
RERA: SHAPING INDIA'S REAL ESTATE FUTURE WITH TRANSPARENCY AND TRANSFORMATION

BY ADAMAY MALIK¹

ABSTRACT

The Real Estate (Regulation and Development) Act, 2016 (RERA) is a pivotal Indian legislation enacted in 2016 and enforced in 2017 to address longstanding issues in the real estate sector. Aimed at enhancing transparency, accountability, and efficiency, RERA is crucial in safeguarding the interests of homebuyers and stakeholders. This study delves into RERA's fundamentals, highlighting its significance, goals, and benefits in rectifying challenges such as project delays and unscrupulous practices. The need for real estate regulation in India is emphasized due to the sector's impact on employment, economic growth, and urbanization. While discussing challenges prevailing before RERA, the study acknowledges the transformative changes initiated by RERA, including defining "carpet area," mandatory project registration, and promoter responsibilities. Despite positive influences on buyer confidence and developer conduct, the study critically assesses challenges such as limited applicability and jurisdictional ambiguities. It concludes by emphasizing RERA's transformative impact, recognizing the need for ongoing improvements to make it a global example of transparency and growth in the real estate sector.

Keywords: Transparency, accountability, homebuyers, project delays, jurisdictional issues, black money.

I. INTRODUCTION TO THE REAL ESTATE REGULATION AND DEVELOPMENT ACT

¹ Law student at National Law School of India University

The Real Estate (Regulation and Development) Act, 2016 (RERA)² is a crucial law in India that seeks to increase the real estate industry's transparency, accountability, and efficiency. Enacted by the Indian Parliament in March 2016 and implemented on May 1, 2017, RERA serves as a regulatory framework to address the challenges and issues that have long plagued the industry. Prior to RERA, the Indian real estate sector was characterized by a lack of regulation, leading to numerous problems such as project delays, incomplete developments, and unscrupulous practices by some developers. RERA was introduced to tackle these issues and defend homebuyers' interests and other stakeholders in the real estate market. RERA is, in essence, an important first step towards reforming the Indian real estate industry by promoting responsibility, openness, and efficiency. By addressing the prevalent challenges in the industry, RERA has the potential to bolster investor confidence and stimulate growth in the real estate market.

II. NEED FOR REAL ESTATE LAWS IN INDIA

The real estate sector in India holds significant importance as it stands as the second-highest employment generator, following the agriculture sector. With its promising growth potential, the sector is projected to reach a valuation of US\$ 1 trillion by the year 2030, contributing 13% to the country's GDP by 2025³. A further positive sign for the real estate sector is India's rapid urbanization rate, with estimates suggesting that the number of Indians residing in urban areas will surge to 542.7 million by 2025 and reach 675.5 million by 2035⁴. Additionally, the construction sector has emerged as the third-largest recipient of foreign direct investment (FDI), with FDI inflows, including construction development and activities, amounting to an impressive US\$ 55.50 billion from April 2000 to December 2022⁵. Notably, the Government of India's 'Housing for All'⁶ initiative is poised to attract substantial investments, estimated at US\$ 1.3 trillion, in the housing sector by 2025. With these promising trends and government initiatives, the real estate sector in India holds immense potential for growth and development in the coming years.

² The Real Estate (Regulation and Development) Act 2016, Acts of Parliament, 2016 (India)

³ India Brand Equity Foundation, India's Real Estate Sector Overview, Indian Brand Equity Foundation Report (2022).

⁴ Id. at 1

⁵ Id. at 1

⁶ PMAY-Urban, PMAY-Urban <https://pmay-urban.gov.in/>.

