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# **PROTECTION OF HOMEBUYERS INTERESTS** **UNDER RERA: A CRITICAL STUDY**

AUTHOREDE BY - SONU KUMAR

## **ABSTRACT**

Protection of interest of homebuyers is of utmost priority of the Real Estate (Regulation and Development) Act, 2016. With the enactment of RERA, 2016, the previously unregulated sector which was moving on the evasive and aggressive approach of the promoter hitting hard to Indian economy comes under the scanner of specialized body i.e RERA, thereby, protecting the interest of the homebuyer. The timely intervention by the RERA has done away with initial bottleneck created by the builder, thus safeguarding the interest of the homebuyer. As per RERA, builders have mandatory to quote to the carpet area and not in the super built area. This will help the customer in the sense that he will not have to pay for an unusable area.

## **BRIEF INTRODUCTION**

The real estate sector in India is one of fastest growing sector in Indian economy but it is not able to balance the demand supply continuum. There is special recognition of real estate sector in global economy. Every country focuses on it since it is related to housing and infrastructure of the country depicts the living standard of the people. Indian Real Estate Sector has been expanded exponentially making it the second largest player in the world economy. There is stiff rise in demand of home, which real estate market has not been able to cope in spite of various Government schemes and which private players takes advantage of it. There were several issues like long delay in giving possession, fund deviation hampering the real estate sector. There were no preventive laws with respect to consumer protection and it was basically unregulated. Therefore, in essence, there was need of “one nationwide” act like RERDA, 2016 to develop “home-buying” ecosystem throughout country. This uniform laws help to boost real estate sector and to entice more foreign direct investment into this sector. It will also pursue to prevent ‘distortion’ and 'structural abuse of power' in this sector.

The passing of RERDA has brought cheers among the homebuyers who have to fight legal battle against heavy weight corporate giant for getting possession of the property. From the outset, RERA would bring transparency and fairness into the purchasing process by protecting the

interest of homebuyer. Developer- promoter will be under surveillance of regulatory body with regards to financial management, as well as their deliverance of the end product. The RERDA aims to establish Real Estate Regulatory Authority to protect the interest of homebuyer by providing speedy disposal of the disputes arising in the real estate industry. The sole purpose of passing this act is to protect the interest of millions of homebuyer who has been a victim of aggressive builder and fighting a legal battle for so many years. That, said, for any new law to be effective and sustainable, effective policing and timely enforcement must work in tandem. The real estate sector has been largest source of siphoning of black money.

### **THE EVOLUTION OF THE LAWS RELATING TO HOMEBUYERS**

The evolution of laws relating to home buyers start with the enactment of the Consumer Protection Act, 1986. Usually home buyers file complain before the consumer forum for deficiency in service by the developer. However after the enactment of the RERA home buyers file complaint with real estate regulatory authority and adjudicating officer. RERA has provided dedicated forum for redressal of disputes under real estate sector. In India every state had its own law to regulate their real estate business but RERDA is a centralized law to regulate real estate industry. The RERA has brought much needed transparency and accountability to this sector. RERA has made compulsory registration of the real estate projects as well as to display data and information on the RERA website. This will certainly help the home buyers to make informed choices while purchasing an apartment.

The enactment of the Insolvency and Bankruptcy Code (IBC) in the Year 2016 has provided additional remedy to the home buyers under which they can file complaint to the National Company Law Tribunal (NCLT) in the event of default committed by the developer. Under IBC home buyers is now recognized as creditors and therefore in the event of default made by the developer they can initiate liquidation proceeding against real estate companies. But for the initiation of the liquidation proceeding a threshold limit has been imposed under IBC whereby an application for initiation of corporate insolvency resolution process shall be filed jointly by not less than one hundred of such creditor in the same class or not less than 10% of the total number of such creditor in the same class. But this provision of threshold limit has raised concerned to file a suit as financial creditor being diluted. Therefore IBC has provided additional remedy in the sense that after having exhausted their remedy offered to them by RERA, They can approach to NCLT for liquidation of real estate companies.

