

## **TRANSFORMATIVE DIMENSIONS OF THE RERA ACT: A COMPREHENSIVE ANALYSIS**

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### **ABSTRACT**

The Real Estate (Regulation and Development) Act, often referred to as RERA, has emerged as a significant legislation that is fundamentally transforming the Indian real estate market. This study explores the revolutionary aspects of the RERA Act, with the goal of conducting a thorough examination of its effects on different stakeholders, regulatory dynamics, and the real estate ecosystem.

The paper commences by examining the historical path that led to the implementation of RERA, emphasising the existing obstacles, such as inadequate transparency, delayed project completions, and unjust practices, that hindered the advancement of the real estate sector. In light of this context, the study examines the fundamental elements of the RERA Act and their consequences for both developers and homebuyers. The examination primarily centres on the openness and

accountability systems implemented by RERA. The Act requires developers to register their projects, assuring the disclosure of important project facts, financial elements, and compliance with deadlines. The effectiveness of this newly established transparency is evaluated based on its ability to empower homebuyers with precise information and reduce fraudulent activities in the industry.

Moreover, the study investigates the influence of RERA on the financial aspect of real estate transactions. An analysis is conducted on the implementation of the escrow account mechanism to assess its effectiveness in protecting the financial interests of homeowners and encouraging responsible financial management by developers. The study assesses the effectiveness of the regulatory system in handling conflicts and complaints, with a particular focus on the contribution of Real Estate Regulatory Authorities

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(RERAs) in resolving disputes. It examines the implementation of sanctions and the effectiveness of the grievance resolution system in protecting the interests of all parties engaged in real estate transactions.

Lastly, this research offers a detailed comprehension of the revolutionary aspects of the RERA Act, providing valuable insights into its effectiveness in restructuring the real estate sector, promoting openness, and safeguarding the interests of all parties involved. The findings enhance the ongoing discussion on regulatory frameworks in the real estate market, offering significant information for politicians, industry experts, and scholars alike.

**Keywords:** RERA Act, Real estate. Transparency, Accountability, Regulatory framework

## INTRODUCTION

Over the past few years, the real estate industry has faced several obstacles, especially in India, where it has substantial global prominence. The sector has faced challenges arising from its lack of organization, including a significant presence of illicit funds and complexities in monitoring financial activities. The Indian government implemented the Real Estate Regulation and Development (RERA) Act in 2016, which became effective in 2017. The objective of this act is to improve the real estate business by promoting increased accountability, openness, and fiscal prudence. The RERA Act aims to rectify the existing deficiencies in the business by controlling the unregulated circulation of illicit funds.

Although the RERA Act was designed to provide advantages to the general public, it has posed difficulties for professionals working in the real estate industry. Although its main focus is on public welfare, its ramifications also have an impact on the industry's economics, exacerbating pre-existing operational challenges. The Act, which was passed in 2016, is still relatively new and has implemented a wide range of solutions after careful examination of different legal situations.

Although the standards established under the RERA Act are extensive, continuing disputes continue to arise as a result of technological improvements, market dynamics, transactional approaches, and other developing variables. Due to the infrequency of legal amendments, judgements and orders resulting from legal processes remain valid in their implementation. This study illuminates the diverse effects of the RERA Act on the Indian real estate business, recognizing both its beneficial objectives and the difficulties it poses for industry participants.

## THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 (RERA)

The fundamental aim of implementing RERA was to promote transparency and standardization in the real estate industry. Before the implementation of RERA, there were several obstacles in the relationships between customers and providers. Both sides were faced with unsolved challenges due to the lack of adequate rules and regulations. Consumers experienced the negative consequences of these issues, particularly in the form of extended durations of waiting, which posed a significant difficulty. The implementation of RERA aimed to tackle not just delays, but also several other difficulties that afflicted the industry, by establishing a legislative framework to alleviate these concerns.

