

Impact of RERA on Indian Economy: A Critical Analysis

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ABSTRACT: The need of regulation of the Real Estate Market arose from the increasing malpractices in the real estate market where the consumers had to bear a lot of risks such as delayed delivery, title of the property, quality of the facilities provided, and necessary changes etc. before they decide to purchase. The Real Estate Regulation (Development and Authority) Act, 2016 came up with a primary objective to restore the faith of consumers by regulating the business practices and transactions in real estate sector. This whole standardization procedure involved establishment of Real Estate Regulatory Authorities at state level for facilitating the development of the real estate sector and a customer oriented procedure wherein the interests of the customers cannot be harmed. Now the risk borne by the customers is transferred to the developer. Provision of an escrow account, no advertisements allowed without registration with RERA, punishments and compensations in case of delayed delivery, etc. left no room for developers to absorb the other costs incurred by them so they may be transferred on the customers by the way of price increase. Instead of increasing the sales, price hike of 40 per cent within a week of enforcement in some states, led to the decrease in total sales, which were already soaring due to Demonetization. There were other challenges faced by the States in establishing the Regulatory Authority as per the central Act and a lot of controversy occurred in respect of penalties, wherein some states did not enforce the penal provision in their subsequent Act and Rules for enforcement of RERA.

I. BACKGROUND

The Real Estate Sector plays a catalytic role in fulfilling the demand for housing and infrastructure in the country. While it has expanded over the years, it has been highly unregulated coupled with lack of standardization and adequate measures for protection of consumers interest. The major problems faced by the consumers was the unavailability of complete and authentic information in respect of the property they were dealing into, lack of accountability on the part of developers and builders and absence of effective regulation. The irregularities affecting the sector were delay in project completion, diversion of funds collected from buyers; renegeing on contractual commitments by both the developers and the buyers; and constraints in financing and investment opportunities available to the sector, thereby affecting its long-term growth.¹ Thus, the need of regulation of real-estate market was never more than it was now: to ensure transparency and fix accountability.

II. KEY OBJECTIVES OF RERA

RERA primarily aims to regulate and promote the real estate sector, ensure transparency in transactions of real estate project in an efficient manner, safeguard the interests of consumers and introduce a customer-friendly system, establish an adjudicating mechanism for speedy dispute redressal by segregating the issued under the jurisdiction of the Appellate Tribunal. The salient features of the Act are as follows:

¹ Arun K. Misra, Nagendra Goel, *Legislation for the Real Estate Sector*, Economic and Political Weekly, 49, 54-55. (June 2014)

- It establishes a centralized Real Estate Regulatory Authority, a separate adjudicatory authority and constituting a Central Advisory Council for the same. It further directs the states to make rules in accordance with this Act for the regulation of the real estate market.
- The Transfer of Risk-bearing from Customers to Developers by the inclusion of liability of promoters, constructors, developers, real estate agents, etc.
- The Act lays out a process for the real-estate Transactions wherein the provision of maintenance of a separate bank account for every project is compulsory out of which only 30 per cent of the total can be appropriated. The rest 70 per cent will only be used in the same project.
- No sale or advertisement of any real estate project is allowed without prior registration with the concerned authority. Provision of mandatory disclosure of all project details e.g. from all accounts, audits and reports etc. to details of the promoters, developers, agents, engineers, architect and the approving authority, etc., and published on one website pertaining to the real estate projects.
- It clearly defines the rights, duties, and functions of all the parties to the project.
- To curb malpractices, provisions of punishments and penalties for offences committed by promoters, real estate agents, allottees, and companies.
- The act overrides all the State legislations inconsistent with the central Act, and also delegate power to the States to draft their own real-estate regulatory law in concurrence with the central Act.

III. LITERATURE REVIEW

In *Revisiting the Real Estate Bill, 2013*², the authors compare all three Real-estate Bills out of which two are central bills – first one proposed in 2011 and the other introduced in Parliament in 2013, which also was passed by the assembly and had been enacted with effect from June 2017. The third bill was Maharashtra Housing Regulation and Development Bill, introduced in Maharashtra State Assembly in 2012.

