
Critical Analysis On Real Estate Regulation Act In India

*Pyda Srivatsa, Christ University.**

Abstract

India has more than 3,287,263 KM of land area and has always developed real-estate post British period. India being the largest nation and the second largest country in the world there was not a need to enact a regulation in this area .before the passing of this regulation land was occupied and enjoyed by the people without any regulation nor there do any document to prove that they had ownership on the property they possessed. There was accumulation and concentration of land in few people who had the monopoly right to decide the sale and the purchase of the property.

* The author is a third-year student pursuing B.B.A. LL.B. (Hons.) from Christ University.

I. Introduction¹

India has more than 3,287,263 KM of land area and has always developed real-estate post British period. India being the largest nation and the second largest country in the world there was not a need to enact a regulation in this area .before the passing of this regulation land was occupied and enjoyed by the people without any regulation nor there do any document to prove that they had ownership on the property they possessed. There was accumulation and concentration of land in few people who had the monopoly right to decide the sale and the purchase of the property. Only after the British rule Indian government enacted legislation to curtail the concentration of lands in few hands. Demand for land and importance of real estate business increased after industrialization and labor migration towards urban areas. So, this has boosted the demand for housing in large area and development of the areas, so due to these private players started entering into the real-estate sector by which many laws and rules in the real estate sector got increased. The laws are divided and they vary from place to place. So, after the new laws are enacted by the central government like apartment ownership, rent control, land ceiling, land use, land acquisition besides governance codes for municipalities, housing boards, urban development authorities, housing cooperatives etc. due to this right to ownership is conferred on the person having the legal title and possession of the property . The bill of Parliament of India Act was passed on 10 March 2016 by the Upper House (Rajya Sabha).so after the RERA Act, 2016 has come into force. This Act has introduced revolutionary changes in the field of real estate business/ transactions.

¹ Manupatra (no date) Manupatra, Articles. Available at: <https://articles.manupatra.com/article-details/CRITICAL-ASSESSMENT-OF-RERA> (Accessed: March 27, 2023).

II. Why We Need Real Estate Regulation Act In India

In India, we previously used to have a zamindari system under British rule so that time they are given lands and got powers to collect money from the peasants also. So due to this the actual owners of the land that is the farmers became the tenants of the land and the zamindars became the real owners of the land. So due to this extra power being given to the zamindars, the lands are been disproportionately got disposed of. After independence, there is act formed for the abolition of the zamindari system is known as the zamindari abolition act of 1950, this act was introduced on the grounds of the equal distribution of the property and this was also introduced for protecting one of the important right that is right to property which are there in our fundamental rights in part 3 of our constitution that are article 19 and 31. So with this every person in the country will have the right to property which was penalized in the zamindari system. so with this everyone got equal distribution of land as many states have introduced land reforming act so with this as I have mentioned above there is equal distribution happening. With this there is a huge boom in the housing and industrial sector . housing is a basic need to every person and with this only so many fundamental rights are also interlinked like the right to a safe environment, right to work and social security. So keeping this the right to house got recognized in the human rights law and also it got recognized internationally as a basic right . So the Indian judiciary as a part also introduced the right to house in the fundamental right also with this the right to housing came under the judiciary. So with time the problems in the real-estate sector also got introduced so this problem includes the issues like forgery, lack of transparency, security, etc. For solving all these issues the Indian government has introduced a new legislation called real -estate regulation act.

III. Introduction Of Real Estate Sector In India

The real estate sector in INDIA got introduced in the year 2016. This was introduced with the intention to make consumers feel easy to the transactions in the field of real estate. So the bill of this act have first passed on 10th march 2016 in Rajya Sabha and followed by the lok sabha the bill has passed on 15th march 2016. According to RERA each state and union territory will have its own set of rules and regulators to govern the operation of regulators, according to RERA. The center is responsible for writing the regulations for Union territories, including the national capital. Many states have notified rules and a regulatory system will be operational, but many states are still behind schedule in notifying RERA rules. Andhra Pradesh, Madhya Pradesh, Maharashtra, Karnataka, Chhattisgarh, Haryana, is few states are the states that have been notified as of July 31. In many places the land aquatint have been proven problematic and Delinquent builders frequently sell investors projects without planning permission that are poorly constructed, so the main aim of the RERA is to solve these kind of problems like the work which has been delayed or if any faraday happens, cost, poor quality constructions etc. The legislation attempts to increase transparency and encourage ethical behavior in the real estate sector.

