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AN OVERVIEW OF RERA 2016

AUTHORED BY - NAVYA ARORA

Introduction

At the core, real estate can be referred to as property, which consists of land and its tangible attachments. Real estate includes land i.e., the actual surface of the earth, earth beneath it, attachments to it as well as the air above it. Buildings and lands that are utilised for residential, commercial, or industrial purpose form a part of the real estate. When it comes to business, real estate is considered as an important instrument of investment. Hence, its regulation is vital for any country.

In India the real estate legislations are administered by both the state and the central government. According to the article 246 of the Indian constitution, the 7th schedule provides that 'land' is the subject matter of List II (State List) whereas 'Transfer of property other than agricultural land, registration of documents and deeds' and 'Contracts other than for agricultural land' are a part of List III (Concurrent list). Therefore, it is inferred that both centre and state can legislate when it comes to real estate.¹

Consequently, the real estate sector is associated with varied laws making the process of buying or selling or registering property complicated. However, the Real Estate (Regulation and Development) Act, 2016 been enacted and enforced making it a landmark legislation primarily dedicated to regulating the real estate sector in India.

¹Dhairya Kumar, *Navigating the RERA Act, 2016: Demystifying the Basics*, LEGAL SERVICE INDIA, (Sept 9, 2023 9:25 pm), [Navigating the RERA Act, 2016: Demystifying the Basics \(legalserviceindia.com\)](https://legalserviceindia.com)

Legal framework

the Indian real estate sector is impacted by a wide range of legislations such as various State/local/municipal laws slum rehabilitation/improvement, rent control, apartment ownership, building codes/bye-laws, property tax, Special Economic Zones (SEZs) and a lot more, however, Key legislatures that regulate the real estate sector are:

The Indian Contract Act, 1872

In India laws related to contracts are dealt under the **Indian Contract Act, 1872**. This act provides the provisions regarding the competency to enter into a contract, its execution and implementation, breach, and the remedies available to the parties in consequence of breach, etc. As sale, exchange, mortgage, lease of property are special contracts they are accordingly governed by this act.

Transfer of Property Act, 1882:

The Transfer of Property Act, 1882 is a central legislature and among some of the oldest Acts in India. As per its preamble, the act defines and amends the laws regarding the transfer of property by act of parties. It mainly deals with immovable properties and lays down general principles relating to ownership of the same. Transfer of property through Sale, Mortgage, Lease, Exchange, Gift and Actionable claim are included in this act.

Since it is an act enacted for transfers that take place as a result of a contract. It is deemed as an extension to the Code of Contract. The omission of the word 'consolidate' from its Preamble confers that the act does not claim to be a complete code in itself when it comes to transfer of property.

Indian Easement Act, 1882:

The laws relating to easementary rights to immovable property are provided under this act.

Registration Act, 1908 and Indian Stamp Act, 1899:

A tax in the form of stamp duty has to be paid for registration of various deeds, documents and instruments which deal with transfer of interest in immovable property. The stamp duty act governs the laws related to that. The main objective of this Act is to generate revenue for the government of India.

In order to ensure registration of important documents the Registration Act 1908 was enforced. This act governs the laws as to registration of documents that contain essential information related to deal regarding land or other immovable property.

Foreign Exchange Management Act, 1999 and Foreign Direct Investment Policy:

The purchase and sale of immovable property in India done by foreign entities and NRIs is regulated under FEMA, while the FDI Policy provides for rules regarding the admissibility of foreign investment, compliance parameters and withdrawal of such investors in the real estate sector in India. the concerned ministries the Department of Industrial Policy and Promotion (DIPP) and the Reserve Bank of India (RBI) regulate such foreign investment.

Land Revenue Codes:

The land revenue codes provide for the division and classification of immovable property in a state along with restrictions on its transfer and powers and duties of revenue officers thereof. It also includes rules, regulations and penalties for breaching such codes. Quite a few land revenue codes have been enacted in India as each state devises its own code that deal with agricultural land-holding, land revenue, types of tenancy and similar matters connected.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:

The act governs regulations concerning land acquisition in India. Land acquisition herein refers to the procedure through which the government acquires private land for the purpose of industrialisation, infrastructural development or urbanisation and undertakes compensation or rehabilitative measures for those who are impacted by the process.

