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**REGISTRATION OF REAL ESTATE PROJECTS UNDER  
THE REAL ESTATE (REGULATION AND DEVELOPMENT)  
ACT 2016: AN ANALYSIS OF THE RETROACTIVE AND  
PROSPECTIVE PRINCIPLE; AND THE IMPLICATIONS  
THAT ARISE UPON VIOLATION.**

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**ABSTRACT**

This article discusses on the provisions of the Real Estate (Regulation and Development) Act, 2016 enacted by the Parliament of India which deals specifically with the registration of real estate projects with the concerned State Real Estate Regulatory Authority (RERA). The Parliament had enacted the Act on 25.03.2016. Thereafter on 26.03.2016 only Section 1 was notified in the Gazette of India and certain provisions were implemented with effect from 01.05.2016 and some from 01.05.2017. The Section 3 specifically deals with matters pertaining to registration of real estate projects & restrains the promoters from advertising, marketing, booking, selling, offering to sell, inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area without the said real estate project first been registered with the concerned RERA established under the Act. The said Section 3 specifically states that all real estate projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, it is mandatory for the promoter to submit an application with the RERA for registration of the said project within three months from the date of commencement of the Act & the contravention of the same may attract penalty and / or imprisonment. As even now litigations arise and revolve around this issue, hence we examine the retroactive & prospective principles of registration of real estate projects and what attracts on violations.

**Keywords:** Real Estate, Real Estate Project, RERA, K-RERA, Registration, Non-Registration, Punishment, Penalty, Contravention, Violation, Allottee, Homebuyer, Promoter, Builder.

## I. INTRODUCTION

The real estate sector in India is one of the major contributors to the India's Gross Domestic Product (GDP) and is a major economic driver and is presently contributing approximately 7.3% to 8% to the national GDP and is the second largest employer after agriculture sector. The current market value of the real estate sector is around 250 billion dollars and is expected to reach 1 trillion dollars by the year 2030 and may contribute up to 15% to 20% of the GDP by the year 2050 and the same is the result of growth of population, rapid urbanisation and infrastructure demand<sup>1</sup>.

The Real Estate (Regulation and Development) Act, 2016 (hereinafter called as 'Act of 2016') was enacted by the Parliament of India understanding the fact that the real estate sector plays a crucial role in fulfilling the demand and need for housing and infrastructure in India and since the real estate sector has been unregulated with lack of professionalism, standardisation and consumer protection. The Act of 2016 was enacted with the primary objective of protecting the interest of the homebuyers and the investment made by them in the real estate sector. The Act of 2016 defines and addresses the homebuyer as allottee and the builder as promoter. As we are going to discuss the retroactive and prospective principles of registration of real estate projects under the Act of 2016, it is important that we know the real objective behind the enactment. The Act of 2016 is an allottee friendly beneficial legislation. The objective of the Act of 2016 includes bringing transparency to the real estate property deals, making the promoter accountable for the assurances they had made to the allottees, to enable faster and fruitful resolution of disputes arising between the promoter and allottees, to bring a standardisation all over India which will be useful for people to purchase properties anywhere in the country, enhancement of growth in the real estate sector, to bring confidence in the mind of allottees to invest money, to bring awareness among the allottees regarding their rights, the authority of the regulatory authority to draw upon conclusions in the agreements made between the promoter and allottees, to establish a professional approach in all transactions between the promoter and the allottees, to overcome frauds and delays and also the higher transaction costs; and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both.

Since we are going to discuss the retroactive and prospective principle in registration of real estate project in this article, it is perforce that we know the meaning of terms "retroactive" and "prospective." The Cambridge Dictionary defines the term "Retroactive" as '(of a law or other

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<sup>1</sup> <https://naredco.in/real-estate-sector-contribute-15-indias-gdp-2050-naredco-president>

agreement) having effect from the time before the law or agreement was approved<sup>2</sup>. The Merriam-Webster Dictionary defines the term “Retroactive” as ‘extending in scope or effect to a prior time or to conditions that existed or originated in the past’<sup>3</sup>. Further The Britannica Dictionary defines the term “Prospective” as ‘likely to be or become something specified in the future’<sup>4</sup>. The Merriam-Webster Dictionary defines the term “Prospective” as ‘relating to or effective in the future’<sup>5</sup>. So, it is very much clear that the term ‘retroactive’ represents and means that it takes effect from time before something was approved and, in our discussion, i.e. the activities technically started or technically completed before the passing of the Act of 2016. And the term ‘prospective’ represents and means something that is happening in the future i.e. the activities carried out after the coming into force of the act.

