CRITICAL ANALYSIS OF THE RERA ACT

-Vaidehi Surange (Author)

4th Year Law Student

Symbiosis Law School, Pune

ABSTRACT

India's Real Estate (Regulation and Development) Act (RERA), passed in 2016, is a major reform for the nation's real estate sector. This abstract assesses the impact of RERA on consumer protection and developer accountability and assesses its overall potential for transformation of the real estate sector. RERA has promoted transparency and has created formal mechanisms to resolve disputes. Yet, implementation differences across States inhibit effectiveness in the same way across the country, and compliance by developers remains an obstacle. There is also a persistent absence of real, systematic dispute resolution protocols. The analysis provides an account of RERA successes and the things that must change to fully accomplish its objectives for a transparent, accountable, and consumer-focused real estate market in India. The Act applies throughout India except Jammu & Kashmir, and applies to all privately owned residences, buildings, and plots that are intended for residential or commercial use.

INTRODUCTION

Background of RERA

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Prior to 2016, India's real estate market had very little regulatory oversight and therefore had a range of systemic issues. In 2009, the Ministers for National Housing Development and Municipal Administration met, to discuss a variety of issues, such as affordable housing, land-use policies, financial empowerment of local bodies, and slum-free urban development; however, they also began discussing ways to draft a Real Estate Bill to deal with land valuation issues and urban development regulations.

On May 1, 2016, the Indian Government implemented the Real Estate (Regulation and Development) Act (RERA) for comprehensive regulation of the previously unregulated sector. On October 31, 2016, the Ministry of Housing and Urban Poverty Alleviation promulgated General

Rules. The overall goals of RERA are to protect consumers from agents of malpractices', uniformity of standards for developers, transformation of the real estate sector.

Need for RERA

The purpose of RERA is to protect property owners, to promote transparency, and to promote accountability for persons and entities engaged within the real estate sector. While the Act represents a major improvement, a detailed analysis shows that there are benefits and outstanding issues that require attention as the sector is reformed and calms down.

RERA has established that a Real Estate Project comprises of new residential development, redevelopment of an existing building, or land division into plots for sale. The Act obliges the registration of Projects above 500 square meters. Some of the features of RERA include: compulsory disclosure of details regarding the project; standardized contract documentation; carpeting area parameters; advance payment limited to 10% of the buying price; and 70% of buyer's money must be deposited into an escrow account. The measures aim to enable completion of the Real Estate projects in a timely manner with penalties for delays.

The Act encompasses both residential and commercial projects, thereby ensuring much more transparency, accountability and fairness in the sector. RERA aims to enhance transparency and improve the interactions between consumers and developers to ultimately restore consumer confidence in the real estate market. Ultimately, both of these factors restore consumer confidence in the real estate market. The project registration requirement and the strict information disclosure requirements mean that any buyer should be in the best possible position to make an informed choice. Third, the escrow provision helps to protect consumer investments. These reforms combine to address many of the traditional inadequacies regarding project delays, false advertising, unfulfilled commitment, and other issues. Thus RERA is an essential and necessary first step toward a more credible and efficient real estate industry in India.

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IMPORTANCE OF RERA

Implementation and Impact of RERA

The enactment of RERA was a huge step forward for one of India's biggest revenues-generating sectors. RERA provides a regulatory platform where risks for developers and buyers can be reduced. The Act imposes several important stipulations, which included:

- **Registration:** All real estate businesses and agents must register with RERA, which impacts over 76,000 entities around the country.[1]
- **Escrow:** With regard to new projects, must deposit at least 70% of all money received from the buyers into a different escrow account with the legal guardian (the buyer); and for continuing projects, there may also be at least 70% of unused money in an escrow or otherwise it would be wasted (again, pursuant to the covenant above).[2]
- **Disclosure of Information**: Buyers have the right to complete as well as ongoing disclosure of information concerning a particular project and also can obtain copies of all documents relating to the purchase.[3]

These initiatives were crucial to restoring confidence into the Indian real estate industry.

RERA had become necessary because of the findings of the Standing Committee on Urban Development in the 2013-14 period. It illuminated the Government's in ability to keep up with the growing housing, infrastructure, and service demands of the nation, despite as many as 130 schemes aimed to address housing and affordable housing. Typically, a swirl of factors led the Central Government to introduce RERA:

- **Elicit market conditions**: Many private participants were conducting standard business practices and making profit regardless of whether their actions were fair or purposefully exploitative.

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[1] Tunia Cherian, *New realty Law in force from today"*, the India business line (30.04.2017), https://www.thehindubusinessline.com/news/real-estate/new-realty-law-in-force-from-today/article64269506.ece

[2] Arpit Srivastava, Importance of RERA (Real Estate Regulatory Act) and its possible effect on Real Estate sector, (12.05.2017), https://blog.ipleaders.in/importance-rera-real-estate-regulatory-act-possible-effect-real-estate-sector/"

[3] Mahima Shah, *Real Estate (Regulation and Development) Act, 2016: A critical analysis*, (06.08.2021) https://articles.manupatra.com/article-details/Real-Estate-Regulation-and-Development-Act-2016-A-critical-analysis.