The Real Estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) Act, 2016 (RERA) is a legislature which specifically address the concerns of the real estate sector in India. The act was enacted in order to promote accountability, efficiency & transparency in the real-estate sector. The act led to the establishment of the Real Estate Regulatory Authority and the Appellate Tribunal which provided a mechanism for speedy dispute redressal. The act also aims at preventing malpractices present in the industry through various provisions.

A compendium of the RERA act

• **Setting up Regulatory Authority and Appellate Tribunal**

As per **section 20** of the act, the appropriate government in accordance with the act must establish Real Estate Regulatory Authority with the aim of exercising the powers conferred thereupon and the functions assigned as per **section 34** of the act. Following would account for the Authority's main responsibilities:

- Registering real estate projects;
- Registering real estate agents;
- Resolving complaints
- Making sure that promoters disclose real estate projects;
- Making suggestions to the relevant Government regarding issues pertaining to the growth & promotion of the real estate sector;

Apart from the Real Estate Regulatory Authority, as per section 4, the appropriate government must also establish appellate tribunal to attend to appeals from any judgments, recommendations, or orders given by the Real Estate Regulatory Authority's or any decision made by the adjudicating officer. The tribunal shall exercise powers conferred under **section 53** of the act.

• **Registration of Projects**

According to **section 3** of the act any plot, apartment or building in any real estate project or part of it, cannot be advertised, marketed, booked, sold or offered for sale by a promoter without registering the real estate project with the Real Estate Regulatory Authority. In simple words, every real estate project must be registered, however the section also provides that no registration is required:

- When the proposed land area to be developed does not exceed 500 square metres²
- When the number of apartments inclusive of all phases is not beyond 8 for the proposed development
- When the promoter obtained a certificate of completion for a real estate project before the act commenced

- When any apartment, plot or building under the real estate project is supposed to be renovated, repaired or re-developed without involvement of marketing, advertising selling or new allotment.

- **Registration of agents**

The act provides for mandatory registration of all real estate agents. According to **Section 9**, the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it registered under section 3, cannot be facilitated by any real estate agent unless he has obtained registration.

Section 10 prescribes the functions of the real estate agent –

- To maintain books of account, records and documents
- To refrain from indulging in any unfair trade practices such as misrepresentation of standard or grade of the services, approval or affiliation not yet obtained or make misleading representation regarding the services
- Aid in the allottee in obtaining the possession of all the information and documents he is entitled to

- **More transparency due to project disclosure**

Section 11 provides for functions and duties of the promoter which involves entering all details of the proposed project on the website of the Authority for public viewing.

This website address, wherein all details of the registered project have been mentioned shall be predominantly present in the advertisement or prospectus issued or published by the promoter.³

The promoter shall also be responsible to make available information such as 1) sanctioned plans, layout plans, along with specifications, approved by the competent authority 2) the stage wise time schedule of completion of the project, which should be inclusive of provisions regarding civic infrastructure such as water, sanitation and electricity.

³ IPLF IP AND LEGAL FILINGS, [The Real Estate \(Regulation and Development\) Act of 2016 \(ipandlegalfilings.com\)](http://www.ipandlegalfilings.com), (last visited 10 sept, 2023)

- **Provision to file Complaint**

Section 31 states that any person who is aggrieved can file a complaint with the Authority or the adjudicating officer in case of violation of any provision mentioned in this act.

Apart from that **section 35** empowers the authority to take Suo moto cognizance of the case. An action against any promoter/allottee/real-estate agent can be taken without a complaint filed by any aggrieved person being an essential.⁴

Such sections protect the rights of buyers and promote clarity & liability in the sector

- **Greater Financial Security**

As per **section 13** an advance payment or an application fee taken by a promoter from a person prior to entering into a written agreement for sale shall not exceed more than 10% of the cost of the apartment, plot, or building as the case may be.

Section 4 (2)(I)(D) provides for the provision of the escrow account. All developers deposit 70% of the money received from allottee in respect to the real estate project into a separate account maintained in a scheduled bank. This fund cannot be diverted for any other purpose and shall only be utilised for project development.

