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# Interplay between the “Consumer Protection Act” & the “Real Estate Regulatory Authority Act”

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## ABSTRACT

*“Consumer protection Act, 2019” is a legislation which protects the consumer’s interests and is consists of group of laws which was designed to ensure consumers rights. The main objective or the purpose of this law is to provide all-round and a better protection and safeguarding their rights and ensures speedy redressal of their grievances.*

*“The Real Estate regulatory authority Act, 2016” is legislation which supervises all the activities carried out or in by the real estate sector which was framed to take out the transparency in the sector of real estate and to regulate all the activities under it with a strict hand.*

*This paper focuses on the areas and the changes which has taken place after the enactment of “the Real estate regulatory authority Act, 2016” secondly, it studies as to what extent does the newly enacted law has reduce the scope of the consumer protection Act, 2019 Thirdly, it addresses the question whether RERA is actually a better forum than the consumer forum which is common for all types of consumers?*

*Earlier, Real estate was largely an unregulated sector where investors or homebuyers Used to pool or invest their money but due to the lack of unbound laws these innocent buyers or investors were fooled by the builders, delay in possession was the common issue and due to lack of laws or any legal protection which was hardly there in order to protect the homebuyers who had to visit cumbersome civil courts for redressal of their grievances which takes heavy expenses and time. Therefore, “the consumer protection act” was enacted and came into existence which provided them with some relief but was not time bound, inexpensive and speedy nor it was in specific for the sector of real estate.*

*Therefore, in order to avoid all these unfair and expensive legislation there came a complete change in the scenario, the government came with a new legislation and enacted “Real estate regulatory authority act, 2016” which was strongly in favor of homebuyers and to provide them with inexpensive and a speedy justice.*

*Pursuant to this new legislation, a new issue came up i.e. which was the correct forum for the homebuyers to approach – “RERA” or “Consumer Court”. Therefore, this paper addresses this question and seeks to state the inter-relationship between the two Acts.*

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## **I. INTRODUCTION**

On May 1, 2016 the legislation came into force only with 59 sections out of 92 notified by the government and the remaining provisions in the year, 2017. Being one of the most leading revenue generating sector of India it was extremely important and a much needed legislation in order to keep an eye on the transaction dealt by the builders or “real estate” firms.

“Real estate” sector is one of those sectors of India which has lacked accountability, transparency, protection of investors and timely handing over of the possession. The downturn in the sector has led to chaos for the home buyers so in order to overcome all the grievances in the year 2016 the government passed a much needed new legislation of the sector “Real estate regulatory authority act”.

At present, the reliability of “the real estate sector” is low due to delay in completion of projects and non-fulfillment of handing over the possession. Therefore, the legislation regulates the unregulated “real estate” sector to fill the gaps between the investors and a “real estate” lobby.

Through the newly passed legislation government has framed an effective regulatory mechanism to boost the growth. Also, minimized the exploitation of consumers/buyers and diversion/streamline usage of funds.

Prior to the “Real estate regulatory authority Act”, 2016 legislation the homebuyers only had an option of approaching national consumer dispute redressal forum or civil courts to seek reliefs and to address their grievances. However, with an enactment of “Real estate regulatory authority Act” aggrieved home buyers now have an access to a better forum for remedial actions.

## **II. BRIEF ABOUT THE “CONSUMER PROTECTION ACT”**

According to the “Consumer Protection Act, 2019”, “consumer” “means any person who buys goods or avails any type of services for which consideration has been paid or promised, or under any system of deferred payment and includes any user or such goods aside from the one that buys such goods for consideration, paid or promised or partly paid or partly promised, or under any system of credit, when such use is formed with the approval of such person, but doesn’t include an individual, who obtains such goods for resale or for any commercial purpose.”<sup>2</sup>

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<sup>2</sup> Mr. Hemant shah, what is CPA, Jagran Josh (April 21, 2020, 9:30 PM) <https://www.jagranjosh.com/general-knowledge/meaning-and-features-of-consumer-protection-act-2019-1578557665-1>.

