

Indian Buyer's Interest Are Protected In India – RERA

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Abstract

The real estate industry generated the second-largest income in India. The real estate industry is growing rapidly in our nation today. The interests of buyers in the real estate industry were not properly regulated or safeguarded in the past. The real estate industry had a high frequency of more dishonest and dishonourable behaviours. Before the RERA was put into place, the developer or promoter frequently caused problems for the buyer. The Real Estate (Regulation and Development) Act 2016 was introduced in India to control promoters and brokers and to safeguard buyers. Real estate has changed dramatically as a result of the RERA. The researcher in this study analyses how the Real Estate (Regulation and Development) Act, 2016 safeguards purchasers' interests against real estate project promoters and agents.¹

Keywords: Real estate, Buyer's problem, Purchaser's interest,

Introduction

The Real Estate (Regulation and Development) Act, 2016, which has a number of provisions, was introduced by our Indian government. On March 10 and March 15, 2016, the Rajya Sabha and Lok Sabha, respectively, approved the bill. On May 1st, 2016, 59 out of 92 parts of the Real Estate (Regulation and Development) Act, 2016 became operative. On May 1st, 2017, certain parts go into effect. Real estate is one of the most significant industries in India, and each state and union territory is required by RERA to have its own regulatory body, known as the Real Estate Regulatory Authority.

However, this industry was not subject to any proper controls. Therefore, the Indian government decided to enact the RERA legislation with a number of rules to control Promoters and protect Buyer Investments. An Appellate Tribunal for quick dispute resolution was established by the RERA statute. Each state, including the Union Territory, has its own set of regulations. The primary goals of this law are to safeguard the buyer's money and control promoters and agents. In India, the real estate industry contributes a bigger percentage of income. RERA is a game-changer since it forbids project promoters from advertising without first registering their projects with the RERA. Each Indian state and union territory benefits greatly from the work of the Real Estate Regulatory Authority. In India, the real estate industry is an empirical sector.²

II. Objectives of the Act Focus on Buyers

1. To study interest of buyers is protected with reference to
 - a) Project delivery
 - b) Property pricing
 - c) Quality of Constructions.
2. To ensure sale of plot, Building, Apartment, sale of real estate project in an efficient accountability and transparent manner.
3. To establish adjudication mechanism for speedy dispute redressal.³

III. Review of Literature

¹<https://ijcrt.org/papers/IJCRT2111256.pdf>

²<https://mohua.gov.in/>

³<https://trendtalky.com/rera-act-2019/>

An empirical dynamic partial equilibrium model that links price appreciation to innovations in trading volume uses a metro economic condition index as a moderator variable. The anticipated moderating effect significantly reduces the long-run reaction to volume shocks. Overall, empirical results are in line with theoretical models' hypotheses that sellers' reservation prices fluctuate countercyclically, smoothing the increase in the repeat-sale index price.

IV. RESEARCH METHODS

This study's secondary data, which was gathered from a variety of websites, including the Maharashtra RERA website and other published articles and journals, was used to summarise the study's objectives.

V. PROJECT EXEMPTED UNDER RERA

1. Projects having a land size of less than 500 square metres are exempt from RERA.
2. The total number of flats that are expected to be built is eight.
3. Renovation and repair projects are exempt from this RERA.

VI. History of RERA

Dr. Girija Vyas, Minister of Housing and Urban Poverty Alleviation, introduced the Real Estate Regulatory Authority (RERA) Bill in 2013 under the UPA 2 administration. A Rajya Sabha committee that reviewed the bill made suggestions that were adopted by the Union Cabinet of India in December 2015, leading to the passage of 20 significant revisions to the legislation. A committee was chosen to review the bill, and it delivered its report in July 2015. The Rajya Sabha and Lok Sabha both approved the bill on March 10 and 15, respectively.

Goals of RERA: The main goal of RERA is to increase transparency and inspire faith and confidence in real estate buyers.