IV. Real Estate Sector In India

Real estate regulation is manly introduced for the consumers so it mainly works with the main issues of the consumers. it will help the consumers to have transparency and accountable in the transactions which are been done . in the case of ² *Madhuvihar Cooperative Housing v M/S. Jayantilal Investments* High Court Of Mumbai by interpreting the ³ section 7 of the Maharashtra Ownership Flats act (1963) it was held that In the said case, HC was of the view that the assent of a home purchaser should be an "educated assent", which is effortlessly given after the property purchaser is given a notification revealing itemized disclosure of the said project which the developers proposes to implement in the project . So, some of the mandatory steps that have to be followed form the

² *M/s. jayantilal investments vs Madhuvihar Co-operative housing ... on ...* (no date). Available at: <https://indiankanoon.org/doc/149737019/> (Accessed: March 27, 2023).

³ *Section 7 : Revocation of registration - the real estate (regulation and development) act, 2016* (no date) *Section 7 of RERA 2016 |Revocation of registration*. Available at: <https://www.aaptaxlaw.com/real-estate-act-2016/section-7-real-estate-act-2016-revocation-of-registration-section-7-the-real-estate-regulation-and-development-act-2016.html> (Accessed: March 27, 2023).

developers end is that

- For any modification that are been done there should be prior information of the buyer
- There shall be prior information shared with all the required documents and also the approvals for those from the government
- No launch or advertisement of the project can be done before registration with the regulatory authority
- Making a more buyer driven approach where significance is given to timely completion of projects

So these all steps are implemented in the real estate regulation act to see the three is transparency in the transaction. as the main objective of this act is to maintain transparency to make real estate regulation act simple as it is main development sector in India and the housing sector in India is rapidly increasing day by day and housing is the key input to the socio, economic sector .

V. Projects That Come Under RERA Act

All real estate projects for which completion certifications had not been obtained as of 1 May 2017 are subject to the RERA Act's application and registration requirements. However, in RERA requirements are been set for some real estate projects that does not require to be registered under the RERA act those are mentioned in ⁴ section 3(2) of the real estate regulation act 2016. Under this section it tells that no registration is required of a real estate project which has, if the total area of land to be developed is less than 500 square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases. Both the conditions that are mentioned under the section 3 should be full filled to be exempted from the registration. In the case of ⁵Geetanjali Aman Construction v Hrishikesh Ramesh Paranjpe what happened is that homebuyers filed complaints that the developer had not registered the ongoing project with RERA. So for this the company the construction company appealed the RERA's decisions to the Maharashtra Real Estate Appellate Tribunal. The defendant was unsuccessful for the appeal made by him as after the

⁴ Section 3 : Prior registration of real estate project with real estate regulatory authority - the real estate (regulation and development) act, 2016 (no date) Section 3 of RERA 2016 |Prior registration of real estate project with Real Estate Regulatory Authority. Available at: <https://www.aaptaxlaw.com/real-estate-act-2016/section-3-real-estate-act-2016-prior-registration-of-real-estate-project-with-real-estate-regulatory-authority-section-3-the-real-estate-regulation-and-development-act-2016.html> (Accessed: March 27, 2023).

⁵ M/s. Geetanjali Aman ... vs Hrishikesh Ramesh Paranjape and ... on 2 ... (no date). Available at: <https://indiankanoon.org/doc/44567776/> (Accessed: March 27, 2023).

arguments it was stated that the rule was a "or" one rather than a "and" one.

And over there the first rule only got full filled that was written under the section that is that it should be under 500 square feet, but the second rule did not got satisfied over there as it was held in the second rule that only 8 apartments should be constructed but defendant party have built more than 8 apartments they have built 22 apartments and also they have additionally built 9 shops in that location ,so by observing this the court have held that the defendant should register in the RERA act 2016 under 30 Days and also imposed the penalty of 3% that is rupees thirty lakhs . It is also crucial to note that the Rajasthan Real Estate Regulatory Authority (RERA) issued an office order they have out lined the parameter that need to be met in order for a project to qualify for an exemption from the RERA Act's restrictions. According to the aforementioned order, under section 3(20) the both required conditions should be fulfilled to get exemption under the registration of the reread act as mentioned above the both conditions are if the land is under 500 square feet and not only that the land should also only contain only 8 apartments if there are more the RERA will ask the following construction company to register and there will also be penalty imposed on them these is all done so that there will be transference in the transaction and the builders will also be responsible about their land and the safety norms are followed in this way where the consumers could be safe and there will no faraday or late or misconstruction happening in the real estate sector of India.

VI. Establishing a Regulatory Authority

⁶Under section 20 of the real estate regulation act the regulatory authority got introduced its main objective to be introduced is that since the from the past, the real estate sector is growing and with that there are Numerous problems have emerged throughout time as a result of the expansion of the real estate sector. So has been anticipated from so long that if any regulatory body will be formed for the real estate sector , due to the forming of the body the problems of the real estate sector would be reduced and also the consumers could act free without any fear in the transactions so for this purpose in the real estate regulation act 2016 the regulation authority for the field of real estate got introduced under section 20 of the act and also the major powers of the regulation are given under the sections ⁷36 to section 39.