It is the duty of the Tribunal to assist the home buyers in attaining the threshold limit prescribed under IBC. Home Buyers can file class action suits under Order-8 Rule-1 of the Civil Procedure Code, 1908 before the tribunals. The Tribunal can give public advertisement to home buyers to become a party in the above mentioned class action suits. The Tribunal can admit application without fulfillment of threshold limit under IBC in his discretionary power.

### **DISPUTE REDRESSAL MECHANISMS PROVIDED IN THE RERA**

The objective of the RERA is to provide speedy and efficient dispute redressal mechanism for protection of interest of homebuyer. Before the commencement of this act homebuyers usually approach consumer forum for redressal of their dispute. But after the commencement of the act, RERA has established specialized body i.e Real Estate Regulatory Authority (RERA) and Adjudicating officer (AO) for resolving all disputes between buyer and builder. But there is no arbitration clause in provided in the act for settlement of disputes.

The purpose of this Act is to regulate the real estate industry, protect innocent home buyers, and speedy and cost effective redressal mechanisms. This Act has been welcomed by the real estate customer, whose money has been stuck up without getting possession of the property. The real estate sector has been mostly unregulated except for a few laws like Consumer Protection Act regulating this sector. Taking advantage of this unregulation, various stakeholders like the builders take advantage of it by not providing the possession on time and diverting the fund for some other purpose.

Before the enactment of the RERA, many buyers usually file complaint and received some remedy from general law the Consumer Protection Act, 1986('COPRA'). Consumer forum provide remedy for deficiency in service by developer for delayed possession of flat. Despite this, builders willfully delayed the litigation for years without giving possession to the homebuyers<sup>1</sup>. In other cases, builders while entering into contract with homebuyers generally insert arbitration clause in standard form of contract which buyers in lurch without any remedy since buyers has to expend which is an expensive business and buyer is not having full understanding of arbitration. The Government of India while seeing the hardship faced by the buyer and for regulation and development along with purpose of protecting the interest of homebuyers and for setting up

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<sup>1</sup> 1 E.T. Realty, Homebuyers Can Now Move NCDRC Directly against a Builder, October 13, 2016, available at <http://realty.economictimes.indiatimes.com/news/regulatory/homebuyers- can-now-movencdrc-directly-against-a-builder/54823235> (Last visited on January 13, 2017).

dedicated adjudicatory forum for redressal of real estate dispute passed the act. Thus inspite of regulation of the real estate sector, this act provides speedy dispute redressal mechanisms for the protection of innocent buyers by setting up two adjudicatory forums i.e., the Real Estate Regulation Authority ('RERA') and the Adjudicating Officer" ('AO') for regulation and management of this sector.

The key objective of this Act is to provide a dedicated specialized body for redressal of all disputes concerning this sector. The present Act has established the Real Estate Regulatory Authority for the timely disposal of all disputes concerning this sector. Prior to the enactment, consumers of the real estate sector approach Consumer Forum, although settled disputes stiffed the litigation for a long time. As per the Consumer Protection Act, the Consumer, first of all, have to approach the district forum, state forum, and finally, a national forum thus delaying the remedy and making the process economical, and burdensome. Taking advantage of this the builders usually adopted the policy of tiring out the customer in the hope of meager settlement and withdrawal of legal claims. Most builders, especially those regarded as large conglomerates, recruited specialized legal counsel to design unfair contracts, and as a matter of business, incorporated arbitration clauses to dissuade buyers from filing lawsuits, which worsened the condition.

To curb this menace and to protect the innocent buyer from aggravated developers RERA Act has established special adjudicatory body i.e Real Estate Regulatory Authority for solving all disputes pertaining to real estate sector.<sup>2</sup> The Act mandated the regulatory authority to dispose of the matter in a time-bound manner and has also provided 60 days' time for adjudication of appeal by the Appellate Tribunal. This ensures speedy disposal of cases and simultaneously reduces time lagged in consumer forums. The function of the RERA is not only to adjudicate the cases, but also to include regulation, development and management of the real estate sector. The RERA under Sections 12, 14, 18 and 19.provides for the appointment of an Adjudicating Officer for the purpose of settling disputes along with amount of compensation to be provided to the homebuyers for the default of developer. This power of awarding compensation by Adjudicating Officer will go in long way in maintaining discipline in the real estate sector. Thus, As a result, the RERA effectively establishes the RERA and the AO as two distinct forums for the redress and enforcement of buyers' rights. The RERA can be contacted for RERA Act infractions, while the

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<sup>2</sup> The Real Estate (Regulation and Development) Act, 2016.

