment) Act, (1993).
Consumer Protection Act, 1986, Section 2 (1) (o).

consumer protection. The implementation of RERA is expected to address these issues, increasing transparency, governance, and investor confidence. Surveys indicate optimism about RERA's impact, with expectations of increased transparency reducing litigations and attracting more investments. As most states have notified RERA rules, its implementation will likely have a significant impact. The depositing of sales proceeds in separate accounts and the provision of penalties for non-compliance aim to ensure timely project completion and boost consumer confidence. Ultimately, the real estate sector's revival depends on regulatory clarity, policy liberalization, and increased investor confidence, all of which are expected outcomes of RERA implementation.

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