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Status Quo of RERA in Indian Real Estate

ANAMYA SHARMA¹ AND KSHITIJ PASRICHA²

ABSTRACT

Delay in providing possession, lack of transparency between the promoter and buyer, with embedded corruption and many other factors was the bitter reality of the Real estate sector in India. This is the second most emerging sector in India in terms of employment and market share. On 1st May 2016, an act named Real Estate Regulation and Development Act, 2016 was passed with the aim to remove hurdles in buying properties and safeguarding the rights of the consumer. Under this Act, a Real Estate Regulatory Authority was established for regulating the multi-facet problems.

The real estate sector was like an unruly horse which was moving in all directions. But the final nail in the coffin came with the formulation and implementation of RERA. This paper aims to build a contrast in the pre and post RERA India. In the pre-RERA India, there was no exclusive forum to deal with the problems of the real estate consumers, other than consumer courts or civil courts, which owed the delay grappling the issues. The Indian contract act, 1872 and the consumer protection act, 1986 used to deal with the real estate sector problems. This paper envisages to explore the impact of REAL ESTATE REGULATORY ACT, 2017.

Keywords: Real Estate, RERA, Buyers, Rights, Redressal, Transparency, Possession.

I. INTRODUCTION

Real estate sector plays a catalytic role in fulfilling the needs and demand for housing and infrastructure in the country and is an important pillar of the economy.

The term real estate means real or physical property which includes the property, land, the air rights over the land and the underground areas below the land. The word real came from the latin *root res* or things. Some say it comes from the word *rex* which means royal as in the ancient time kings used to own all the lands in their kingdom. Over the passage of time, it was the need of the hour to make some regulatory authority to keep an eye on the real estate sector as the rights of buyers were infringing and promoters were not fulfilling their duties towards their consumers or buyers. In the view of the above, parliament enacted Real Estate Regulation and Development Act, 2016 with an aim to protect the interest of real estate buyers and

¹ Author is a student of Amity Law School, Noida, India.

² Author is a student of Amity Law School, Noida, India.

establish a mechanism for speedy redressal to the disputes or conflicts among the promoters and buyers. An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. The RERA covers both the commercial as well as residential segments and requires registration of all the projects above 500 sq. meter in size and till to eight apartments with the real estate regulatory mechanism. The Centre has drafted the rules for states as well union territories for the regulation of RERA. Other than developers who are intended to sell any plot, apartment or building, they also need to register themselves under section -3, chapter II ³of REAL ESTATE REGULATION AND DEVELOPMENT ACT ,2016.

RERA is applicable to all builders and developers under section-3, chapter II, with some exception⁴ where no registration of real estate shall be required with the authority. Exemptions are allotted to the developers or the builders with some clauses provided in the RERA.

II. PROJECTS WHICH ARE COVERED UNDER RERA ARE AS FOLLOW:

1. Residential and commercial projects including plotted development.

³ Real estate regulation and development act, 2016, sec.3, cl.1, Prior registration of real estate project with Real Estate Regulatory Authority.

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

⁴ RERA, sec.3(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation. —For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

2. Projects which measure more than 500 sq. Meters or 8 units.
3. Those projects which are without completion certificate before commencement of act.
4. The project is only for the purpose of renovation / repair / re-development which does not involve re-allotment and marketing, advertising, selling or new allotment of any apartments, plot or building in the real estate project, will not come under RERA.

The introduction and implementation of RERA in 2017 has brought a vast number of changes in the Real estate sector of the country. Though it has paved the way for further regulation of the real estate sector, but its purview has been kept limited and has its own limitations. We will be discussing a contrasting character of RERA. The major focus of RERA was to promote the approach of “*Caveat Venditor*⁵” that literally means Cautious Seller. The principle of caveat Venditor cautions that the seller is responsible for any problem that the buyer might encounter with a service or product. The introduction of RERA had a major impact on builders, buyers, brokers, and the economy of the country.