Before the introduction of RERA, the Indian real estate sector had been facing slumps since 2012. According to the report of the Standing Committee on Urban Development⁷, the government was unable to effectively address the increasing demands for housing and infrastructure in the country, despite implementing multiple schemes. This gave rise to several concerns. Firstly, private players in the market took advantage of the situation and profited immensely through arbitrary practices and consumer exploitation. They engaged in unfair practices, manipulating prices and exploiting unsuspecting buyers. Secondly, although public and private banks offered easy loans, the high interest rates and high equated monthly installments (EMIs) imposed additional burdens on individuals in this unregulated sector. The financial strain further exacerbated the challenges faced by potential homeowners. Lastly, due to the absence of an effective mechanism, there was a lack of accountability enforced against builders and developers. Consumers had no recourse to hold them accountable for delays, substandard construction, or incomplete information. This resulted in a lack of transparency and trust between buyers and developers, hindering the overall growth and stability of the real estate sector.

III. OBJECTIVES OF THE ACT⁸

- Regulating and promoting the real estate sector to ensure fair practices and sustainable growth.
- Protecting the interests of consumers by safeguarding their rights and ensuring they are not exploited by unscrupulous practices.
- Facilitating a smooth flow of accurate and transparent information between both the promoter and the purchaser, enabling informed decision-making.
- Establishing accountability of promoters towards purchasers, ensuring that they fulfil their obligations and commitments.
- Ensuring transparency and efficiency in property sales, creating an environment of trust and confidence for buyers.

⁷ Standing Committee on Urban Development, Role of Central Public Works Dept... (full name on page 7 of pdf), (29th Report, Ministry of Urban Development, 2014)

⁸ Karnataka RERA, <https://rera.karnataka.gov.in/homr?language=en>.

- Striking a balance of responsibility between both parties involved, promoting a mutually beneficial and harmonious relationship.
- Introducing uniformity, professionalism, and standardization in various business transactions and practices within the real estate sector.
- Establishing a mechanism for fast-track dispute resolution, providing an efficient and timely resolution of conflicts that may arise.

IV. MERITS OF RERA

1. **Carpet Area** - The Act introduced a unique restriction on promoters to address confusion and manipulation in real estate projects. They are now only allowed to sell projects based on the "carpet area"⁹ criterion. Carpet area refers to the usable space within an apartment, excluding external walls and services shafts. However, it includes the area covered by internal partition walls. Notably, the balcony, verandah, and open terrace areas are excluded from the carpet area calculation. Additionally, when registering a project, the promoters must disclose the carpet area to the Real Estate Regulatory Authority (RERA)¹⁰. This measure aims to ensure transparency and clarity in property transactions.
2. **Registration** - The Act requires real estate projects to be registered in order to establish uniformity, professionalism, and standardized procedures in the real estate sector. and real estate agents¹¹ with the Real Estate Regulatory Authority (RERA). Promoters are required to register their projects with the Authority before engaging in any activities such as advertising, marketing, booking, selling, or offering for sale¹², especially when the project exceeds a certain threshold. This provision aims to prevent the practice of pre-launch sales. Similarly, real estate agents must also obtain registration with the Authority before assisting in the sale or purchase of any real estate¹³. The agent's registration is not permanent and requires periodic renewal.¹⁴ Upon registration, the agent is assigned a unique registration number¹⁵ that must be quoted in every sale facilitated by them in accordance with the

⁹ Real estate regulation and development act, § 2(k) (India Code 2016).

¹⁰ Real estate regulation and development act, § 4(2) (h) (India Code 2016).

¹¹ Real estate regulation and development act, § 34(a) (India Code 2016).

¹² Real estate regulation and development act, § 3(1) (India Code 2016).

¹³ Real estate regulation and development act, § 10(a) (India Code 2016).

¹⁴ Real estate regulation and development act, § 9(6) (India Code 2016).

¹⁵ Real estate regulation and development act, § 9(3)(a) (India Code 2016).

provisions of the Act. These mandatory registrations aim to enhance transparency, accountability, and trust in the real estate industry.

3. **Restrictions and Responsibilities of the Promoters** - The enactment of the Act aimed to address the issue of excessive power wielded by builders and promoters in the real estate industry. To ensure accountability, confidence, and transparency among sellers, several mandatory provisions were implemented. One such provision made it compulsory for all real estate projects exceeding a certain size limit¹⁶ to register with the Authority. Promoters were required to submit an application to the Authority, following which they would receive a registration number within thirty days¹⁷. Additionally, the applicant would be provided with a Login ID and password to access the Authority's website and create a web page¹⁸ where they could provide details of the proposed project. These documents included specifics on the project's promoters, the plan of layout, the development work plan, the land status, legal permits, disclosure of the proforma agreement, and data on the real estate agents, architects, engineers, and other participants. The approved details of a project were made available on a public portal for easy access by the public.