- **Financial burden of clients**: Clients had an unprecedented access to loans from PEMB and other alternative private lenders, however the borrower was faced with high-interest payments per month and high overall costs in an unregulated environment.
- **Absences of recourse**: The consumer lacked any viable mechanism to hold a builder or developer accountable or whether they were providing sufficient knowledge about the project.

These three streams were necessary for RERAs objectives of accountability, transparency, and fairness, to restore reasonable health and confidence into the industry.

KEY OBJECTIVES

Objectives and Importance of the RERA Act

The Real Estate (Regulation and Development) Act (RERA), 2016, effectively came into being as a response to systemic weaknesses in real estate sector issues, as well as providing both buyers and sellers with improvements in transparency and accountability across players in the real estate sector in India. The Act gave consumers a regulatory framework, which both protected consumer rights and assured adherence to trade standards for all players in the industry. Most importantly, the Act's objectives are based on legislation in the Act:

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1. **To Ensure Timely Completion and Possession of the Project**
   - Problem: Persistent delays in the completion of projects has created financial and emotional mismanagement on buyers.
   - Solution (Section 18): If the promoter does not give possession after the agreed delivery date, the buyer has the option to;[4]
     a) Exit the project and be refunded all money along with interest, or
     b) Remain within the project and be compensated interest for the number of months of delay until possession is provided.
2. **Establishing Fund-use Guidelines**

[4] Real Estate (Regulation and Development) Act, 2016), S. 18.

- Problem: the use of buyer payments diverted to unrelated projects, essentially absconding with buyers' funds.
- Solution (Section 4(2)(i)(D))[5] : Promoter must deposit in a separate escrow account 70% of those amounts realized from buyers, to be used exclusively with regard to the project.[6]

3. Establishing Transparency and Rights of Buyers

- Problem: Buyer exploitation due to non-disclosure and accountability.
- Solution(Multiple Sections including Section 19) :
    - Right of Information: A buyer can demand project information at any point.
    - Right to Inspect: A buyer can inspect the progress of construction.
    - Right to Documents: A buyer is entitled to take all the documents upon possession.
    - Right to Refund: A buyer can request a refund if the project is not complete per the agreement.
    - Right to Possession: A buyer is entitled to possession following full payment and as agreed upon at the onset of the project.

4. Conceptual Definitions for Resolving Ambiguity

- Problem: Terms "carpet area", like others, were so ambiguously defined, that they allowed unfair sale of real estate.
- Solution (Section 2(k)): "Carpet area" is defined as "net usable floor area", and it excludes external walls, service shafts, balconies, and verandahs but includes internal partition walls;[7]

5. Regulatory and Appellate Authority

- Problem: There is no authority to deal with grievances, and enforce compliance;
- Solution (Section 20 & 43):
    - Provides the real estate regulatory authority (RERA) for resolving real estate disputes promptly and[8]

[5] Real Estate (Regulation and Development) Act, 2016), S. 4(2)(I)(D).
[6] Dhawan, S, *Will India become a home buyers' heaven? All you need to know about RERA*. Economic Times, (30.04.2017) https://economictimes.indiatimes.com/news/economy/policy/will-india-become-a-homebuyers-heaven-all-you-need-to-know-about-rera/all-you-need-to-know-about-the-rera-act/slideshow/58442444.cms.
[7] Vinay Thyagaraj, *Carpet Area under RERA*, Tax Guru, https://taxguru.in/corporate-law/carpet-area-rera.html. (19.06.2021).
[8] Sharma, *S. Impact of RERA on Indian Economy: A Critical Analysis*, International Journal of Law Management & Humanities, 1-7 (2018).

- Provides the real estate appellate tribunal for hearing appeals from RERA decisions.

6. **Penalties for non-compliance**
   - Problem: no deterrent against malpractice;
   - Solution (Sections 59-71): The Act provides penalties for promoters, agents, and buyers who violate the Act.

By tackling these fundamental issues the RERA seeks to provide an equitable, transparent, and accountable real estate market to protect the interests of buyers and achieve ethical conduct by developers and agents.