III. PURPOSE⁶ OF RERA, 2016

Following are some motives and resolutions taken by RERA, 2016-

- To establish the Real Estate Regulatory Authority for regulation and promotion of the Real Estate sector.
- To ensure transparency in projects.
- To protect the interest of consumers in the Real Estate Sector and to establish an adjudicating mechanism for speedy dispute redressal.
- To provide proper information about the Builder.
- Provide recommendations to appropriate Government on in matters relating to the development & promotion of real estate sector.

RERA gave the veil of protection to the buyers and safeguarded the interest of many to promote healthy practices related to the dealing of real estate in the nation. The following are the major advantages because of the introduction of RERA.

⁵ MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050.

⁶ <http://lawzilla.in/uncategorized/commencement-certificate-and-completion-certificate-important-rea-judgments/>

- Any project with over 8 apartments or size of over 500 sq. mt.⁷ is required to be registered under RERA, the builder/ developer is required to register each stage of construction with the authorities. Prior to the implementation of RERA, big builders used to pre-launch a project for which they used to raise capital. It is like the two sides of the coin since the builders cannot raise capital until and unless they register the project under RERA. This will lead them to raise capital at a higher rate which will in turn harm the consumer by the raised prices of the property. Though if such provision were not made then it would have given the option to the builder to commit a fraud. Registration of each stage was to ensure the proper development of the realty project, delivery of the property to the consumer in time and promoted transparency in the process of developing the building. Furthermore, this provision also restricts the promoters to advertise before the successful registration of the project.

In Brig. (Retd.) Kamal Sood vs M/S. DLF Universal Ltd⁸. This case raised some interesting issues before the National Consumer Dispute Redressal Commission (NCDRC), for instance: Can a builder give alluring advertisement promising delivery of possession of the constructed flat to the consumer within the stipulated time, and, subsequently, on his failure, turnaround and contend that as governmental permissions, such as, approval of zoning plan, layout plan and schematic building plan, were not given, the delay in construction should not be the ground for grant of compensation to the consumer? The NCDRC observed that the aforesaid practices were unfair trade practice on the part of the builder to collect money from the prospective buyers without obtaining the required permissions such as zoning plan, layout plan and schematic building plan.

- RERA also mandated the builders to register critical information related to the project. This information includes:⁹
 - Layout
 - Promoter details
 - Land Title status
 - Statutory approval status

⁷ RERA, SEC.3 (2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required— (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases.

⁸ Brig. (Retd.) Kamal Sood vs DLF Universal Ltd., III (2007) CPJ 7 (NC)

⁹RERA, Sec.4 (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;

- Agreements
- Details of the brokers
- Architects and contractors

The registering of the above stated information binds the builder to provide for the specifics related to the property as promoted in the various advertisements and will have a binding affect over the builder.

In Dilip Kumar Jayaswal vs M/S Housing Development & Infrastructure Ltd The builder alleged in the booking form area is shown as 930 sq. Ft. which is built-up area and, in the agreement, area is shown 61.80 sq. mtrs as carpet area while the buyer was not aware of the same. The court held that It was contended that in the booking form area was shown as 930 sq.ft. whereas in the agreement by playing fraud area is mentioned as 61.80 sq.mtrs which is equivalent to approximately 618 sq.ft. and hence, complainants are entitled for 930 sq.ft. area.

RERA also put up the condition over the builders to take consent of the 2/3rd of the allottees of the project before making any alteration in the layout of the project.

*In Mr. Pankaj Agrawal v. DLF Gurgaon Home Developers Private Limited*¹⁰, the CCI took note of the development agreement mentioning about change in its construction plans without giving any option to the apartment buyers and termed it as abusive.

Prior to RERA, every builder had a different way to advertise the area of the property for the sale. RERA standardized the way the real estate property was sold.

Builders compute the price of a property as follows: Cost of Property = Carpet Area x Rate per sq. ft.

Builders must inform the home buyers about the carpet area, built-up area, and super built-up area. It will make the cost calculation more transparent as the home buyers will now know what they will get. Developers would also not be able to manipulate the calculation carpet area to increase the prices. Earlier buyers used to charge separately for the super-built-up area from the customer but RERA, included the super-built-up area (verandah etc.) in the carpet area. So, now the buyers need not pay separately for super-built-up area.