To understand the applicability of various provisions of the Act of 2016 and the retroactive and prospective principles of registration, it is crucial that we know the dates of enactment and notifications that followed. Though the Act of 2016 was enacted by the Parliament of India on 25.03.2016, various provisions were notified on different dates. Section 1 of the Act of 2016 was notified in the Gazette of India on 26.03.2016 and Sections 2, 20 to 39, 41 to 58, 71 to 78, 81 to 92 was notified on 26.04.2016 and implemented with effect from 01.05.2016. Sections 3 to 19, 40, 59 to 70, 79 to 80 was notified on 19.04.2017 and implemented with effect from 01.05.2017. So, it is very much clear that the Section 3 of the Act of 2016 which deals with the registration of real estate project was implemented with effect from 01.05.2017 and we are hereafter going to discuss on the mandatory registration of real estate project with the RERA for the technically completed, ongoing and newly commencing real estate projects.

## II. REGISTRATION OF REAL ESTATE PROJECT AND ITS NECESSITY

The Act of 2016 is enacted by keeping in mind the primary objective of extending all types of legal protection to the allottees who invests their hard-earned money in a real estate project, projected by various promoters through various mediums. The lack of knowledge or scrupulous scrutiny by the allottees on a particular real estate project cannot in no way be at a later stage bring difficulty into the business transaction made between a promoter and an allottee, whereby the allottee had invested his or her hard-earned money for purchase of any real estate project.

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<sup>2</sup> <https://dictionary.cambridge.org/dictionary/english/retroactive>

<sup>3</sup> <https://www.merriam-webster.com/dictionary/retroactive>

<sup>4</sup> <https://www.britannica.com/dictionary/prospective>

<sup>5</sup> <https://www.merriam-webster.com/dictionary/prospective>

The allottees on bare eyes are in contact with the good side of any real estate project as highlighted by any promoter and accepting what is seen and communicated to the allottee by the promoter and may in advance make payment for the purchase of the real estate project that too by entering into an agreement. Often these agreements are also one sided in nature that the clauses it contains may be drafted in favour of the promoter and that the allottees may not have any option for seeking correction of the same. Since in all cases of sale of real estate projects, as the promoters are having upper hand, the legislature found it necessary to enact a legislation whereby the interest of the allottees are protected. In order to bring the promoter within the clutches of law, through the Act of 2016, the legislature had decided that all real estate projects at the commencement of the Act of 2016 shall to registered before the concerned State RERA, who are exercising the authority over the real estate project within their jurisdiction. Through Section 3 of the Act of 2016, it has restrained the promoters from advertising, marketing, booking, selling, offering to sell, inviting persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area without the said real estate project first been registered with the concerned RERA established under the Act of 2016. The said Section 3 specifically states that all real estate projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, it is mandatory for the promoter to submit an application with the RERA for registration of the said project within three months from the date of commencement of the Act. It further states and exempts those real estate projects 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 of construction. The said provision of law specifically through sub-section (2) of Section 3 also exempts those promoters who had received the completion certificate from the competent authority for the real estate project before the commencement of the Act of 2016; and those activities for the purpose of renovation, 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. The said Section 3 further explains that in cases 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 the Act of 2016 for each of the phase separately. The said Section 3 deals with two principles in registration of real estate projects with the RERA i.e. (i) Retroactive principle and (ii) Prospective principle.

**A. Retroactive principle in registration of real estate project.**

As per the Gazette of India S.O. 1216 (E) dated 19.04.2017, the Section 3 of the Act of 2016 came into existence with effect from 01.05.2017 i.e. commencement of Section 3 of the Act of 2016 is from 01.05.2017. On conjoint reading of Section 1 and Section 3, it is very much clear that all real estate projects which are ongoing and not completed; and those completed and for which completion certificate has not been issued by the competent authority, the promoter is mandated under the Act of 2016 to get the real estate project registered with RERA within a period of 3 months from the date of commencement of the Act of 2016 i.e. from 01.05.2017. This specific provision had created huge amount of confusion among the promoters, allottees and other statutory authorities as to whether a promoter who had started the work of a real estate project before the enactment and commencement of the Act of 2016 is obliged under the Act to get register their real estate project. Almost in most of the cases, the promoter had already entered into an agreement with the allottee relating to the real estate project offering certain promises and the allottee accepting the same and the allottee been handed over the money as advance investment or payment for the purchase of the said real estate project. The sudden direction of the legislature through the Act of 2016, whereby the real estate projects that were started and completed, and for which what remains is the issuance of the completion certificate by the competent authority, is to get their real estate project registered creates additional burden on the promoters. Since the Act of 2016 is of beneficial in nature to the allottees, the promoter compelled to get register their real estate project is dragged inside the legal framework and may face additional financial burden and also additional duties envisaged under the Act, that they are mandatorily expected to follow without fail. This had created confusion and agitation among the promoters and led to various litigations. The Supreme Court had finally upheld in the matter of *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and Others*<sup>6</sup> that the Act of 2016 is retroactive in nature and all real estate projects for which no completion certificate has been issued as on 01.05.2017, the promoters are mandatorily required to get register their real estate project with the RERA. This very dictum laid by the Hon'ble Supreme Court of India is very much appreciated in view of the fact that the apex Court had found that the decision of the legislature in including the real estate projects of this nature within the ambit of the Act of 2016 is to protect the interest of the allottees and the allottees and their hard-earned money invested with the promoters are safe. The promoter can very well seek the benefit of sub-section (2) of Section 3 of the Act of 2016, as stated earlier, if the real estate projects