IMPACT OF RERA AND RELATED REFORMS: AN ACADEMIC STRUCTURE

Impact on Developers

- Enhanced Compliance and Financial Discipline: RERA requires developers to register projects and provide comprehensive information, including project timelines and legal documents, for both promotion and sale. Developers must also deposit 70% of their project funds into an escrow account, which obligates them to spend that sum on the particular project, guaranteeing there is no diversion of funds elsewhere. These obligations have imposed financial discipline and transparency, alongside the increased level of operational burden faced particularly by smaller developers.
- Industry Consolidation: Increased scrutiny has also encouraged consolidation, whereby more substantial, more financially secure developers are thriving, while smaller and less well organized players have been forced out of the market or merged with bigger players.
- Deterrents and Accountability: Developers also now face significant deterrents, including imprisonment and fines for failing to comply or deliver on projects despite existing deadlines.
- Short term Disruption: The collective impacts of RERA, GST, and demonetization created an equally adverse environment, where projects were already underway, causing disruption to cash flows, not complying became particularly difficult, leading to stalled projects and significant job loss in the construction sector.

Impact on Buyers

- Improved Transparency and Safety: RERA has brought about improved transparency in the real estate sector because it mandates that developers must disclose comprehensive project information such as timeline, approvals, and legal status.
- On-Time Possession and Recourse: Buyers now have legal provisions that guarantee they will obtain possession of their properties on time. If the developers fail to deliver possession on time, buyers are entitled to compensation and/or refunds, dependent on the provisions within RERA, as well as legal action against the developers.
- Improved Consumer Confidence: The increased transparency and accountability has helped restore consumer confidence in the sector, making real estate transactions more secure while mitigating fraudulent and misleading practices.
- Faster Dispute Resolution: RERA has provided fast-track grievance redressal mechanisms that enable buyers to resolve disputes far more promptly.

Economic Disruption Timeline

Year	Reform/event	Key impact on real estate sector
2016	Demonetization	A liquidity crisis in cash-driven sector; lower buyers' purchasing power and sales
2017	Implementation RERA	An increase in compliance burden for developers; industry consolidation; buyers are better protected
2017	Introduction on GST	An overhaul of the indirect taxation system; confusion and operational challenges for developers initially.
2020	COVID-19 Pandemic	Stalled construction and sales; worsening downturn in the sector; forced to rely on savings

2023+	Gradual recovery	Some stability in the sector; increase of buyer and investor confidence; more effort and focus on compliance and quality

THE LACUNAS

Digital Literacy and Online Registration

A primary challenge to RERA's implementation is the digital divide experienced across the country. The transition from offline registration platforms to online registration platforms was not straightforward, particularly for those without pre-existing knowledge of computers and digital processes. Digital illiteracy is prevalent amongst many stakeholders across the industry, and in particular in rural settings where reliable access to the internet and the digital literacy necessary to access websites belonging to the state RERA, to lodge complaints to a state RERA, and to research project approvals are lacking. This digital gap restricts the usefulness of RERA's online systems and undermines access for a considerable portion of the public.

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Uneven State Implementation

RERA is a central law, but the implementation of it falls to state bodies, so the implementation varies noticeably across the different states. Some state portfolios were established as fully functional online portals where processes can be performed electronically, while others did not have any digital systems at all. In several states, builders must still attend the RERA offices in person to get updates on their project; and several states have not even developed a RERA portfolio or portal57. Unbalanced state implementation leads to the variation of consumer protections and regulatory oversight that occurs depending on where a project is located, going against the idea of national consumer standardization intended in the Act.

Public Awareness and Accessibility

Low levels of public awareness of RERA persist, especially outside major urban centers. In a Magicbricks survey, it was shown that 74% of buyers did not know that prior to purchasing a housing unit the project was required to be registered under RERA. The lack of awareness is even more pronounced in rural areas where knowledge about the provisions under RERA and consumer rights is not adequately communicated58. Most buyers and small developers do not have access to information about their rights and responsibilities, nor are there local RERA offices to seek advice or register complaints. Thus, a sizable portion of the population remains disconnected from the protections that were intended to be enshrined in the Act.[9]

CONCLUSION

The Real Estate (Regulation and Development) Act has the potential to enhance transparency and accountability in India's real estate sector for the benefit of both homebuyers and developers. However, while RERA as a framework is strong, it has not proven its value yet as it relies on states' implementation of it, as well as lack of citizens' awareness of RERA. There are specific recommendations to help remedy this situation:

- Create a Central Digital RERA Portal: A single national portal could help unify the registration, compliance, and grievance redressal processes, minimizing inconsistencies between states and providing ease of access for all stakeholders.
- Conduct Compulsory Awareness Programs: National campaigns, particularly with regional language engagement for rural citizens would help inform buyers, developers, and agents about their rights and responsibilities as related to the RERA.
- Ensure Performance by the States: The central government should outline strict performance guideline timelines for the states to complete the process of getting RERA registered authorities and digital functionalities online, under strict guidelines.

These recommended steps can enhance RERA's potential to promote orderly urban real estate development while protecting citizens' rights that support the larger goals of urban equity and inclusive development.

[9] A year after *RERA Act introduction, changes in realty sector negligible*, Newindianexpress, http://www.newindianexpress.com/business/2018/may/01/a-year-after-rera-act-introduction-changes-in-realty-sector-negligible-1808532.html (01.05.2018).