The authors juxtaposed all three bills and strikes out differences and similarities in all three. Prominent similarities drawn out were the common objective of compulsory registration of all the real estate projects which are above a certain size. Another common intention carried out by all three bills was of provision of the Appellate Tribunal having powers similar to that of a civil court. Although, the bills promise transparency, but the reluctance can be spelt out for introduction of meaningful controls.³ The differences along with the discrepancies were demarcated in respect of the definition of “apartment”, “carpet area”, issue of compulsory

² Sahil Gandhi, Shirish B. Patel, Vaidehi Tandel. *Revisiting the Real Estate Bill, 2013* Economic and Political Weekly, 48, (2013, November) Issue No. 48.

³ *Ibid.*

registration of agents and other intermediaries and the said Appellate Tribunal whether or not should be bound by the Code of Civil Procedure, 1908.

Although all the three bills are promising transparency, regulation and quick redressal for real-estate disputes, there is a lot of procedural ambiguity pointed out by the authors. For instance, there is a provision of punishment with respect to making false statements of bookings, or the right to call for the production of records by the buyers during the course of a trial; leaving ambiguity in terms of availability and accountability of the registered sellers or developers and so on.

The authors further compare and contrast the proposed legislations with other countries. Majority of these countries only concentrates on regulation of real estate agents, and either regulate developers implicitly or do not regulate them at all. Although aiming at the protection of consumer's interest and promoting the industry, the authority leaves the industry to function freely with minimal restrictions, guiding them to conform with some stipulated standards and primarily regulating licensing of all the intermediaries functional in the real estate market. Some of the regulations also cover rental premises.⁴ According to the author, the regulation of developers is of prime importance in India, where properties are sold before they are built. Generally, in India, the market is more concentrated in transactions in new construction than in existing units. The primary need is of the regulation developers, along with the regulation of the real estate agents in the long run for the ready-to-occupy second sales.⁵ The Real Estate Bill introduced in 2013 borrowed the best of all the proposed regulations, having the closest semblance with South African regulatory mechanism, which has also been substantiated in the Real Estate (Regulation and Development) Act, 2016 in Chapter VI⁶.

In authors' opinion, there should be a central Act as a model act, guiding the states to enact their own legislations or should be made applicable to only those states that haven't enacted any legislation in this field, as the Real Estate is enlisted in concurrent list, open to legislation by both states and the Union. The authors advocate penalties and punishments of imprisonment, which in my opinion are not feasible. It should be open for the court to decide as per the case while ascertaining the damages for such consumers.

There are recommendations proposed for how the Real Estate Act "ought to be", most of which have been satisfied by the current enactment. For instance, the provision of revealing all the RERA registration details along with stipulated details related to the property concerned can be only advertised after such estate has been

⁴ *Supra* at 2. p 39.

⁵ *Ibid.* p. 37

⁶ Real Estate (Regulation and Development) Act, No. 16 of 2016, 2016, Chapter IV talks about the establishment of the Central Advisory Council to be chaired by the head of the ministry dealing with housing, consisting of members from other concerned central ministries, state governments, and regulatory authorities, to advise the central government on matters concerning implementation of the law; to make recommendations on major questions of policy; protection of consumer interest; and to foster growth and development of the real estate sector.

registered under RERA. The customers' interests have been given primary importance. The act also ensures a system of speedy dispute resolution wherein many terms have been defined clearly under the Act such as the architects, engineers, contractor, the real estate agent, purchaser, developer, etc. Other ambiguities and difficulties in terms of taxation were supposedly eliminated by the GST.

In *Legislation for the Real Estate Sector*⁷, the authors pointed out the factors leading to introduction of RERA and a need for consolidation of law for the regulation of the market and the parties concerned as well as protection of the rights and interests of the consumers; aiming to facilitate the growth and functioning of the real estate market. RERA, being a sector-specific regulatory enactment intends to regulate the business of sale and purchase of real estate properties. Moreover, it also addresses the concerns of both buyers and promoters in the sector, is both a preventive and curative legislation with powers to enforce specific performance based on contractual obligations; providing for fast-track adjudicatory mechanism, including imposition of penalties, interest and compensation for contravention on all the parties involved in the transaction.⁸ The authors further explain the salient features of the bill while critically analyzing them, and the same has been enacted as proposed in the Bill. The advantages and benefits as described further by the authors is more of an ideal scenario, focusing on the objectives of the Real Estate Bill, and simply fails to cull out the discrepancies. While considering the ideal perspective, the authors fail to analyze the implications on the real estate market altogether.