RERA's goals include, among others:

- To create a Real Estate Regulatory Authority (RERA) with the primary objective of regulating the real estate industry
- To create a system for grievances and transparency in the real estate industry
- To ensure that buyers' rights are protected.
- To confirm the legitimacy of real estate brokers, projects, and promoters.
- In order to prevent needless delays in project delivery, approval, etc.
- To establish a separate procedure for handling complaints.
- To boost the real estate industry's confidence.
- To specify the consequences for violators.⁴

VII. BUYERS' BENEFITS AND PROTECTIONS UNDER THE RERA ACT

Major Advantages for Home Buyers

Before advertising or marketing projects, builders must have all required approvals and a certificate of registration from the authority. All property clearance must be completed before a project can start. All project-related documentation can now be checked and verified on the RERA website. (For example, an authenticated copy of each approval, the commencement certificate, the sanction plan, the layout plan, the specification, the plan of development work, the planned facilities, the Performa allotment letter, the agreement for sale, and the conveyance deed to be delivered)

Selling in a carpet region rather than a heavily developed or built-up area "Carpet area" refers to the net useable floor area of an apartment, which includes the internal portion walls of the flat but excludes the exterior walls, areas below service shafts, exclusive balconies or verandas, and exclusive open terrace areas.

⁴<https://trendtalky.com/rera-act-2019/>

Additionally, RERA registration is required for real estate agents working on this project. Buyers' funds totalling 70% will be stored in an escrow account and utilised only for the same project.

Sale agreements between builders and buyers are required by RERA.

Without the consent of two-thirds of the project's buyers, builders cannot alter the project's blueprints. Flats delivered on time. A clause in RERA states that the buyer will be responsible for paying interest if it is delayed.

The interest rate that the promoter or the buyer, depending on the situation, must pay is referred to as "interest."

In the event of default, the promoter shall be entitled to charge the buyer interest at a rate equal to that which the promoter shall be required to pay the buyer.

The promoter must pay interest to the buyer starting on the day it received the money, and the buyer must pay interest to the promoter starting on the day they stopped making payments to the promoter until it is paid.

Five years after the property is in their hands, builders or promoters are required to offer service. Due to the 5-year faulty liability period, building quality will improve.⁵

VIII. MAJOR SECTIONS AND PROVISION FOR PROTECTS THE BUYERS / ALLOTTEES UNDER THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The researcher should highlight major sections under the Real Estate (Regulation and Development) Act, 2016 amendment, which is under the Ministry of Law and Justice (Legislative Department).

Real Estate Regulatory Authority (RERA) is one of the state-level regulatory agencies (**Section 20**): State governments created the Real Estate Regulatory Authority (RERA). The Act enables state governments to establish a number of regulatory bodies, each having the following responsibilities. Real estate projects should be listed, kept up to date, and made accessible to the public on the business website safeguarding the interests of purchasers, agents, and promoters a housing development that is both affordable and sustainable; and offer government guidance and guarantee compliance with the Act and its rules.

Real Estate Appellate Tribunal (**Section 43**) - The decision of the Real Estate Regulatory Authorities may be challenged before the tribunals established for each state under the Act. This includes the tribunal's membership, requests for dispute resolution, requirements for the chairperson and members, authority over the tribunal, and open positions.

Mandatory Registration (**Section 3**): All projects with land sizes of at least 500 square metres or eight apartments are required by the regulatory authorities to register.

Deposits: A separate escrow account set up specifically for the project's construction will receive 70% of the money collected from the buyer.

Penal interest on default (**Section 61**): In the event of either party's default, both the promoter and the buyer are obligated to pay an equal rate of interest.

A promoter is not permitted to take more than 10% of the price of the land, apartment, or building as an advance payment or an application fee from a person without first getting into a sale agreement.