The introduction of the Real Estate Regulatory Act (RERA) by the Government of India has implemented distinct obligations for promoters, guaranteeing adherence to legal standards in property development and sales despite increasing disputes between purchasers and promoters. The implementation of RERA has resulted in significant changes in the Indian real estate market, highlighting the government's strong commitment to promoting equity in the private business.

Buyers currently feel more confident since the government is dedicated to upholding fair practices in the real estate industry. While buyers, promoters,

and real estate brokers who comply with government rules may find satisfaction, unethical tactics by certain promoters might result in financial losses. Presently, Gujarat, Madhya Pradesh, Maharashtra, and Punjab are the sole states that have formed enduring regulators, whilst the remaining states are engaging with provisional regulators. In addition, six states have established regulations but are awaiting notice, while only 23 states/union territories have received official notification of the rules specified by the Act.

## **THE RATIONALE BEHIND IMPLEMENTING RERA**

Since 2012, the Indian real estate industry has seen significant obstacles, mostly due to reasons such as high unemployment rates, economic downturns, low returns on rental properties, excessive inventory levels, unclear tax regulations, and conflicts. The ambiguities about delays and obstacles are especially unsettling for house purchasers who allocate their life savings to real estate investments. In addition to the problem, brokers or real estate agents abuse potential purchasers by disseminating deceptive information regarding the quality and completion status of developments, so engendering a lack of confidence.

Home purchasers have frequently expressed dissatisfaction with manipulated real estate transactions that predominantly benefit developers, resulting in prolonged negotiations. The fundamental goal of the Real Estate Regulatory Authority (RERA) and the government's model code is to provide a just and moral structure in the process of buying and selling properties, particularly in the primary market. The primary objective of RERA is to streamline real estate transactions by implementing improved measures of responsibility and openness, hence promoting a fairer environment. For RERA to have a significant impact, it is imperative that states strictly follow the prescribed regulations and maintain the fundamental principles of the central law, therefore promoting a transparent and reliable real estate market.

## **Projects fall under the purview of RERA**

RERA is expected to cover the following types of projects: - Commercial and residential developments, including planned development.

1. Projects that surpass 8 units or 500 square metres, as outlined in section 3(2)(a).
2. Projects that do not have a certificate of completion before the start of the Act, in accordance with section 3(2)(b).
3. Projects that are not covered by RERA are those that are only carried out for the purpose of maintenance, repair, or redevelopment. This excludes any activities linked to re-allotment, marketing, advertising, selling, or new allocation of apartments, plots, or buildings in the real estate project.

RERA, the first regulatory body for the Indian real estate industry, requires the creation of a regulatory authority in every state and union territory. Moreover, it is necessary to develop laws that establish the operational structure of the regulator in compliance with the Real Estate Act.

## **REGISTRATION UNDER RERA:**

An essential element of RERA revolves on the registration process, as specified in Section 4 of the RERA Act, which precisely describes the procedure for applying for registration. The Real Estate Act designed this qualification to specifically tackle the prevailing issues in the real estate business. Prior to engaging in operations such as promoting, booking, selling, offering for sale, or soliciting investments for any land, flat, or building, it is obligatory to get RERA registration.

As per RERA regulations, a builder is prohibited from selling a unit, site or building without first registering it. Therefore, building registration is a necessary need for property transactions. Section 3(2) of RERA specifies the exceptions to the obligation of registering certain real estate projects. "These exceptions apply to projects with a land area of less than 500 square metres or consisting

of no more than eight units. Furthermore, real estate projects that were finished prior to the implementation of RERA, as well as projects that solely involve renovation, repair, or redevelopment without any involvement in marketing, promoting, selling, or allocating new apartments, plots, or buildings, are not required to register under Section 3<sup>3</sup>.