IV. IMPACT ON INDIAN ECONOMY

The three policies that were introduced together were Demonetization, GST and RERA which had multiple effects on the Indian economy at that time. Demonetization hit the middle class and the lower class the most. After six months of demonetization, RERA was put into effect which again affected the real estate market detrimentally. Implementation of RERA with the aim of regulating the real estate market turned out to as an impediment to its growth since its inception.⁹ RERA directly affected the small-scale developers and contractors badly in the metropolitan areas due to the lack of employment opportunities for the laborers as a lot of proposed development of real-estate projects were either closed or adjourned until it were registered with the RERA. The shift of liability and increased accountability of the builders in terms of delivery of the property was balanced by the developers by a unanimous increase in the price of the estates up to 40 per cent more than their previous values within a fortnight in Mumbai, 30-40 per cent in Bangalore, and about 25-30 percent in

⁷ *Supra at 1.*

⁸ *Supra at 1. p. 57.*

⁹ Shubhra Tandon, *With implementation of RERA, Challenges persist*, THE FINANCIAL EXPRESS, May 15, 2017. Retrieved from: <http://www.financialexpress.com/industry/withimplementationofrerachallengepersist/668536/>

Delhi; although the predicted rise in price was not more than 10 per cent.¹⁰ Such a sharp rise in the prices of estate coupled with withdrawal of small, unorganized firms due to lack of competence as well as lesser trust due to lesser accountability added barriers in the real estate market. Moreover, the purchasing capacity was hit by demonetization thus there were even lesser buyers in the market. The situation arose wherein the sellers could not possibly sell the property at lower prices due to limited incentives and buyers were not willing to buy property because of their income hit by demonetization or the decreased liquidity of the estate and was simply waiting for the sellers to decrease the price. Thus the real estate market was stagnant.

The Act further complicates the mechanism by its ambiguity. For instance, although the Appellate Tribunal has the jurisdiction as similar to that of a civil court, the same is not bound by the Civil Procedure Code, 1908. With no definite procedure defined in the central Act, the Union leaves it on the States to make rules in consonance and comply with the Central Act guidelines within a span of one year. Furthermore, according to the general convention, the Central Act overrides all the State legislations in case of a conflict, but here the statement with respect to the over-riding effect is puzzling –

“Provided that where a State has enacted a law for regulation of the real estate sector, and such State law is not inconsistent with this Act, then, the State Government, to that extent, may not apply the provisions of this Act in the State.”¹¹

It is hard to make out what “not inconsistent” means. Does it mean there is no difference between the two Acts? In that case, how does it matter which of the two (identical) provisions you apply? Or does “not inconsistent” mean that if both Acts cover the same ground, “may not apply” means the state government can choose whichever of the two legislations it prefers to apply in respect of any particular clause?

V. CONCLUSION

The Real Estate (Regulation and Development) Act 2016 was introduced with a motive of regulation and promotion of the unregulated real estate sector in order to protect the interests of both buyers and sellers and other parties to the transaction and facilitate dissemination of information to the parties. India scores low on the regulatory index due to lack of proper enforcement mechanism in the real-estate sector. It also aimed to establish a separate adjudicatory mechanism as proposed under the bill, to resolve disputes faster between the promoter and the buyer or the buyer and the real estate agent.

Nonetheless, any legislation for the real estate sector will have to continuously evolve, like any other regulatory law, with the changes in the economy. The real estate industry in India was in dire need of effective regulation

¹⁰ R. Sharma, *RERA impact: New launches down 41 per cent in real estate sector*, THE HINDU. June 17, 2017. Retrieved from: <http://www.thehindubusinessline.com/news/realestate/reraimpactnewlaunchesdown41percentinrealestatesector/article9752450.ece>

¹¹ Real Estate (Regulation and Development) Act, 16 of 2016, 2016, Section 91

towards consumer protection, and the current Act has been drafted and enforced by keeping in mind the characteristics of Indian real-estate market, all measures inculcated are taken from the best regulatory systems of the world. As the Act is in its initial stages, it is natural for the anomalies to occur in the course of execution, and with constant upgrading as per the changes in the economy, the Act will achieve its purpose in totality.

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