¹⁰ Case No. 13 & 21 of 2010 and Case No. 55 of 2012.

- Formation of the Reserve Account is yet another important step to regularize the real estate sector. The formation of reserve account for the construction of the project ensures that the builders use the money allotted to a particular project for the construction of the same and do not diverge the funds to another project. This has been a major reason for the delay in possession of various properties. The consumer tends to keep on waiting for the project to be complete and the builder keeps postponing the delivery of possession due to the funds that were diverged. The builders are required to park at least 70% of the project¹¹ receivables in a separate account whose information needs to be handed over to the authorities for proper channeling of the funds. The funds in the reserve account ensures that the builder does not go insolvent, also promotes transparency, and avoid disputes, as the authorities are there to have proper check on the builders.

The Jaypee Infratech Ltd. Case is a classic example of how insolvency can lead to delay in possession. Jaypee Infratech Ltd. Promised to deliver around 32,000 unit in 2011-2012 but was able to deliver only 12,000 units due to the lack of funds.

- **RERA also created a standard model for sale proceeds of the real estate properties.** Earlier, builders/promoters used to add various penal provisions whose violation lead to the consumers paying hefty fines to the builders. Such one-sided agreements, which favored the builder in any or all scenarios have been dictated to be non- satisfactory and termed improper and illegal. RERA created a standard model of sale and reduced the unnecessary details, paperwork created by the builders to harass the consumer by invariantly taking money as fines.

In Belaire Owners' Association v. DLF Limited, HUDA & Ors., the CCI (Competition Commission of India held that DLF Limited had resorted to malpractices. DLF's right to change the layout plan without consent of allottees, DLF's unilateral power to make changes in the agreement and the power to supersede without any right to the allottees.

¹¹ RERA, Sec.4(2) (1)(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

DLF was held liable for abuse of dominant position under the Competition Act, 2002 and was slapped with a penalty of Rs. 630 crores. The CCI in the case also directed DLF to suitably modify conditions imposed on its buyers.

In Hindustan Petroleum Corporation Ltd. Vs. Pink city Midway Petroleum reported in (2003) 6 SCC 503 ¹²the Supreme Court held that Section 8 of the 1996 Act in clear terms mandates that a judicial authority before which an action is brought in a matter which is subject matter of an arbitration agreement to refer such parties to arbitration, and that the language of the said Section is unambiguous. The Supreme Court also held that the Civil Court discharges administrative function and, therefore, it cannot go into the question whether the Arbitral Tribunal has jurisdiction to decide the said issue.

- **RERA gave the buyers exclusive rights against the defects¹³.** The defects related to property, title and possession was another stone that was turned. If at any time after the proceed of the sale and transfer of the possession of the property, if the buyer finds any defect in the title of the property, the buyer can raise the claim from the builder and if it is not proved otherwise, RERA binds the builder to fulfil the claim of the customer. Also, if within 5 years after the possession of the property is transferred to they buyer, the buyer finds any structural defect, defects due to workmanship, quality, provision or service; such defect will be rectified by the builder within 30 days at no extra cost. RERA binds the builder to develop the real estate property to develop without any defects. Even so, if there is any defect remaining it provides the builder to rectify any such mishappening.
- RERA also provide the right to be compensated to the buyer¹⁴, in case the buyer wishes to withdraw from the project, provided that there was a delay on the part of the builder to hand over the possession to the buyer. In case, the builder is unable to hand over the project on time, then the buyer has the following to options:

¹² Hindustan Petroleum Corporation Ltd. Vs. Pink City Midways Petroleum (2003) 6 SCC 503.

¹³ **Provisions of Section 14 (3) of the RERA Act, 2016**

¹⁴ RERA, Sec. 18 . Return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- The buyer at any time after the proposed date of possession can opt-out or withdraw from the project and the buyer is entitled to the complete compensation of the project.
- The buyer can seek compensation for the delay in terms of interest that is to be paid by the builder in lieu of every month the possession is delayed.