One crucial aspect was that promoters had to deposit approximately seventy percent¹⁹ of the funds collected from purchasers into a separate account in a scheduled bank. This money could only be utilized for construction costs or land expenses. Withdrawals from this account had to be made in proportion to the project's completion percentage and required certification from an engineer, architect, and chartered accountant. Moreover, these accounts had to be audited annually by a practicing-chartered accountant²⁰. Finally, the promoter was obligated to provide certified and signed statements of accounts during the audit process, verifying that the funds received from the allottees had been appropriately utilized for the completion of the specific project.²¹

In summary, the Act introduced mandatory provisions to curb the excessive power of builders and promoters, promote accountability, foster confidence, and ensure transparency

¹⁶ Real estate regulation and development act, § 3(2)(a) (India Code 2016).

¹⁷ Real estate regulation and development act, § 5(1) (India Code 2016).

¹⁸ Real estate regulation and development act, § 5(1)(a) (India Code 2016).

¹⁹ Real estate regulation and development act, § 4(2)(I)(D) (India Code 2016).

²⁰ Id. at 18

²¹ Id. at 18

in the real estate sector. These provisions included compulsory registration of projects, public disclosure of project details, strict financial controls, and regular audits to verify the proper utilization of funds collected from purchasers.

4. **Compensation** - The Act recognizes that purchasers in the real estate market often lack experience and knowledge about market conditions and technicalities. This makes them vulnerable to manipulation and exploitation by builders. To empower purchasers and protect their interests, the Act includes provisions mandating compensation and refunds, along with interest, in cases where purchasers are dissatisfied with the services or the property transferred to them. These provisions are as follows:
- a. Promoters typically advertise real estate projects through prospectuses that contain models of the proposed projects. Based on the information provided in these prospectuses, buyers make advance payments or deposits. If a buyer suffers any loss or damage due to improper or deceitful statements²² included in the prospectus, the promoter is required to compensate the buyer according to the provisions of the Act. When an affected buyer intends to withdraw their advance payment or deposit from the project, the principal amount invested, along with interest at the prescribed rate, must be returned to the buyer.²³
 - b. In cases where the promoter fails to complete the real estate project or deliver possession of the property as per the terms of the agreement or on the promised date, or due to project registration revocation or other reasons, two possible repercussions may occur. Firstly, if the allottee (buyer) wishes to withdraw their money from the project, the promoter is liable to return the principal amount received for that project, along with interest at the prescribed rate.²⁴ Secondly, if the allottee does not intend to withdraw from the project, the promoter must pay them interest for every month of delay until possession is handed over.²⁵

²² Real estate regulation and development act, § 12 (India Code 2016).

²³ Id. at 18

²⁴ Real estate regulation and development act, § 18(1) (India Code 2016).

²⁵ Real estate regulation and development act, § 18(1)(b) (India Code 2016).

Furthermore, the promoter is held liable to compensate the allottees when the allottee suffers any loss due to defective title of the land on which the project is being developed or has already been developed.²⁶

These provisions aim to safeguard the interests of purchasers and provide them with recourse in cases where they experience dissatisfaction, delays, or losses in their real estate transactions. By ensuring compensation, refunds, and interest, the Act seeks to address the vulnerabilities faced by purchasers and promote fairness and accountability in the real estate industry.

- 5. Speedy Dispute Resolution** – One of the main goals of RERA was to assist many disappointed consumers who had to, plead, struggle and file suits for years before they were eventually granted ownership of the promised apartment or received a refund of their hard-earned life savings²⁷. In order to provide swift dispute resolution and deliver justice to customers, new grievance redressal agencies like the Real Estate Regulatory Authority (RERA)²⁸, the Adjudicating Officer²⁹ (AO), and the Real Estate Appellate Tribunal³⁰(REAT) have been established.

