

A STUDY OF REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 AND LEGAL TRANSFORMATION

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Abstract:

The real estate sector is one of the most globally recognized sectors. Real estate sector, which seems to be one of the major contributors in the inclusive growth of the nation with the contribution of 8.53% of total GDP and growth rate to the tune of 30%, is also clutching the share of its regulatory attention. Significant performance of real estate industry with the significant rights and liabilities involved in the transactions has fetched the government attention for proper policy and regulation of real estate sector. This led to a deep-seated legal transformation in the form of Real Estate (Regulation and Development) Act, 2016. The real estate sector comprises of four sectors- housing, retail, hospitality, and commercial. The growth of this sector is well complemented by the growth in the corporate environment and the demand for office space as well as urban and semi-urban accommodation. The Construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy. By 2040, real estate market will grow to Rs. 65000 core (US\$ 9.30 billion) from Rs. 12000 core (US\$1.72 billion) in 2019. Real estate sector in India is expected to reach US\$ 1 trillion in market size by 2030, up from US\$ 200 billion in 2021 and contribute 13% to the country's GDP by 2025.¹ The Real Estate (Regulation and Development) Act, 2016 is one of the significant regulations to maintain check and balance between buyer and seller. In this paper

searcher is going to focus on the important provision of this act and its utility.

Introduction:

Real estate is real property that consists of land and improvements, which include building, fixtures, roads, structures and utility systems. Real estate, as a general term, describes the built environment, which plays a vital role in every aspect of an economy, society and environment. Businesses and society can't function without the services of commercial property, including the provision of offices, shops, factories, malls and many other forms of real estate. The commercial property sector delivers and manages the infrastructure needed for entrepreneurship to thrive. It is therefore a fundamental source of employment and economic growth, and a major contributor in addressing two critical challenges of our time: providing liveable and functioning cities for a growing urban population and reducing the environmental footprint of the built environment.² The real estate has a catalytic role in fulfilling the demand for housing for the various socio-economic classes. Equally important is need to provide the backup infrastructure covering utility services such as water supply, sewerage, drainage, roads and transport requirements as well as social infrastructure like schools, health and recreation facilities, commercial infrastructure like markets/malls, office complexes, technology parks etc. The cumulative effect of these demands places the onus on the real estate

and construction sector, providing an excellent opportunity for conferring social benefits which could act as a major vehicle for kick-starting the economy.

The Real Estate (Regulation and Development) Act, 2016 is an enactment to protect from exploitation, maltreatment and misinforms. The Act restricts illegal construction of building and apartment. The structure of the RERA Act is to focus on regulation as well as development of the real estate sector including the capping on realization, establishment of RERAs and specialized Appellate Tribunals, Registration with Regulatory Authorities, Internal Audit and Valuations has enhanced the role of professionals in ensuring effective, oriented and directed implementation of this law in the country.

Objects and Reasons of the Act

1. To ensure accountability towards allottees and protect their interest.
2. To infuse transparency, ensure fair-play and reduce frauds & delays.
3. To introduce professionalism and pan India standardization.
4. To establish symmetry of information between the promoter and allottee.
5. To imposing certain responsibilities on both promoter and allottees.
6. To establish regulatory oversight mechanism to enforce contracts.
7. To establish fast- track dispute resolution mechanism.
8. To promote good governance in the sector this in turn would create investor confidence.

Salient Features of the Real Estate Act, 2016

1. Act establishes the Real Estate Regulatory Authority for regulation and promotion of the real estate sector.
2. Act ensures sale of plot, apartment of building, as the case may be, or sale of real

estate project, in an efficient and transparent manner.

3. Act ensures protect the interest of consumers in the real estate sector.
4. Act establishes an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority (RERA).
5. Act regulates transactions between buyers and promoters of residential real estate projects.
6. Act establishes state level regulatory authorities called Real Estate Regulatory Authorities.
7. Act provides, residential real estate projects, with some exceptions, need to be registered with RERAs.
8. Act states that, promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs.
9. Act speaks about the registration; and the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.
10. Act state that the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount.
11. Act provides right to Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioners.
12. Act imposes stringent penalty on promoter, real estate agent and also prescribes imprisonment.

Advantages of RERA

1. Project planning
2. Transparency

3. Timely completion of the project
4. Customer management
5. Reduction in litigation
6. Increased FDI

Real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

Section 2(g) defines appropriate Government it mean (i) for the Union territory without Legislature, the Central Government; (ii) for the Union territory of Puducherry, the Union territory Government; (iii) for the Union territory of Delhi, the Central Ministry of Urban Development; (iv) for the State, the State Government.

Responsibilities of the appropriate Government:

1. As per section 84 of the Act the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
2. As per section 20 of the Act the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30th April, 2017.
3. As per section 20 of the Act the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
4. As per section 43 of the Act the appropriate Government is required to establish the Appellate Tribunal within 1

year from its commencement i.e. maximum by 30th April, 2017.

5. As per section 43 of the Act the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
6. The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
7. As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
8. As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
9. As per section 75 the appropriate Government is required to constitute a ‘Real Estate Regulatory Fund’.

Many developers across India follow a common practice of pre-launching a project without securing requisite approvals for the project from the local authorities, which is termed as “soft launch”, “pre-launch” etc. Buyers also lap into this opportunity as they get discounted prices during the pre-launches period. But if it is from a developer who is unscrupulous or a fly by night operator, then it carries a great risk. Hence, to plug this gap, registration of every project with the regulatory authority has been mandatory before it is launched for sale and for registration the basic pre-requisite is that the developer must have all the requisite approvals. Thus the buyer is protected as the project is ring-fenced from the

vagaries of non-approvals or delays in approvals which are one of the major causes of delay for the project.

Prior Registration of Real Estate project with Real Estate Regulatory Authority A promoter shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established. The projects that are ongoing on the date of commencement of this Act and for which the completion certificate has 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 this Act. Authority in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made there under, shall apply to such projects from that stage of registration 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 this Act for each phase separately.³

Projects exempt from the ambit of the Act

1. 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;
2. Where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
3. For the purpose of renovation or 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.

Functions and duties of promoter

Promoter is a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon. The promoter shall, upon receiving his Login Id and password, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project for public viewing, including (a) details of the registration granted by the Authority; (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked; (c) quarterly up-to-date the list of number of garages booked; (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate; (e) quarterly up-to-date status of the project; and (f) such other information and documents as may be specified by the regulations made by the Authority.

Establishment of Real Estate Appellate Tribunal

The appropriate Government shall, establish an Appellate Tribunal to be known as the (name of the State/Union territory) Real Estate Appellate Tribunal. The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be. Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one

Administrative to Technical Member. The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal. Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter: It may be noted that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Conclusion:

RERA Act is significant legislation which provides various provisions including the

definition of promoter, allottee, real estate agent and many others. However, registration of project is compulsory so also the function and duties are imposed on the promoter. Act provides appellate tribunals to solve matter arising out of any dispute. Overall the Act is an important legislation to control promoter and legalize the project. Act control the promoter activities which deceive or misleads the allottee.

Reference:

1. ibef.org
2. The Institute of Company Secretary of India, Printed at Chandu Press /100/July 2017. PP 1
3. The Institute of Company Secretary of India, Printed at Chandu Press /100/July 2017. PP 6