As per **section 18** in case when the promoter isn't able to grant the possession to the allottee as per the terms agreed to by a specified date or because of discontinuance of his business as a developer he shall either return the amount received for the project if the allottee decides to withdraw from the project or in case the allottee does not want to withdraw from the project, the promoter shall be liable to pay interest for every month until the possession is given at a prescribed rate.⁵

- **Penalties**

⁴ M. Nikitha, *Critical Analysis of RERA Act, 2016*, B&B ASSOCIATES LLP, (Last visited on 9 Sept, 2023 11:12pm), [Critical Analysis of RERA Act, 2016 - B&B Associates LLP \(bnblegal.com\)](https://bnblegal.com)

⁵ Shivangi Singh, *Analysis of RERA Act, 2016*, BSK LEGAL SOLICITORS & ADVOCATES, (last visited 9 sept 2023 10:12 pm), [Analysis of RERA Act, 2016 - BSK Legal](https://bsklegal.com)

Section	violator	Offense	Punishment
Sec 59	promoter	Non- registration of a project	a penalty which may extend up to 10 % of cost the real estate project as determined by the Authority.
Sec 60	Promoter	Providing false information or contravenes the provisions of section 4	a penalty which may extend up to 5% of cost of the real estate project as determined by the Authority.
Sec 61	Promoter	any promoter contravention of any other provisions of the act	a penalty which may extend up to 5% of the real estate project as determined by the Authority.
Sec 62	Real estate agent	Non registration, contravention of sec 9 and 10	Rs 10,000 per day until default continues or 5% of the total cost of real estate project as determined by the Authority.
Sec 63	Promoter	Failure to comply with authority orders	A penalty per day until default continues thereof cumulatively extended up to 5% of cost of the real estate project as determined by the Authority
Sec 64	Promoter	Failure to comply with appellate tribunal	Imprisonment which may extend up to 3 years or fine per day until default

			continues thereof cumulatively extended up to 10% of cost of the real estate project as determined by the Authority
Sec 65	Real estate agent	Failure to comply with authority orders	A penalty per day until default continues thereof cumulatively extended up to 5% of cost of the real estate project as determined by the Authority
Sec 66	Real estate agent	Failure to comply with appellate tribunal	Imprisonment which may extend up to 1 years or fine per day until default continues thereof cumulatively extended up to 10% of cost of the real estate project as determined by the Authority
Sec 67	allottee	Failure to comply with authority	A penalty per day until default continues thereof cumulatively extended up to 5% of cost of the real estate project as determined by the Authority
Sec 68	allottee	Failure to comply with appellate	Imprisonment which may

		tribunal	extend up to 1 years or fine per day until default continues thereof cumulatively extended up to 10% of cost of the real estate project as determined by the Authority
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- **Other important provisions**

Section 79 acts as the bar when it comes to jurisdiction, according to it civil court will not have jurisdiction over matters which come under the purview of the Authority or the adjudicating officer or the Appellate Tribunal as per the act and no injunction shall be granted by any other court or other authority with respect to any act done while exercising any power conferred by or under this Act.

Section 84 empowers the appropriate government to formulate rules in order to execute provisions of the act.

The area of a property is calculated in 3 ways which include carpet area, built up area and super built-up area. There has often been confusion around this concept while purchasing any property. The **section 2(k)** of the act provides a definition for carpet area to avoid such confusion.

Conclusion

Lack specific and appropriate laws led to prevalence of hardships and malpractices in the real estate sector. Introduction of the Real Estate (Regulation and Development) Act of 2016 has been a step towards reforming Indian real estate legislature, the act focuses on increasing transparency and accountability within the land sector and protects the rights of the allottees. The transparency also benefits the builders.

The legislature has provided a basic framework for conducting transactions pertaining to real estate fairly. It imposes penalties on buyers as well as builders upon defaults as per the app. However, it largely undertakes buyers' perspective into account, being a little harsh on the builders. The act should take builders into account. Unnecessary delays due to government approval is a major issue which sets back the real estate sector and the RERA has failed to cover it. A few suggestions that could be considered are as follows:

- In order to establish a faster approval mechanism, single window clearance should be put in place to put an end to delay of projects due to government clearance.⁶
- For betterment of the project, industry experts for site management can be appointed.
- Due to the escrow account reduces the cashflow and therefore slows down⁷ the industry alternatives such as Letter of Credit and bonds should also be considered.
- Proper planning and implementation should be effectuated from the commencement

References

[a2016-16.pdf \(indiacode.nic.in\)](#)

[RERA Act and Law - India- Salient Features- SSRANA](#)

⁶ Harsh Bhushan, *Impact of RERA in Real Estate Sector in India: An Analysis*, IJPIEL (3 Jan 2022), [Impact of RERA in Real Estate Sector in India: An Analysis | IJPIEL](#)

⁷ Nithi, *RERA Act: A Critical Analysis*, Volume 11, Pen Acclaims, Page 17, (2020), [Nithi.pdf \(penacclaims.com\)](#)