The Act has significantly strengthened and empowered consumer rights, making it evident that its provisions carry significant weight. In order to effectively enforce these rights, the Act establishes the Real Estate Regulatory Authority (RERA) and the Adjudicating Officer (AO) as bodies responsible for adjudication. Any person who feels aggrieved by a violation or contravention of the Act by a promoter, allottee, or real estate agent has the right to file a complaint with the RERA or the AO³¹. It is worth noting that the Act implicitly recognizes the concept of class action, as it includes associations of allottees or voluntary consumer associations within the definition of "person."³² This allows collective complaints to be filed on behalf of a group of consumers. Furthermore, the Act grants the RERA and the Real Estate Appellate

²⁶ Real estate regulation and development act, § 18(2) (India Code 2016).

²⁷ 'Excerpts from the Parliamentary Discussion in the Sixteenth Lok Sabha,' <<http://164.100.47.194/Loksabha/Debates/Result16.aspx?dbsl=6906>> accessed May 1, 2023

²⁸ Real estate regulation and development act, § 20(1) (India Code 2016).

²⁹ Real estate regulation and development act, § 71(1) (India Code 2016).

³⁰ Real estate regulation and development act, § 43(India Code 2016).

³¹ Id. at 28

³² Real estate regulation and development act, §31(1) explanation (India Code 2016).

Tribunal (REAT) the same powers as those vested in the Civil Court³³, giving them the authority to ensure fair and just proceedings.

Interestingly, while the Act sets a specific time limit of sixty days³⁴ for the REAT to dispose of appeals and for the AO to dispose of compensation applications, it makes no reference to a deadline for the RERA's handling of complaints. This omission leaves the timeframe for resolving complaints to the discretion of the RERA, which could potentially affect the efficiency and speed of the overall adjudication process.

V. ISSUES WITH RERA

1. **Applicability** - The Act currently has a limited scope and applicability, as it only covers land exceeding 500 square meters or projects with more than 8 apartments. This threshold excludes rural and semi-rural areas while primarily including large projects in urban and semi-urban areas, which lack adequate remedies and fall beyond the regulatory framework.³⁵ This limitation contradicts the purpose of the legislation, which is to regulate and protect consumers nationwide. It effectively weakens the Act's effectiveness and exposes the rural and semi-rural population to potential exploitation by builders, a group that requires maximum protection.

Moreover, the threshold also excludes real estate agents involved in smaller-scale transactions, thereby failing to achieve its intended goal of curbing fraud and holding real estate agents accountable. Previous versions of the Act had set the threshold at land exceeding 1000 square meters or projects with more than 12 apartments. However, the Standing Committee on Urban Development, in its report, recommended reducing the threshold even further to 100 square meters and three apartments. This adjustment would have ensured a broader coverage and a more comprehensive approach to regulating the real estate sector.³⁶

³³ Real estate regulation and development act, § 35(2) and 53(4) (India Code 2016).

³⁴ Real estate regulation and development act, § 44(5) (India Code 2016).

³⁵ Standing Committee Report Summary, The Real Estate (Regulation and Development) Bill, 2013 (2013).

³⁶ Id. at 34

2. **Correcting the Defects**_ Section 14(3) of the Act³⁷ imposes a requirement on builders to fix defects within 30 days, even after handing over possession for five years., or alternatively, compensate the consumers for such defects. This provision places a significant burden on builders, and there is a high potential for abuse. Consumers could file complaints against builders for minor defects, which may have actually arisen due to use, wear and tear, or even negligence on the part of the consumers themselves placing a legal requirement on builders to fix all flaws might lead to a wave of pointless lawsuits. This, in turn, may overwhelm the redressal bodies established under the Act, leading to delays in the resolution of disputes and ultimately undermining the objective of achieving a speedy dispute resolution process. It is pertinent to highlight that the builders may seek additional undertakings or sign pertinent papers limiting their duties under this section in order to avoid this onerous duty. As a result, there are questions about how effectively and practically this provision will be and is implemented.