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<sup>6</sup> 2022 (1) SCC 716

are coming under the ambit of the said provision.

### **B. Prospective principle in registration of real estate project.**

As stated in the previous paragraph that as per the Gazette of India S.O. 1216 (E) dated 19.04.2017, the Section 3 of the Act of 2016 came into existence with effect from 01.05.2017 i.e. commencement of Section 3 of the Act of 2016 is from 01.05.2017. All real estate projects that had commenced after 01.05.2017 by the promoters will have to be registered with the RERA irrespective of any agreements entered between the allottees and the promoters. All these are subject to the exemptions granted under sub-section (2) of Section 3 of the Act of 2016. It means that the legislature protects the allottees and the promoters are expected to fulfil their statutory duties and obligations on the allottees. The most important aspect that we need to understand and realise is that the purpose or the main intention by which the legislature had enacted this very Act of 2016 is to protect the allottees and to bring into confidence the promoters so that more investment is poured into the real estate sector which in another way boost the Indian economy. As stated in the introduction, the real estate sector is the 2<sup>nd</sup> largest contributor to the GDP of India and it is the bounded duty of the legislature and the government to make the allottees / homebuyers fully believe the promoters / builders, so that without any fear more investments are made in the real estate sector. Hence the prospective principle in registration is very simple that all real estate projects started after 01.05.2017 are brought within the ambit of the Act of 2016.

## **III. IMPLICATIONS OF NON-REGISTRATION OF REAL ESTATE PROJECTS WITH THE RERA**

Like every law enacted by the legislative body and in order to enforce the same effectively, penal provisions are of most necessity. Likewise, the Act of 2016 also prescribes through Section 59(1), that any acts done by the promoter in contravention of the provisions of Section 3 is liable to a penalty which may be extended up to 10% of the estimated cost of the real estate project as determined by the RERA. In addition, through Section 59(2), if the promoter does not comply with the orders, decisions or directions issued under the sub-section (1) or continues to violate the provisions of Section 3, the promoter shall be punished with imprisonment for a term which may extend up to three years or with fine which may extend up to a further 10% of the estimated cost of the real estate project, or with both. So, section 59 makes it clear that any promoter acting in contravention by non-registering the real estate project as stated in Section

3 or of the orders, decisions or directions issued by the RERA with regard to the registration of the real estate project or continues to violate the same shall be imposed with penalty and / or with imprisonment. The purpose of prescribing punishment through the Act of 2016 is to compel the registration of the qualified real estate projects with the RERA, so that the allottees interest are protected and the promoters are kept on scrutiny and on checks and balances with regard to the real estate project carried out by them.

#### **IV. JUDICIAL EXPOSITIONS**

After the enactment and after the notified commencement of the Act of 2016, there arises a plethora of litigations especially with regard to taking of registration of the real estate projects with the RERA. The main reason for the increase in the number of litigations is because of the retroactive principle of registration of real estate projects that does not exempt any promoter from the clutches of the legal framework of the Act of 2016, unless specifically exempted through the provisions of Section 3 (2) of the Act of 2016. As the date of commencement of the Act of 2016 pertaining to Section 3 which deals with registration of real estate projects, the crucial date being 01.05.2017, the confusion arises whether projects that was commenced and ongoing; and that was commenced and technically completed before 01.05.2017 need to be registered or not. The Act of 2016 through the proviso to sub-section (1) of Section 3 clearly mandates that registration is compulsory for all real estate projects for which completion certificate is not issued by the competent authority. It means that some promoters of real estate projects may have technically completed their construction before 01.05.2017 and only what remains is getting of the completion certificate from the competent authority, whom might have issued the said certificate after 01.05.2017. But the Act of 2016 in order to protect the interest of the allottees mandated that the said real estate projects need also to be registered with the RERA.

