

# The Real Estate (Regulation and Development) Act, 2016 – An Overview

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## Introduction:

Over the past few decades, the demand for housing has increased manifold. Despite Government's efforts through various schemes, it has not been able to cope up with the increasing demand. Taking advantage of the situation, various private players have taken over the Real Estate Sector, who are completely non-sensitive towards the interests of consumers. Contracts with unfair and one sided conditions have left the consumers helpless and the current existing laws have failed to check the largely unregulated Real Estate and Housing Sector in India. Consequently, consumers are forced to sign on dotted lines with absolutely discriminatory clauses giving the developers unbridled and unreasonable power. Besides, consumers are also unable to procure complete information or even enforce accountability against erring developers in the absence of an effective mechanism. The need for a legislation to regulate Real Estate Sector was felt badly for establishing an effective mechanism to enforce accountability against the Real Estate Sector and providing expeditious adjudication machinery, which ultimately led to passing of "Real Estate (Regulation and Development) Act, 2016".

The Bill received the assent of the President on 25<sup>th</sup> March 2016, thus making it a law. It will come into effect on a date to be notified by the Central Government.

The primary purpose of the Act is to restore the confidence of consumers in the Real Estate Sector by introducing transparency and accountability therein. It will also help in accessing the financial and capital markets in the long term goals.

The Real Estate (Regulation and Development) Act, 2016 aims to regulate and promote the real estate sector by regulating the transactions between buyers and promoters of residential as well as commercial projects. It also has provisions for establishing a regulatory authority at state level called "Real Estate Regulatory Authority" (RERA) for monitoring the real estate sector and adjudicating disputes relating to Real Estate Projects. The main aim of the Act is to protect buyers and help investment in Real Estate Sector.

## Main Objectives:

- enhance transparency and accountability in real estate and housing transactions;
- providing uniform regulatory environment to ensure speedy adjudication of disputes and orderly growth of the real estate sector;
- boosting domestic and foreign investment in the Real Estate sector;
- promote orderly growth through efficient project execution and standardization;
- offer single window system of clearance for real estate projects.

## Salient Features of the Act:

- Establishment and incorporation of Real Estate Regulatory Authority (RERA) at every State in India for monitoring and adjudicating disputes relating to real estate projects (Section 20).
- Establishment of fast track dispute resolution mechanism for settlement of real estate disputes through dedicated adjudicating officers and Appellate Tribunal (Section 43 & 44).
- Registration of all real estate projects is made mandatory with RERA having territorial jurisdiction over such projects. No sale in a real estate project can be made without registration of the project with RERA (Section 3). RERA can also refuse to register a project, if the same is not compliant with provisions of the Act. Registration of a project can even be cancelled, in case, RERA receives any complaint and the same is found to be correct after inquiry.
- It is mandatory for a promoter to upload details of proposed project on the website of RERA, including details of registration, types of apartments or plots booked, list of approvals taken and the approvals which are pending subsequent to commencement certificate, status of the project, sanction plan, layout plan etc. (Section 11).
- RERA shall approve or reject the application for registration within 30 days, failing which it shall be deemed to have accepted the application for registration (Section 5).
- Any promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a buyer without first entering into a written agreement for sale with such person and register the same. (Section 13)
- It has been made obligatory for the promoters to deposit 70% of the money collected from buyers for a particular project in a separate account that will cover the cost of land and construction and the same can be withdrawn only after certification from an engineer, an architect and a chartered accountant. [Section 4(2)(I)(D)].
- It is now obligatory for all the promoters to obtain insurance in respect of title of the land and buildings and construction of every project. (Section 16).
- The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from at least 2/3<sup>rd</sup> no. of allottees, except the promoter, and without the prior written approval of RERA [Section 15(1)].
- Both promoter and buyer are liable to pay equal rate of interest in case of any default from either side (Section 2 (za)(i)).
- The promoter shall compensate the buyer in case any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as

provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force. (Section 18)

- An aggrieved person may file a complaint with RERA, as the case may be, for any violation or contravention of provisions of this Act or rules and regulations made thereunder against any promoter, buyer or real estate agent. (Section 31)
- During the pendency of enquiry, RERA can restrain any promoter, buyer or agent from continuing with the act complained of. (Section 36)
- A person aggrieved by any direction or decision or order made by RERA or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter. (Section 43)
- If a promoter continues to violate the provisions of Section 3, he shall be punished with imprisonment for a term which may extend to three years or fine which may extend to ten percent of the estimated cost of the project or both [Section 59(2)].
- If a promoter fails to comply with orders or directions of RERA, he shall be liable to a penalty, which may extend up to five percent, of the estimated cost of the project as determined by the Authority (Section 63).
- If a promoter fails to comply with the orders or directions of the Appellate Tribunal, he shall be punished with imprisonment for a term which may extend to three years or fine, which may extend up to ten percent of the estimated cost of the project, or with both (Section 64).
- Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. (Section 69)
- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which RERA or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. (Section 79)

## Conclusion:

The Real Estate Act, 2016 is one robust step towards regulating the highly unregulated real estate sector and bringing more transparency to real estate transactions. It was a long due measure which has now finally been implemented. However, a closer scrutiny of the provisions of the Act would reveal that the Act has certain loopholes, which ought to have been filled while enacting the same and which may make the consumers liable to suffer. Some of such loopholes are as follows:

- The Act only covers new projects and the projects where completion certificate is not issued on the date when the Act is notified, but not the existing projects i.e. the projects that are ongoing

as on date or where partial completion certificate has been issued, completed immediately before the Act is notified, or stuck as on date for any reason;

- The Act doesn't make any provision for selling flats/ apartments on carpet area basis, leaving a scope for promoters for manipulation;
- Under the Act, it is not mandatory to register projects, which are smaller than 500 square meters and 8 apartments. It could lead to the exclusion of a large number of small housing projects, which also have great share in the market.

However, despite the abovementioned loopholes, the Act will benefit both promoters as well as buyers. It is an initiative to protect the interest of consumers, to promote fair play in real estate transactions and to ensure timely execution of projects. With a clear intention of protecting the interests of buyers, the Act helps the consumers to safeguard themselves from any foul play or exploitation by promoters. The legislation is considered to be a game changing step in the real estate sector.



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