3. **Having 70% Capital in separate accounts**_ It is widely acknowledged that real estate projects heavily rely on borrowed money or money obtained from customers when making bookings. The stringent requirement stated in Section 4(2)(d) of the Act³⁸, which mandates locking in 70% of the funds in a separate account, poses an additional burden on an already debt-ridden sector. This provision could potentially squeeze out small builders who lack the financial capacity to meet such a significant capital requirement, thereby impacting their ability to compete in the market.

Furthermore, this capital crunch may lead to project delays and an increase in the cost of capital. To ensure trouble free smooth operation and lower capital costs, it would be more reasonable to lower the threshold to at least 50%. This adjustment would provide some relief to builders and facilitate the efficient functioning of the real estate sector.

4. **Forum Shopping and confusion between redressal forums**- The Act in question provides for the establishment of the Real Estate Regulatory Authority (RERA) and Adjudicating Officer (AO) to resolve disputes arising from the same cause of action. While it limits the authority of civil courts³⁹, it does not prohibit filing complaints with forums under the

³⁷ Real estate regulation and development act, §14(3) (India Code 2016).

³⁸ Real estate regulation and development act, § 4(2)(d) India Code 2016).

³⁹ Real estate regulation and development act, § 78 (India Code 2016).

Consumer Protection Act⁴⁰ (CPA). Sadly, the Act says nothing about the clear conflict and overlap of authority between RERA and other laws, AO, and the consumer forums. Moreover, Section 88⁴¹ states that the Act is in addition to, and not derogatory to, any other law. Consequently, consumers now have multiple options to pursue claims under the Act, CPA, and arbitration if the builder-buyer agreement includes an arbitration clause. This lack of clarity and multiplicity of forums can lead to delays and harassment for consumers who have to navigate different jurisdictions. It would have been a wiser move to exclude the jurisdiction of other bodies handling real estate disputes to ensure prompt resolution and avoid consumer harassment caused by searching for the appropriate forum. Though the question of jurisdiction between the Arbitration Tribunal and the forums under the COPRA is currently pending hearing, the conflict between the jurisdiction of the RERA, AO and the Arbitration Tribunal is far from being resolved, especially in light of the murky jurisprudence on the arbitrability of disputes in real estate sector itself.⁴²

In addition to the concerns raised about the multiple forums and jurisdictional overlap in resolving real estate disputes, it is noteworthy that even central government ministers recognize the need to address this issue. Hardeep Singh Puri⁴³, Minister of Housing has emphasized the importance of curbing consumers' tendency for "forum shopping" and encouraging them to approach the Real Estate Regulatory Authority (RERA). This deficiency of RERA and the confusion surrounding jurisdictional matters have garnered attention at the highest levels of government, further emphasizing the urgency to streamline the process and promote RERA as the primary avenue for resolving real estate disputes. By addressing this concern, it is hoped that consumers will receive the necessary guidance and support from RERA, ensuring a more efficient and effective mechanism for addressing their grievances in the real estate sector.

⁴⁰ Consumer protection act (India Code 2019).

⁴¹ Real estate regulation and development act, § 88 (India Code 2016).

⁴²Id. at 40

⁴³ Dipak K Dash, Govt entities should curb consumers tendency for 'forum shopping', encourage them to approach RERA: Hardeep Singh Puri, Times of India (May 10, 2023), <https://timesofindia.indiatimes.com/india/govt-entities-should-curb-consumers-tendency-for-forum-shopping-encourage-them-to-approach-rera-hardeep-singh-puri/articleshow/100113190.cms>.

5. **Addressing the issue of Black Money** - Indeed, the real estate sector in India has been historically susceptible to the circulation of black money due to the high value of transactions and the traditionally opaque nature of property deals. The amendment to Section 269SS of the Income Tax Act in 2016⁴⁴ was a significant step towards curbing this practice. This provision, which penalizes cash transactions above Rs. 20,000 in property deals, has been instrumental in promoting transparency and accountability in the sector.