AO can be contacted awarding compensation. The Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016 (the "Rules") and 31(1) of the REA" make it clear that the procedures before the two forums are independent and separate. The Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016 (the "Rules") and 31(1) of the REA" make it clear that the procedures before the two forums are independent and separate. .It is worthy to note why the legislature would create two separate forums in a single enactment especially when Section 72 point out the factors to be taken into consideration while awarding compensation by the adjudicating officer to the aggrieved homebuyers.<sup>3</sup>

### **BENEFITS OF HOMEBUYERS**

The Act has been passed with objective of resolving the conflict between buyer and builder in a faster and time bound manner. The Act has provides several right to homebuyer such as right to right to transparency in measurement, payment structure, completion time, and penalties for delays or legal issues. The act gives sufficient clarity to homebuyer in regard to area of measurement, refund of money, speedy trial and financial discipline. RERA have given now given several option to dissatisfied homebuyer for speedier action under RERA, 2016, IBC, 2016 along with COPRA, 2019. The options lie with homebuyers to go to NCLT, RERA, and Consumer Forum. However, it would be judicious for homebuyers to approach RERA or Adjudicating officer under RERA since RERA is specific legislation dealing with real estate matter and provide compensation or refund of money in a time bound manner. The Act candidly provides penal provisions for violations committed by the builders/agents under RERA against the homebuyers. The penalty include the revocation of registration or fine or imprisonment, depending on the nature of offenses committed.

The primary objective of the RERA is to provide time bound and cost effective justice to the homebuyers, but the Act has provided two adjudicatory forum for redressal of dispute which will at a time create an issue of conflict of jurisdiction between two bodies thereby will defeat the very purpose of act to decide the dispute in time bound manner. For example it is the bounden duty of the developer to make promise in regard to date of handing over the possession of the apartment during the course of registration of the apartment. In case developer fail to keep to his

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<sup>3</sup> Section 72 (provides that: "While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.").

promise and do not give possession to the homebuyer then buyer can file complaint to the authority for providing possession to the property as well as for compensation for loss caused to him.<sup>54</sup> Addition to Section 61 of the REA's penalties, the builder may also get further remedies in the form of restitution .for contravention of the provisions of Section 4. Therefore, the bone of contention between buyer and builder is regarding failure to give possession on time to the homebuyers. Delay in giving possession was major concern which new enactment address by providing compensation to the homebuyer. However, homebuyer can file complaint before regulatory for breaching the promise given under Section 4 of the Act and simultaneously seek compensation under Section 71 for breach of Section 18 and 19 of the act. It makes little sense to file two complaints about the same cause of action, that too before two separate forums. From the perspective of the buyer, it would be more beneficial to file the complaint before the AO and seek compensation, than to file a complaint before the RERA and only seek the imposition of a penalty on the builder. This creates an absurd position of law as there is no provision providing for the transfer of complaints or joint-hearings before the RERA and the AO.

If the buyer does not file a complaint to either RERA or AO, then as per Section 61 builder will escape from liability, they nullify the objectives of the act like monitoring and regulation. But the situation would be absurd if the two complaints were for the same cause of action thereby will create a conflict of jurisdiction leading to delays in the settlement of disputes and higher legal costs for the parties as well as the possibility of contradictory judgments of the two authorities. The key feature of the redressal mechanisms of the REA is that it does not oust the jurisdiction of the consumer forum. The proviso to Sec 71 states that the buyer may withdraw litigation pending before a consumer forum and file a complaint before the AO for compensation. <sup>55</sup> There is no such provision for transfer of complaint of consumer forum to the AO directly; instead, the buyer will have to file a file claim under REA to either AO or RERA.

The creation of two multiple forums for adjudication of disputes may thwart the intention of the legislature for providing speedy justice for the protection of the interest of the homebuyer. Instead, the legislature could have given an overriding effect to this act over all other acts including Consumer Protection Act, and established a single forum i.e., the RERA with a judicial officer as a member to determine compensation in accordance with Section 72 of the REA. This would have given an opportunity to the RERA to adjudicate disputes in a time-bound manner without any issue of conflict of jurisdiction over other authorities with little or less amount of delay.