#### “Registration Documents for Projects”<sup>4</sup>

In order to obtain RERA registration under Section 4(2), a promoter is required to provide necessary documentation, which includes PAN Card, bylaws, Memorandum and Articles of Association, verified letterheads, and income tax records. Additional prerequisites include acknowledgment receipts for real estate agents, verified financial statements, specifications of involved parties, construction technology data, seismic-resistant methodologies, blueprints of each floor, information on any legal disputes, designated parking areas, and architectural designs.

The promoter’s statement for RERA registration should confirm the existence of a legitimate property title, specify the responsibilities involved, provide a commitment to completing the project within a certain schedule, and promise to pay 70% of the project earnings at regular intervals into a specialised bank account for the allottees. Submission of incomplete or fraudulent documentation may result in refusal of authorization, perhaps leading to legal ramifications.

The registration under RERA stays valid until the stated completion date set by the promoter. Section 6 delineates the conditions under which an extension may be granted, which encompasses extraordinary occurrences beyond human control, such as earthquakes, known as Force Majeure events. Promoters have the ability to provide a valid reason for extending anything for a maximum

duration of one year, but all additional reasons will be deemed invalid once this time period has passed.

### PROCEDURE FOR LODGING A COMPLAINT UNDER THE REAL ESTATE REGULATION AND DEVELOPMENT ACT (RERA) SECTION 31

1. Individuals who are facing abuses of their rights have the option to submit a complaint under RERA.
2. If there are disagreements with rulings, they can be challenged within a period of 60 days.
3. If unsatisfied with the decision of the Appellate Tribunal, a legal action can be commenced in the High Court within a period of 60 days.

### PENALTIES IMPOSED BY RERA:

#### ON PROMOTERS

1. Section 59 of the Real Estate (Regulation and Development) Act (RERA) mandates a 10% cost evaluation for projects that have not been registered.
2. Breaking the law results in a punishment of three years of incarceration or a fine equivalent to 10% of the construction expenses.
3. Section 60 imposes a penalty of 5% of the building’s cost for providing misleading information.
4. Section 61 enforces a 5% tax on development costs for additional offences.

#### ON AGENTS

1. Section 62 mandates a daily fee of Rs.10,000 or 5% of the building’s cost for failure to register.

3. Saloni Sharma, ‘India: RERA: Registration Of Real Estate Projects- A Brief Overview’ (Mondaq, 29 March 2018) accessed 07 October 2023.

4. Real Estate (Regulation and Development) Act 2016, Section 4.

2. Section 65 requires the payment of daily fines, which might potentially amount to 5% of the building's cost, for failure to comply with the authorities.
3. Failure to comply with tribunal orders according to section 66 may lead to a maximum penalty of one year of imprisonment or a fine equivalent to 10% of the building's total cost. The Real Estate Regulatory Authority (RERA) encompasses a wide range of infractions that are subject to severe penalties. This framework aims to enhance the effectiveness of the business, minimise instances of corruption, and control building fees.

#### **Registration forfeiture (Section 7 of RERA):**

Section 7 of the RERA legislation delineates the specific conditions under which registration withdrawal may occur, which encompass:

1. Failing to fulfil necessary obligations as stipulated by the Act, rules, or regulations.
2. Violating the terms set by the authorised governing body's permission.
3. Participating in unjust practices or discrepancies, which encompass misleading assertions, untrue declarations, deceitful actions, or dishonest conduct.

Revocation necessitates a minimum of 30 days' advance notice, during which the Authority may choose to maintain registration under supplementary conditions. Following the revocation, the Authority has the power to enforce limitations, forbid access to websites, notify other regulatory bodies, facilitate the completion of projects, freeze accounts, and provide essential instructions to protect the interests of allottees or the general welfare. Registration can be revoked due to illicit activities or unjust practices, guaranteeing adherence to legal requirements.