When we consider this aspect with regard to the State of Kerala, it is brought to the light that the State of Kerala enacted the Kerala Real Estate (Regulation and Development) Rules 2018 only in the year 2018 and was officially notified on 14.06.2018. It means that the crucial Rules was enacted after more than a year after the commencement of the Act of 2016. Moreover, the Kerala Real Estate (Regulation and Development) Regulations 2020 was notified by the K-RERA through the Gazette of Kerala on 11.06.2020. The formal launch of the K-RERA was made only on 01.01.2020. So, a regulator like RERA in the State of Kerala came into existence only after more than two and half years after the commencement of the Act of 2016.

The main reason by which many of the confusion which led to large number of litigations is

that, after the official functioning of the K-RERA, the K-RERA started to issue suo moto notices to the promoters who had completed the real estate projects after 01.05.2017 and before 01.01.2020. The common question that had arisen in the mind of the promoters is with regard to the necessity of registering a real estate project with the K-RERA when the project is fully completed and the possession have been handed over to the allottees or to the association of allottees, where the completion certificate was received by the promoter only after 01.05.2017. This same issue was also faced by many promoters in various other States. Many of the promoters had challenged the retroactive nature of the registration of real estate project before various High Courts and also before the Supreme Court of India.

The Hon'ble Supreme Court in **Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. and Others**<sup>7</sup> had held as that all "ongoing projects" that commence prior to the commencement of Act of 2016 and in respect to which completion certificate has not been issued are covered. The legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act of 2016 became operational, but also to bring under its fold the ongoing projects and to protect from its inception the rights of the stake holders, including allottees / home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means. Merely because the Act of 2016 is made retroactive in its operation, it cannot be said to be either violative of Article 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the pre - existing contract and rights executed between the parties in the larger public interest. From the scheme of the Act of 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act of 2016.

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<sup>7</sup> 2022 (1) SCC 716

The Hon'ble High Court of Kerala in **Graceland Foundation v. Kerala Real Estate Regulatory Authority**<sup>8</sup> had held as that all projects that are ongoing on the date of commencement of the Act of 2016, as on 01.05.2017 and for which the completion certificates have 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 the Act i.e. from 01.05.2017. So, the cardinal aspect which would govern mandatory registration is whether the completion certificate has been issued on or before 01.05.2017 in relation to a real estate project in dispute. It is not in dispute that Section 2(q) of the Act of 2016 deals with completion certificate. Certainly, the completion certificate contemplated under S.2(q) of the Act of 2016 must be one issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan as approved by the competent authority under the local laws. The Court also clarified that the "completion certificate" as defined under Section 2(q) of the Act of 2016 is the "occupancy certificate" issued by the local authorities in Kerala.

So, it is clear from the above pronouncements, that both the Hon'ble Supreme Court of India and the High Court of Kerala had clarified that the crucial aspect to check is when the completion certificate is issued and if the same is issued on or before 01.05.2017, the promoter is exempted from getting registration to his real estate project with the RERA.

## V. CONCLUSION

From the above discussion inference can be drawn that the Act of 2016 has been enacted by the Parliament of India with specific aim to protect the interest of the allottees / homebuyers from the hand of errant promoters / builders. The act prescribes certain rights to the allottees and also certain duties and obligations upon the promoters in such a way that the real estate projects are confined within the clutches of a legal framework. As the Act of 2016 makes it clear that it objects includes ensuring greater accountability towards allottees, to significantly reduce frauds, delays and the current high transaction costs, and to balance the interests of allottees and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, and a fast-track dispute resolution mechanism.

Therefore, through Section 3 the legislature mandates that mandatory registration of real estate projects are to be taken by the promoters and has restrained the promoters from advertising, marketing, booking, selling, offering to sell, inviting persons to purchase in any manner any

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<sup>8</sup> 2023 (7) KHC 551

plot, apartment or building in any real estate project or part of it, in any planning area without the said real estate project been registered with the concerned RERA established under the Act of 2016. The said Section 3 simply mandates that all new, ongoing and completed real estate projects for which the completion certificate has not been issued as on 01.05.2017, are to be registered with the concerned RERA, unless exempted vide sub-section (2) of Section 3 of the Act of 2016. So, the retroactive principle and prospective principle of registration of the real estate projects is enacted by keeping in mind the principles of the Constitution of India and is of most necessity in view of the challenges faced by the allottees / homebuyers in our country. The punishment prescribed vide Section 59 of the Act of 2016 for non-registration of real estate projects is also inevitable, since taking into confidence the allottees / homebuyers is of most necessity as they had made investments in large amount in the real estate sector which further contributes massively to the GDP of our country.