However, the Real Estate (Regulation and Development) Act, 2016 (RERA) could indeed benefit from incorporating similar mechanisms to further discourage the use of black money. RERA, as it stands, has already brought about a paradigm shift in the real estate sector by promoting transparency, accountability, and efficiency. It has established a regulatory authority for real estate transactions, mandated the registration of projects, and provided mechanisms for speedy dispute resolution.

Yet, the issue of black money still persists. To tackle this, RERA could consider implementing stringent reporting and auditing requirements for developers. This would involve the mandatory disclosure of financial transactions, including the sources of funds used for property development. Such a measure would not only deter the use of black money but also enhance investor confidence in the sector.

Moreover, RERA could also introduce a provision for the digitalization of all property transactions. This would ensure a traceable record of all transactions, making it difficult for black money to be laundered through the real estate sector. Digital transactions would also simplify the process of property buying and selling, making it more user-friendly and transparent. Furthermore, RERA could work in tandem with other regulatory bodies such as the Income Tax Department and the Enforcement Directorate to monitor and investigate suspicious transactions. This would require a robust inter-agency cooperation mechanism, but the benefits in terms of curbing black money would be substantial.

Lastly, it's crucial to remember that while laws and regulations play a significant role in curbing black money, the ultimate responsibility lies with the individuals involved in the transactions. It's essential for all parties to uphold the highest standards of ethics and integrity, and to understand

⁴⁴ Income tax act § 269 (India Code 1961).

that the use of black money not only undermines the economy but also erodes trust in the real estate sector. In conclusion, while the amendment to Section 269SS⁴⁵ of the Income Tax Act and the introduction of RERA have been significant steps towards curbing black money, there is still room for improvement. By incorporating stringent reporting requirements, promoting digital transactions, and fostering inter-agency cooperation, we can make further strides in eliminating the shadow economy from the real estate sector.

VI. CONCLUSION

The Real Estate (Regulation and Development) Act, 2016 (RERA) represents a watershed moment in the evolution of the real estate sector in India. Enacted to protect homebuyers and promote transparency, accountability, and efficiency in the real estate industry, RERA has brought about significant reforms.

The key highlights of RERA include the mandatory registration of projects and agents, restrictions on promoters, provisions for compensation and refunds, and mechanisms for speedy dispute resolution. The usage of carpet area as the basis for sale has brought much-needed standardization. Provisions for refunds with interest provide relief to buyers in cases of project delays or discontinuation. The establishment of regulatory bodies like RERA and AO has enabled time-bound redressal of grievances. However, RERA suffers from certain limitations in terms of applicability, separate account requirements, multiplicity of forums, and prevalence of black money transactions. While it covers major urban projects, smaller rural projects remain outside its ambit. The 70% separate account requirement for project funds appears excessive and inflexible. Overlapping jurisdictions of RERA, CPA forums and arbitration has created confusion. RERA needs more teeth to curb black money flows.

Nevertheless, RERA remains a game-changer for Indian realty. It has enthused buyers' confidence like never before and compelled developers to revamp their practices. Teething troubles notwithstanding, RERA has set the stage for increased transparency and professionalism in the sector. The real impact will be visible over the next decade as more projects come under its oversight. To build on the gains under RERA, its scope should be expanded to cover projects

⁴⁵ Income tax act § 269 (India Code 1961).

of all sizes across India. Reasonable relaxations in account restrictions should be allowed. Jurisdictional issues need resolution to prevent forum shopping. Provisions to digitize transactions and enable inter-agency coordination will help curb black money.

RERA has sparked a metamorphosis in the real estate sector. But the process needs to evolve further through reviews and reforms to address limitations. The real estate sector must uphold ethics and integrity as it progresses towards increased transparency and efficiency. RERA should aim to inspire stakeholder confidence and trust through continuous improvements.

With progressive refinements in the years ahead, RERA has the potential to transform the regulatory landscape for Indian real estate. It can enable the sector to imbibe global best practices in governance, transaction processes and consumer protection. RERA can fuel a paradigm shift making Indian realty an attractive option for investors and end-users alike. The future looks promising for a revamped real estate sector that balances the interests of all stakeholders.