#### **JURISDICTION OF RERA**

The Real Estate Regulation and Development Act (RERA), which came into effect on July 1, 2017, is applicable to both new and current projects that do not have completion certificates. The Maharashtra RERA Authority recently dealt with a legal matter concerning the termination of a selling agreement. The buyer requested compensation, contending that RERA's authority still applied, even though the termination occurred before RERA was put into effect. The Authority confirmed its authority, asserting that as long as the project is active and is registered under RERA, the Authority's supervision continues. Builders cannot absolve themselves of responsibility by asserting the absence of complaint maintenance if the project is registered under RERA and does not possess an Occupational/Completion certificate.

#### **EFFECT OF RERA**

The RERA legislation necessitates comprehensive project registration, which include providing information about the project's background, facts on the promoter, and the execution plans. Dedicated forums such as the State Real Estate Regulatory Authority and Real Estate Appellate Tribunal have been created specifically for the purpose of resolving disputes, with the exclusion of ordinary consumer forums or civil courts. The primary objective of RERA is to protect the interests of buyers by enforcing the disclosure of project status in a transparent manner. Developers are required to regularly update this information on a quarterly basis. Customers have the option to submit complaints online regarding a violation of the contract, which will be addressed and remedied within a period of 120 days. Builders are not allowed to make any alterations to the structure of a building without obtaining approval from the buyer. This helps to build confidence among investors and is in accordance with the regulations of RERA.



### **RERA's Effects on Developers and Promoters:**

Builders are required to register essential project information under RERA, which includes the project plan, facts about the promoter, proof of title, necessary permissions from authorities, and contracts that comply with the specified dates set by RERA. Non-compliance with registration results in significant consequences. A five-year agreement guarantees the integrity of the structure, making builders accountable for any structural problems that may arise during this timeframe. RERA also requires the formation of a Resident's Welfare Association within three months of the project's completion. Purchasers have the right to demand reimbursements according to Section 18 in cases of delays or dissatisfaction, while developers are obligated to clearly state the precise size of the property (carpet area) rather than the total constructed area. Developers are only permitted to sell their projects after gaining authorization from RERA (Real Estate Regulatory Authority). Additionally, they are obliged to deposit 70% of the project cost in an escrow account, which restricts their access to immediate funds and limits liquidity. Escrow account fund withdrawals require certificates from both a Certificate Authority (CA) and an engineer.

### **RERA's Effect on New Projects:**

Projects that consist of more than 8 residential units or have a total area over 500 square metres are required to individually register with RERA. This registration requirement aims to restrict the use of pre-launch finance sources. The Real Estate Regulatory Authority (RERA) imposes a maximum limit of 10% on initial deposits, restricts advertising before to registration, and has the authority to take legal measures against unregistered developments as per Section 59. The Act imposes liability on builders for delays and building quality problems, specifying the terms of compensation in the original contract. Continuing projects are subject to registration requirements, delays, and possible penalties if certifications are not obtained promptly.

Extensions need authorization from the relevant government and may incur penalty for any delays.

### **RERA's Effect on Agents and Brokers:**

Indian real estate agents are now required to register for transaction facilitation under the new legislation. The disorganised market is expected to have around 5,000-9,000 agents. RERA, the regulatory authority, prevents brokers from promising unlisted services and requires them to provide all necessary information to consumers at the time of booking. The Real Estate Regulatory Authority (RERA) enforces penalties, including fines, imprisonment, or a combination of both, for any infractions of regulations, which might potentially lead to the removal of unqualified brokers from the industry. Enrollment is obligatory for the sale of houses, and the giving of incorrect information may result in fines. There are concerns about job losses for brokers who are not organised, with some choosing to terminate their firms because they have less faith in builders and do not receive enough benefits under RERA.