This Act was enacted to safeguard the interests of the consumers, provide, less formal, inexpensive and faster access to justice. The Act further enlists the objectives with which it was drafted, which includes better protection of the interest of consumers. To enforce this objective, the Act makes provision for the establishment of “Consumer Councils” and Forums. “Consumer Forums” are established for settling the consumer disputes and follows the following hierarchy in ascending order: -

- “District Forum – It entertains consumer complaints, where the value of the subject-matter does not increase Rs. 1 crore.”<sup>3</sup>
- “State Commission – Consumer complaints with pecuniary value ranging from Rs. 1 crore to Rs. 10 crores are filed in this forum”.
- “National Commission – It has the pecuniary jurisdiction beyond Rs. 10 crores in consumer complaints.”

In the “real estate sector”, the forum for settling disputes is “National Consumer Disputes Redressal Commission” In cases of delayed possession, the forum has pointed out that “the cause of action on the builder continues till the time allotment of the site or full refund of money if refused to allot” which means “that to honor his/her service agreement, irrespective of the period of delay”, the builder has to abide by the agreement and complete the assignment on time. Secondly, it was observed that “each property developer is liable to execute an agreement for sale and a failure to do so can be a cause of action against the builder in the “Consumer Court”.

Under the Act, if there is any delay in payment of any installment, interest would be chargeable at specified rate according to the agreement, but if the construction is not scheduled, the builder is not made accountable for any financial liability. Eventually, it is the buyer who bears the burden of interest liability. Further, many cases of delayed possession and deficiencies in construction of flats have been reported. False and deceptive advertisements are one of the most popular ways of misleading the consumer. Under a “consumer dispute redressal forum”, if a builder is found guilty of non-compliance, he/she is punished with imprisonment. However, it gives no respite to the consumer imprisoning the builder will only add to the delay in the consumer’s possession, escalating his/her misery.. Therefore, in order to protect the buyers, a growing need to bring a transparent government body was felt, to act as a check for the developers and consequently, the Legislature passed

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<sup>3</sup> All you need to know about the jurisdiction under CPA, Mondaq (April, 23 2020, 3:30 PM)  
“<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/876600/the-consumer-protection-act-2019-an-overview>”.

“the Real Estate Regulatory Authority Act (RERA)” in 2016.

### **III. BRIEF ABOUT THE “REAL ESTATE REGULATORY AUTHORITY ACT”**

In March 2016, the Parliament passed the legislation called “Real Estate Regulatory Authority Act (RERA)” wherein, it is the duty of the authority to look after the under-construction projects. The objective of the Act behind focusing on the ‘under-construction phase’ was to curb the swindling activities, which are mainly prevalent during this phase. .

Prior to the passing of the Act, the “real estate sector” was highly unregulated in India. When a consumer wished to file a complaint against a developer, he/she would have to go through the lengthy and cumbersome process of civil or “consumer courts”, which are already overburdened.<sup>4</sup> Further, “absence of standardization and lack of suitable consumer protection has constrained the healthy and orderly growth of the industry.” After the passing of the Act, the buyers/consumers will no longer have to worry anymore because buyers can reach the forum easily under the Act. Additionally, the act makes it compulsory for all the builders, where the land exceeds “500 square meters,” to register themselves with “RERA” before launching or even before advertising their project. Non-compliance of this provision attracts a “maximum imprisonment of 3 years or penalty of up to 10%” of the total project cost. Developers are mandated to maintain a separate account of 50% of “the money collected from a buyer to meet the construction cost of the ongoing project as it will put a check on the general practices of developers”. This will prevent them to divert buyer’s money for starting a new project instead of completing the ongoing one, for which the money had already been collected. This will enable the construction to be completed on time.

The Act is beneficial not only to the consumers but also the builders.<sup>5</sup> Firstly, “it proposes to impose penalty on allotter for not paying the dues on time”. For this the builder will also have an opportunity to approach the regulator in case there is any issue/grievance with the buyer/consumer. But the builders believe that the bill was heavily stacked against them and renders them liable even if there is delay on the part of the company or a builder. Only a consumer or a buyer is eligible to knock the doors of the “real estate regulatory authority (RERA)” for redressal, which aims at ensuring transparency through the requirement for disclosure of architects, contractors, engineers and other involved parties in the development of the project along with the existing parties in the ongoing project. Secondly, the builders are

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<sup>4</sup> What is RERA, Housing (April 30, 2020,10:45 AM) <https://housing.com/news/rera-will-impact-real-estate-industry/#>.