Penalties (**Section 66**) Developers who violate the orders of Appellate Tribunals and Regulatory Authorities may be sentenced to three years in jail, while agents and purchasers may be sentenced to one year in prison or to a fine of up to 10% of the total contract price for each day the breach persists.⁶

⁵<https://gharkul.com/blog/what-is-rera-act-9-key-benefits-for-home-buyers/>

⁶<https://blog.ipleaders.in/real-estate-regulation-and-development-act-2016-2/>

IX. UNDER THE RERA ACT, THE BUYERS MAY FILE A COMPLAINT

The Real Estate Regulatory Authority seeks to increase sector openness. The RERA's primary goal is to eliminate the current inconsistencies and issues in the industry. The buyer may make a complaint with the Real Estate Regulatory Authority or an adjudicating official designated by law in accordance with section 31 of RERA in some instances of delayed projects that are not registered under RERA. There are projects whose RERA registration expired in July, but there has been no enforcement of this. Even after registering with RERA, if the promoter does not finish the project by the deadline, further action must be taken in accordance with Section 7 of the Act. contact the State's RERA authorities only, but other legal bodies as well.⁷

X. Landmark Decisions Under RERA

❖ Aftab Singh v. Emaar MGF Land Limited & Anr

(Consumer Case No. 701 of 2015)

There was a disagreement in this case on whether a consumer complaint may be brought against the builder if the lawsuit falls under RERA. According to the case's circumstances, the builder had agreed to construct villas and make them available for delivery within a given timeframe, however he had fallen short of his claim.

Then, because there was an arbitration clause in the main agreement between the buyers and the builders, he filed an application under the Arbitration and Conciliation Act of 1996 to request that the court authority refer the parties to arbitration. The builder was thereafter the target of a consumer complaint that was lodged in the forum, but he argued that the forum lacked the ability to hear the case because it was already under consideration by another statute and another authority. According to the honourable court, the Consumer Protection Act is a supplement to another law, not a suppression of a privilege granted by another law. The forum established by the statute should not be viewed as a civil court. Simply because a statute gives a consumer access to an alternative remedy does not exclude him from contacting the forum. Although RERA has measures specifically designed to safeguard builders and developers as well as buyers' rights with regard to major recompense, but none of this limits or curtails the right, for example. The provision of adjudicatory powers in Section 71 of RERA does not in any way prevent the person from exercising their CPA rights. It was determined in the same case before the NCDRC that the agreement does not prevent the parties from proceeding to a forum for issue resolution. As a result; it is now accepted practise that consumers have the option of bringing their complaints to the RERA forum as well as the Consumer Protection forum.⁸

❖ Geetanjali Aman Construction Vs Hrishikesh Ramesh Paranjpe (Complaint Number 0000691 [Maha RERA])

In this instance, the dispute's focus was on Section 3 of the RERA and pertained to the question of the project's registration. The key clause in this case was 3(2), which made it clear that projects do not need to be compulsorily registered if their area does not exceed 500 square metres or if their building has no more than eight stories. The offender was hit with a fine of Rs. 30 lakh. The defendant was unable to achieve the intended outcome even after stating that the condition is a "or" condition rather than a "and" condition. The argument made claimed that the first requirement, that it must be within 500 square metres, is met, but the allottees have claimed that because there are around 22 flats and 9 shops, the second requirement is broken. The court had to decide how to read 3(2). It concluded that 3(2) would now be construed in its most literal sense and that the developer must meet both requirements

⁷<https://ijcrt.org/papers/IJCRT2111256.pdf>

⁸<https://www.lawinsider.in/columns/rera-landmark-judgements>

in order to receive permission. According to the consensus, the developer must pay Rs. 30 lakhs and register the project within a month.⁹

❖ **Mr. Jatin Mavani Vs M/s. Rare Township Pvt. Ltd [Maha RERA]**

The issue at hand concerns the fact that the complainant paid a fair price for a flat in the respondent's building. However, when the house was delivered, a significant issue regarding the parking space that is supposed to be offered to anyone purchasing a certain area arose. According to the RERA, the owner or developer is required to offer parking for every resident of his region. Another argument made in this case was that the respondent allegedly attempted to show the parking place to some other individuals, which is against the law on its own. The court determined that the respondent, the project's developer, is required to give all of its residents who have purchased apartments in the development the requisite parking space after hearing the arguments from both parties. He is not allowed to in any way sell that land to others.