### **Examining the effects of RERA:**

In accordance with the Real Estate (Regulation and Development) Act (RERA), developers are obligated to provide explicit information on the completion of their projects. Failure to comply with this requirement may result in fines and penalties, as demonstrated in the case of Bindu R. Jaisingh v Ekta Parkville Homes Pvt. Ltd. The Act guarantees uniformity in carpet measurements, so eliminating fraudulent practices related to layout, area, and agreements. Developers are required to adhere to rigorous deadlines and deliver homes that have been pre-sold within the agreed-upon timeframe. Failure to do so may result in severe penalties, including financial restitution and jail. Prior approval from government authorities is obligatory prior to the sale of any property, and purchasers have the right to notify any faults within one year of receiving the property. Although there are apprehensions over the Act's influence on existing projects, it

has undeniably revolutionised the industry in a favourable manner.

### **ECONOMIC IMPACT:**

The introduction of RERA posed early hurdles for the real estate sector, which is a substantial contributor to the Indian economy. The Act, albeit causing interruptions, guarantees transparency and excellence in the sector. Strict regulations imposed by RERA prevent the diversion of funds invested in properties, therefore strengthening the industry. Homebuyers will have a secure and cautious experience when dealing with reliable developers that comply with RERA standards. The Act yields enduring advantages by addressing problems, fostering competition, and establishing trust in builders and customers alike.

Overall, the implementation of RERA has resulted in significant transformations and instability within the real estate industry, therefore affecting the economy. Although faced with initial obstacles, the Act seeks to improve industrial productivity, safeguard consumer welfare, and contribute to future progress. Modifications and enhancements are required to ensure smooth adherence, rendering RERA a substantial advantage for consumers despite disadvantages for builders.

### **CONCLUSION**

The implementation represents a notable improvement in the openness of the real estate sector, promoting responsibility among developers and promoters, and developing efficient methods for resolving complaints. The rigorous controls are intended to decrease lawsuits in the traditionally corrupt sector. Given India's emphasis on promoting constructive urban development amidst fast change, the implementation of a standardised Real Estate Regulation Act is crucial to establish consistent benchmarks and improve countrywide transparency in property transactions.

Enacting legislation like as RERA is a crucial step in fostering awareness among customers,

promoters, builders, and other stakeholders. Potential future goals may encompass the modernization of land records, land acquisition, and the implementation of GST, in accordance with the principles of RERA, to facilitate the growth of the real estate business. All parties must adhere to project specifications, agreements, and regulatory frameworks in order to guarantee the satisfaction and appropriate upkeep of allottees' dwellings. RERA is dedicated to effectively enforcing the country's real estate legislation, consistently adopting measures to ensure the sector's continuous growth. The diverse policy actions implemented under RERA are anticipated to provide significant enhancements in economic and social change, promoting sustainable development and creating a customer-centric atmosphere.

### **SUGGESTIONS:**

1. The notion of 'ongoing projects' should be consistently harmonised without any exclusions throughout all states, as conflicts with RERA's objectives of openness impede the rights of homeowners. There should be widespread agreement for a precise and unambiguous definition of Central RERA, without any exceptions being allowed.

2. Ensure government organisations are held responsible for promptly granting project approvals by implementing legislative deadlines for crucial approvals (such as ownership certificate and land use change) in order to prevent project delays.

3. Ensure consistent implementation of RERA's requirements throughout all state legislation, imposing fines and imprisonment on offenders without the possibility of compounding penalties, so guaranteeing consistency in consequences for failure to comply.

4. Retain the 2016 provisions of Central RERA in all state laws, without substituting or modifying them, to ensure the continued efficacy of the quasi-

judicial authority in resolving disputes, including the imposition of jail and penalties.

5. Precisely delineate the group of creditors, encompassing homeowners, in order to prevent clashes between the Insolvency and Bankruptcy Code (IBC), 2016, and the Real Estate (Regulation and Development) Act (RERA), therefore systematically safeguarding the interests of

purchasers in cases when builders declare bankruptcy.

6. Establish a resilient IT framework for RERA, crucial for ensuring the law's sustainability in the long run. An efficient surveillance system and timely resolution of grievances in the event of violations are essential elements of this IT framework.