<sup>5</sup> All you need to know about RERA, BankBazaar (May 11 2020,02:30 PM) <https://www.bankbazaar.com/home-loan/rera-act.html>.

also bound by the “rules and regulations” of the “real estate regulatory authority” for ensuring transparency by submitting all the original documents for all the projects they carry out, they will also have to focus on maintaining the quality and they must also rectify any kind of issue faced by the consumer/buyer within 6years of purchase of a property.

#### **IV. DOES RERA REDUCE THE SCOPE OF “CONSUMER PROTECTION ACT”?**

In order to answer the question, we need to look at “section-3” of “the Consumer Protection Act, 2019”, which says that the provisions of this section shall be “In addition to but not in derogation” of the provisions of any other statute for the time being in force which <sup>6</sup>means that if any other statute comes or exists which supports or is beneficial for the consumers, then it will not be in derogation but will be in addition to the law of this act. Further, “Preamble to the Act suggests that it is to provide better protection for the consumer and their interests”. For example: - under consumer protection act, if a consumer of real estate wants relief from the issues/grievances, the only relief would be a regular suit.

However, for compensation or other reliefs they consumer/buyer may have to approach Real estate regulatory authority forum. The newly passed legislature has also framed “quasi-judicial tribunals/forums” as an alternative system of adjudicating consumer issues/grievances. The protection provided under “the consumer protection act” to consumers is “in addition to the remedies available under any other statute”. It does not override the remedies under another law/statute but it provides an additional or alternative remedy.

Hence, it can be seen that “the real estate regulatory authority act(RERA)” is in addition to the “consumer protection act” and Under “RERA” there are certain guidelines which are formed by the government where the buyer of a flat or a property can file his/her complaint and remedies for a real estate home buyer if we talk about the jurisdiction for filing a complaint to the “consumer court”, the home buyer will have to determine the pecuniary jurisdiction and file the case depending upon the subject matter and compensation claimed whereas under “real estate regulatory authority board (RERA)” a home buyer can file a complaint under the authority of the state where the property is situated.

The jurisdiction regarding the appeal from decisions of the “RERA” will lie with the High Court. Hence, it can be said that neither act overrides the provisions of the other nor both the acts must be construed harmoniously by the courts.<sup>7</sup>

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<sup>6</sup>All you need to know about “RERA” in India, Indian express (May2,2020,4:30 PM) <http://indianexpress.com/article/what-is/what-is-rera-and-how-will-it-help-homebuyers-4635705/>”.

<sup>7</sup> Scope of “consumer protection act” Soolegal, (May,4 2020,5:00 PM) “<https://www.soolegal.com/news/delhi-hc-to-decide-does-rera-exclude-the-jurisdiction-of-consumer-protection-act-for-homebuyers>”

## **V. SCOPE OF “REAL ESTATE REGULATORY AUTHORITY BOARD (RERA)”**

Under the “real estate regulatory authority” board there is a strict time frame for deciding the matter by appellate authority, but in “consumer courts”, there is no such time limit. In order to file a complaint or to seek redressal a buyer/consumer has to approach the “consumer courts” when although the flat/apartment purchased by them has been delivered by the builder, there is any deficiency or any other defects in the same and the consumer holds the completion certificate, then such cases will not come under the jurisdiction of the “real estate regulatory authority board.”<sup>8</sup>

The aggrieved party will have to approach the “consumer court” which is “National consumer dispute redressal commission”. In cases of projects where the certificates of completion are not granted and the possession is not with the buyers, the buyer (consumer) can approach the “real estate regulatory board (RERA)” and for other legal remedies during prudency are that in case a person has approached “consumer court” for relief, then a consumer cannot approach any other authority for an kind of grievance which states that a consumer cannot file two cases at the same time in different forums or any appropriate authority.

Under the “Real estate regulatory authority act (RERA)”, forum specifically takes an undertaking from the person who I making a complaint at the time of making a complaint that the buyer/consumer has not filed any other complaint in addition which clearly infringes the rights of the complainant to claim a consolation. There are certain other rights of an allotter, for example to know the state wise time schedule of completion of the project, to claim the refund of the amount paid along with interest and compensation if the promoter fails to give the possession of the property, and to take the possession of the property within two months of issue of an occupancy certificate for the property.