⁶ LawZilla, T. and Pratap, A.A. (2020) *Drawbacks and shortcomings of real estate (Regulation and Development) act, 2016*, LawZilla. Available at: <http://lawzilla.in/uncategorized/drawbacks-and-shortcomings-of-real-estate-regulation-and-development-act-2016/> (Accessed: March 27, 2023).

⁷ *Real estate (regulation and development) act, 2016*. (1970) *India Code*. Available at: https://www.indiacode.nic.in/handle/123456789/2158?sam_handle=123456789%2F1362 (Accessed: March 27, 2023).
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These includes

- According to the act when the Authority is convinced that an act has been is about to be committed in the violation of the act then the this Act or the rules and regulations thereunder, the Authority may, by order, restrain any promoter, allotted, or real estate agent from carrying out that act until the end of the inquiry or until further orders, without giving such party notice, if the Authority deems it necessary.
- The Authority may provide such instructions to promoters, allotted, or real estate agents, as the case may be, as it deems necessary to carry out its powers under the provisions of this Act or rules or regulations adopted thereunder, and such directions shall be binding on all parties concerned, according to Section 3 of the Act.
- According to the Act, the Authority may change any order it has issued within two years of the date on which it was made in order to fix any error that is clear from the record and must do so if the error is brought to his attention by the parties. However, no such change shall be made in regards to any order from which an appeal has been filed in accordance with this Act. Furthermore, while correcting any errors that are clear from the record, the Authority may not amend any substantive part of the order it made in accordance with the terms of this Act.

VII. Mandatory Registration

According to this act as we have discussed except the exceptions that are given in the section 3 of the act there should be mandatory registration done before the project starts and there should be certificate completion and also there should be a possession of the certificate for starting the project. Additionally, the promoters should also give the information to the concerned authority details of the projects and the updates of the project including the status of the land, necessary information about the promoter/developer, all necessary approvals from the concerned authorities, once all the necessary reports are been registered and also verified by the concerned authority then the project can be marketed (advertise) by the promoter or by the owner of the project for outside.

So, this Mandatory registration in one way can be told as one of the biggest advantage for the consumers. As after introduction of the RERA act now the builder and the developers of the construction project will require the clearness from the concerned authority for proceeding to the project. So over here we can see by all these proceedings there will be transference been there so that there will be no malpractices happening to the customers who will purchase the projects in the future.

VIII. Judicial Approach

The buyer made a sizable payment to the developer in the matter of *Chauthiprasad S. Gupta vs. M/S Nahalchand Laloochand Pvt. Ltd.*, and in response, the developer signed and filed a sale agreement for a unit in NL Aryavarta in Dahisar (East), Mumbai. According to the buyers' account, the builder unilaterally cancelled the agreement of sale through a termination letter without allowing the buyer a chance to be heard. Therefore, the builder petitioned the Authority for instructions to retract the termination letter, as well as for the payment of interest and compensation.

The builder opposed the buyer's claim under the argument that because the contract was terminated prior to the commencement of RERA, the RERA authority was ineffective. the authority to consider the current complaint. The builder further argued that the termination of the contract was in accordance with its terms and did not require the Authority's intervention.

IX. Conclusion

On May 1, 2017, the RERDA, 2016, went into force in order to encourage transparency and accountability in the real estate and housing industries. One of the most important government programs to control the unregulated and uncontrolled real estate market for the industry sector and the housing sector one of the most growing sector in India. Though the act which was introduced faces many problems as per clearance of any project it needs so many approvals from many departments and many authorities which will lead to many failures and constant delay in the project works they handle which may be a heavy loss for the construction side and the Indian economy, not only this the real estate regulation will follow different rules in different states as this act is not a centralized act so as per state there will be different laws as land will fall under the state list so this will make a very big disadvantage.

Despite the fact that it was designed to increase accountability and openness for customers. But we can tell that the act will not only help home buyers but also benefits builders due to increased transparency. The RERA concept is perfect if executed as written, however because certain states and developers do not follow the guidelines, it is very challenging to achieve the specific goals of RERA. It offers a variety of tools to make transactions in commercial and residential projects easier to manage, and it assures that project promoters do their work on schedule.

X. Recommendation

On the basis of the various factors that is being there implemented for the delay in the real estate sector the following steps need to be followed to reduce the delay in the real estate sector which considered major problem for the losses and the delay in the making of projects to the dead line , the steps are as follows :

- There shall be introduction of the process which makes the sanction of the project in simple way in other words fast and easy way due to which the project will not be delayed and
- there should be more planning done , real estate sector should also see that the planning is implemented properly in every areas due to which there will be no delay in the projects
- Real estate sector should also be at the single agenda and also not introduce different rules in different states which might lead to miss implementation of the planning and also there might be no proper implementation of planning happening as different states will have different rules.
- Contribution of an Industry expert for site the board specifically with the goal that a specialist outlines is additionally gotten. Such ability will prompt the advancement of the project.