## **INDIAN SUPREME COURT ORDERS MORE EMPOWERMENT TO THE HOMEBUYERS**

In the latest judgment in *M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors.*, Civil Appeal No(S). 6745- 6749 of 2021 and eight other Appeals Civil Appeal No(S). 6750-6757 of 2021[13] delivered on 11 November 2021, the Apex opined that RERDA needs to be amended in order to protect the interest of homebuyer. The Apex Court has recommended that the RERDA, 2016, be amended to protect the rights of homebuyers. The broad contours of the ruling are that RERDA's application is retroactive, and it encompasses all projects for which completion certificates were not granted when the Act was enacted. Before challenging any RERA judgment, the Court also made it essential for developers to deposit at least 30% of the penalty imposed by the regulator. The verdict may serve as a deterrent to such builders, who will now be required to deposit the entire amount plus interest as a condition of doing business. Furthermore, the Court determined that RERA has sole authority to order a refund of the sum, plus interest, direct interest payment for late delivery of possession, or a penalty and interest to the allottee. However, to speed up the procedure, the adjudicating body has the right to assess compensation. After the RERDA's implementation, homebuyers through the Forum for People's Collective Efforts (FPCE) and other organizations have emphasized the weakening of RERA restrictions in several states. Buyers will benefit from the judgment in many ways, including creating a unified regulatory framework for all projects and improved grievances. Buyers would enjoy a faster decision in cases where RERA has issued a penalty since builders will have to pay a pre deposit before challenging an order. Regarding developers, the orders imply that developers must follow RERA regulations and register projects in progress before enacting the Act if the relevant authority has not issued a completion certificate. In general, builders who have appealed RERA decisions in previous years will have to evaluate the circumstances they want to challenge the ruling. The decision might force revisions to State Rules based on the Act. The review of these six cases suggests that the Supreme Court of India's judgments, particularly on the Amrapali Silicon City Private Limited and the latest one, the Newtech Promoters and Developers Private Limited, have broader implications for the builders and lessons for central and state governments. The rulings have been a boost for homebuyers across the country. The Court is likely to bring any such favourable ruling depending on the need of the time.

## **PREVALENT MALPRACTICES AFFECTING HOME BUYERS ADDRESSED BY RERA**

RERA has been implemented to revamp real estate sector. It has regarded as consumer centric

legislation. Few concern which RERA has been able to address are

1. .No delay in project- the major concern prevalent in real estate sector has been transfer of possession to the homebuyers. It has reduced the trust factor between homebuyers and developer. Generally in that cases developer goes scot free with no accountability. To address this issue as per RERA heavy penalty will be imposed on developer and they will have to pay same interest as paid by consumer through EMI.

2. Diversion of fund by promoter Fund diversion for launching another project has been a common practice in real estate sector. Generally developer collect fund from consumer for one project and then invest that money for launch of another project. This was major reason for delay in of completion of the project. But now RERA forced the developer to create a project specific bank account and deposit 70% of amount collected by consumer in that account. This will help in completing project on time.

3 Unwanted surprises generally it happens that developer promises lot of facilities to be provided to homebuyers. But as the project progresses he usually taken aback by not getting those facilities for which money has been paid by them. RERA has cure this remedy by stating that that no developer can make any changes 68 without the permission of homebuyers once property has been purchased by them.

4. Transparency and accountability -the current scenario of real estate industry has been facing a lot of issues like fraud on customer investment of black money.

### CONCLUSION

The allottees are always on the winning side since the Real Estate (Regulation and Development) Act, 2016, was passed. Working on some place of stage in practical fashion is the act's fundamental motto. Previously promoters easily violate the norms, rules and ethics in real estate business and they never respect the voices of the homebuyers after the sale and in due course of sale. But after the enactment of the RERA, they swiftly take action once the Real Estate Regulatory Authority order to do that. After the enactment of the homebuyers are getting remedies in days instead of year. The effect of the passing of this act is such that now the promoter has to follow rules, regulation and ethics of this profession.