“Real estate regulatory authority Act (RERA)” also makes it compulsory for all the builders who are developing a project where the land exceeds 500 square metre to register with the local state regulatory authority before launching or even advertising their project and also prohibits the builders to sell and the non-compliance invites a punishment up to maximum “imprisonment of 3 years or fine up to 10% of the total project cost”. Further, the developers are also bound to upload all the project details such as approved layout of the plan, timeline, cost etc. The developers who fulfill these mandates would only be permitted to advertise their project to prospective buyers.

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<sup>8</sup> Mr. Bradley Dunseith, Scope of “RERA”, India Briefing (May,3 2020,1:30 PM) <https://www.india-briefing.com/news/the-rera-act-an-explainer-14275.html/>

Ongoing under construction projects, both the residential and commercial building are also covered under the newly passed legislation, the best thing is that the agents and “Real estate” brokers also falls under it whose main motive is to provide with comfort and ease to the home buyers.

## **VI. IS “RERA” COMPLAINT REGISTRATION BETTER THAN THE “CONSUMER FORUM?”**

“Real estate regulatory authority” has provided security and welfare to buyers/consumers against the malpractices of the builders related to property, whereas prior to the commencement of the Act, consumers/buyers had to file a complaint before “National consumer dispute redressal commission”.

Firstly, “Real estate regulatory authority act” deals only in the cases which are related to the properties and a complaint can be filed by any of the agencies or by the complainant himself/herself, whereas, under consumer protection act only registered agencies are allowed to do so. Therefore, “Real estate regulatory authority act (RERA)” is a specific legislation, while “Consumer Protection Act” relates generally to all consumers. Secondly, under “consumer protection act” it used to take around 5-6 years for seeking redressal of consumers/buyer’s grievances or any kind of adjudication of dispute by “consumer forum” but now after the enactment of the new legislation “(RERA)” on an average it just takes couple of years for grievances. Therefore, speedy disposal of cases is another merit of “Real estate regulatory authority Act”.<sup>9</sup>

Thirdly, “Real estate regulatory authority” exercises its own power and control by deregistering the firms, imposing fines, putting them in defaulters list and orders to complete the project by using state government’s guidelines and passes orders appropriately. “Real estate regulatory authority Act (RERA)” lays down various measures to complete the project by empowering the authority regarding the same to keep home buyers away from the lurch, by penalizing builder’s forum also prevents and discourages the builders from undertaking any further projects when they do not have requisite funds. While, the “national consumer dispute redressal commission” has its own power to execute orders, in comparison of regular suits or orders passed by any various forums making the execution a steady affair since scope of consumer act is very limited.

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<sup>9</sup>Mr. Devul, Difference between “RERA & CPA”, Legal service India ([May.28.2020,10:00AM](http://www.legalserviceindia.com/legal/article-303-rera-vs-insolvency-code-vs-consumer-forum-home-buyers-flat-purchasers-remedy.html))  
“<http://www.legalserviceindia.com/legal/article-303-rera-vs-insolvency-code-vs-consumer-forum-home-buyers-flat-purchasers-remedy.html>”

The only relief which the buyers/consumers are particularly interested in is the completion and handing over possession of their properties, so conclusively “Real estate regulatory authority (RERA)” is a better and a less time consuming and an effective remedy where buyers/consumers may easily seek relief and can claim injunctions for their damages.

## **VII. CONCLUSION**

For regulating the “real estate” sector “the Real estate regulatory authority act” is a piece of landmark legislation imposing time bound obligations on promoters. By bringing a fair play consumers or homebuyers rights are intended to be protected.

Thus we can conclude that in a highly unregulated sector “Real Estate regulatory authority Act” was a much needed and an awaited legislation, so as to protect the buyers from frauds and from delay in possession of property and to provide a grievance redressal mechanism effectively. The newly enacted legislation will not only bring transparency and accountability but will also help the consumers or the property buyers to get a possession easily and timely or file complaints against the builder or any “real estate” firms.

The consumers or home buyers may even expect early and fair judgments and can seek a relief without much difficulty within the framework of three months unlike before the act when it took years and years to solve a case. “Real Estate authority act” is beneficial for both the builders and consumers. But it has added some uncertainty for “the Real Estate sector” because it has not been enacted completely. This act has finally ended up being an extension of “the consumer protection act” where it helps to address the growing need for transparency in favor of consumers as well as builders.

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