❖ **Avinash Saraf, Neha Saraf Vs. Runwal Homes Pvt. Ltd (MAHARERA, Mumbai)**

The amount of compensation that becomes due in this situation because of a failure to deliver the agreed-upon space is in dispute. Runwal Homes, the respondent, pledged to provide the apartments by August 2016 in accordance with the identical agreements, which were signed and properly considered paid for in November 2014. In this case, the complainant argued that despite having paid nearly 97% of the consideration, they still have not received their apartment. As a result, they approached the tribunal in an effort to have the respondent company held accountable and ordered to pay the full amount of the consideration plus interest for the period during which they failed to deliver possession. The respondent corporation argued that because the agreement was struck before RERA was ever a thing and hence cannot be held accountable under the Act's provisions, the RERA authority in this case lacks jurisdiction. This court has been accorded authority under Sc. 79 of RERA because the judgement said that as the cause of action pertains to the failure to deliver apartments, it takes with it the retrospective application of the law. The court is of the opinion that the respondent developer must pay compensation and interest for registration in addition to stamp duty, so the issue of jurisdiction is resolved.

❖ **Suresh V. Swamy Vs. L&T Limited 2018(4) ADJ 406**

This important ruling, which addressed a few crucial RERA-related issues, is one of its kind. The complainant had paid the full purchase price for the apartment, and as a result of the promoter's default, it is expected that the promoter will pay interest on the amount paid. The parties had also signed a sales agreement, and it was agreed that delivery would take place on any date in September 2017. Following this, the project in issue acquired its occupancy certificate, and a revised completion date of December 31, 2018, was verified. This case provided resolutions to a few crucial Act-related questions.¹⁰

❖ **Sushil Ansal vs. Ashok Tripathi, Suarabh Tripathi [2020] 43 NCLAT**

A decree in this case that forced the corporation to file for insolvency in order to pay the rupees 73 lakh that UP RERA had awarded against them was challenged in the NCLAT. Whether or whether homebuyers fall under the definition of a financial creditor was the matter at hand. Home buyers are permitted to use civil law as a means of enforcing their decree, but they are not permitted to resort to the IBC for assistance. According to the 2019 amendment, the basic condition for filing bankruptcy is either 100 purchasers or 10% of the allottee, but it is important to remember that if there are only 100 buyers, for instance, the firm could be forced into insolvency by just 2 or 3 people. It is made clear that when it comes to

⁹<https://www.lawinsider.in/columns/rera-landmark-judgements>

¹⁰<https://www.lawinsider.in/columns/rera-landmark-judgements>

implementing a decision for the repayment due to default on the part of the promoter itself, a home buyer is not to be viewed on the same lines as a financial creditor.¹¹

❖ **Vinod Kumar Agarwal vs. Jaipur Development Authority (Rajasthan RERA)**

RAJ-RERA-C-2020-3622

Whether the RERA regulations will take precedence over local law provisions was the topic under discussion. The Real Estate Regulation Act's Section 13 applicability was also a legal issue.

The provision states that until the agreement for sale and other requirements have been met, the project promoter may not receive any money that is greater than 10% of the total amount. According to the case's facts, the authority demanded additional consideration in contrast to the 10 percent norm, using the Rajasthan Improvement Trust Rules, 1974, a local state law, as its justification. They further argued that the respondent was under no obligation to carry out specific development in that region. While the petitioner argued that the RERA's provisions supersede those of state laws since they are a product of the Central Legislature and are a result of that act. Therefore, in accordance with Section 13 of RERA, the authority should be forced to sign the sale document and finish the agreement before requesting any further funds. The tribunal in this case acknowledged the arguments and stated that, in this case, Central Law would triumph as well as the fact that the aforementioned clause is necessary in nature, requiring the authority to execute the aforementioned purchase agreement.¹²

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