*In Vishal Arya v. Unitech Limited– In this case, the Complainant was aggrieved by the inordinate delay caused in completion and possession of his flat booked with Unitech. The Complainant in the case had deposited the entire amount of flat with Unitech and according to the Agreement the possession of flat was assured by March 2009. However, the construction of flat had not yet even started. Aggrieved by this, the Complainant prayed either for immediate delivery of flat or refund of the entire amount along with interest and litigation charges. In reply, Unitech contended that the delay was caused by force majeure circumstances which was beyond its control. In the case, Commission was of the view that there was a sheer deficiency in the services of Unitech and they were only enjoying the fruits of deposited amount and on account of mental agony suffered by the buyers, the **Commission directed Unitech to refund the entire amount along with interest @10% p.a. and also to pay Rs. 2.50 lac as compensation to the Complainant for mental agony.***

- RERA also makes it important to create a “Resident Welfare Association” within the specified time or within 3 months when most of the units have been sold.¹⁵ This is done to ensure that there is no fraud related to the day-to-day functioning of the real estate projects. There have been many occasions where the builders were committing frauds using the maintenance facilities of the projects. Now, these maintenance facilities will directly go under the supervision of “RWA”, thereby, giving more powers to the residents of the projects than to the builder over the control of general maintenance of the projects.
- The builder is required to take all the clearances related to the project before the sales proceed¹⁶. RERA makes this a mandatory liability over the builder. The advertising of

¹⁵ RERA, Sec.11 (4) (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable.

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.

¹⁶ RERA, Sec.4 (1) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:— (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

the project before taking appropriate clearances from the government is deemed to be declared illegal and a penalty has been imposed for the same.

In Smt. Krati Rungta, W/O. Sri Vikas ... vs M/S. Aliens Developers (P) Ltd., the developer without taking approval from the government for conversion of agricultural land into residential and commercial land, took the booking amount from the buyer and thereby was late due to the same reason in the delivery of the possession. The court held the builder guilty of not taking the approvals prior to the sale proceed of the units of flat and made the builder pay the appropriate compensation.

- Another most important step mentioned under RERA is the formation of Real Estate Regulation Authority, ¹⁷I.e., a special grievance body for the matters and disputes pertaining to the real estate sector. Prior to RERA, civil courts and consumer protection courts were the forums to address the issues. Civil Courts and Consumer Protection Courts are already having shortage of the members of judiciary and have several cases piled up. This creation of a different body will help reduce the burden over the courts, also the efficient and speedy hearing over the matters and disputes.

IV. RECOMMENDATIONS

- A mandatory provision pertaining to a third-party inspection at the time of handover of the possession should be there to reduce the frauds and better channeling of the agreement between the builder and the buyer.
- The defect liability under RERA related to the structural defects should be the same for 5 years but from the date of completion of the project and not from the date of the

¹⁷ RERA, Sec.20. Establishment and incorporation of Real Estate Regulatory Authority.

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act;

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority;

Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be;

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act;

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

possession, this would protect the builders from having excess liability of the units that are sold/ handed over to the allottee.

- The option given to the allottee to walk out of the project with the suitable compensation should be from case-to-case basis instead of a blanket provision.
- Special rules pertaining to the projects before the introduction of RERA should be made.
- The language of the Act must be suitably amended to encourage the completion of the project.

V. CONCLUSION

RERA has been a positive step in the direction to regulate, increase transparency and accountability and setting up efficient forum for grievance redress, for the different issues pertaining to the real estate sector. It successfully talks about various provisions to safeguard the buyer/ prospective buyer from getting into any fraud. But it fails to recognize the issues pertaining to the projects that are ongoing, completed, or stuck due to clearance or financial issue. It fails to consider the procedural delays due to various governmental bodies and for the projects for less than 500 sq mt. or 8 units. In conclusion, RERA is the first step of the ladder to create an efficient and transparent process of the real estate sector.
