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Kharkar Ali, Thane West, Thane, Maharashtra-400601, India.

Paper on Study of RERA Act in real Estate Sector-opportunities and challenges

CA Vaibhav Sali

Sheth NKTTCollege of commerce and Arts,
Thane (W), India.

Abstract: This paper is focusing on RERA act and it's an Evolution in real estate sector. The Real estate industry is the most prominent and capital-intensive industry. This industry is also consider as one of the most volatile industry. The Variations in the policies and schemes of government directly or indirectly affect the industry in different manner. The Real estate Development leads growth as well as rapid urbanization in the country it become utmost necessary to keep a check on the industry. The industry should be beneficial to all its stakeholders. The real estate industry was functioning in a more hazardous ways where the developer was not able to stick to their promises of quality and delivery of the project. The Realty sector was unorganized which create problem for customers and the customer used to face many problems. Due to such behavior of developer there was trust gap observed between the stakeholders. As many other industries are dependent on real estate industry, it was utmost necessary to resolve the issue. For this Government of India came up with RERA bill help in very efficient way to which put common obligations, restriction and check on all the stakeholders of the industry. This study is done in order to analyze the act and suggest some of the changes that can be implemented in order to make the system more business friendly and efficient.

This paper is intended to give the readers a brief idea about some of the most important laws that RERA Act has introduced and will also talk about the challenges. RERA Act although seems to have solved all the problems and save a lot of time and money of both buyers and promoters, but its most important part that is not usually discussed is the amount of transparency it has created between the parties involved.

Keywords: Realty sector, RERA act, Fund diversification, Redressal mechanism, Challenges.

I. INTRODUCTION

India's real estate sector has been one of the world's largest market. The unorganized sector being the dominant in the sector, there was a need of the transparent government body which need to monitor and regulate on the unorganized companies and forced them to come under the organized sector. There was a trust gap between the developer and the buyer. Real estate sector as and when have seen the recession, there was no mechanism to check the credibility of the developer and have to rely on the market image of the developer. There was no specific redressal mechanism for the sector for delay in delivering and other related project issues and complaints. One of the major factors had always been trust. Buyers were always been in the fear

that the developer will not give possession on time or he will not provide the required documents or he will not give the said quality of property. They were a fear that developer will fly-by-night. Developer were selling the property on super built up area and home buyers end up paying more and receive lesser usable space. Home buyers had to give booking amount to booked the apartment and rest of the payment in instalments without knowing where is there money being used, developer use the money to purchase new land rather than completing the existing project.

RERA was also needed from the side of developer as it can keep the check on inventory and will filter out the non-capable developer in the sector so that there remain companies which see larger stake in the business and indulge more professionalism. A regulatory Act like RERA was needed in order to revive confidence in our country's real estate sector. It is one of the leading revenue generators in our country and it is needed some transparent government authority to keep a check on developers. RERA will provide a common tool for both buyers and developers and will help to minimize the risks which were faced by the people earlier. This act is having extreme significance as it will be applicable to various companies across the country. This act obligate a number of things like registration of projects and real estate agents which have become mandatory now. A buyer will have all the rights to know and understand every detail about a real estate project and will also have the right to get all the documents related to the project. It is also helpful for establishing a state authority which will govern and regulate both residential and commercial real estate transactions. At the same time RERA will ensure timely delivery of the project which is a big sigh of relief to home buyers.

II. LITERATURE REVIEW

Indian Real estate sector is one of the major capital intensive sector. India's real estate sector has seen many stiff slumps, the major reason being the project getting delays and the trust of buyer from developer getting fade away. When developer instead of completing the project invest in land, the land prices increases and so the price of the apartment are always high. To curb all these RERA act 2016 was introduced in parliament. However, the prices are not stabilized even after the implementation of the RERA act. This study is done to recognize the loopholes that still the developers are using to use the law in favor of them as well as to know what can be done to make this law more effective in terms of both developer and buyers. And can this act be implemented on a wider base and more transparent ways.

As per Indian Express (Dec 26th, 2012) Dr. Reena Vasishta – additional secretary to the Govt. of India (26th March 2016) in her studies shed titled that this was indeed to make a call in favor of customers, buyers, promoters and agents. The reform of the act implemented due to the economic crisis, fraudulent activities happened in the Indian real estate sector this step was taken and implemented in favor of customers to stop unnecessary incidents. It has been facing a lot of problems since 2012. This could lead to decrease demand for property further. This reduced demand is causing a slowdown in recovery of investment for builders. The RERA act is initiated efficiently by the central as well as state government to spread awareness and bring transparency to maintain the real estate field safe and secure for all the stakeholder and society as well.

Drake Mac Donald (2011) in his studies titled, In India construction industry is emerging rapidly. In India faulty construction is a major problem recognized through different segments. People construct buildings due to the hefty greed. Builders use cheap product and quick way to build with providing lesser wages to the workers. Lack of enforcement leads unwanted activities such as bribes.

III. RESEARCH METHODOLOGY

The Paper is based on secondary data. Secondary Data collection is done through Journal, Periodicals, Articles and official websites of RERA act.

IV. OBJECTIVES OF THE STUDY

The objective of this paper is to understand the effects of RERA act in realty sector. The paper tries to focus on how important RERA is for the construction sector which has been a need of time. RERA initiated a set of rules and laws that were to be followed by the individuals that participated in a construction project. This includes rules, Laws and various obligations on the part of the Developer, promoter, buyer, broker, and everyone else that is involved.

V. CONTENTS OF RERA DOCUMENTS

The analysis of the RERA document has been done. There are clauses which direct to the developer right from the planning stage of the project to the execution and the closing stage till handed over the property to the Buyer. Developer has to open an escrow account which is mandatory for the project and 70% of the payment that they have received as an instalment of the apartment, or any such unit that amount should only be used for the construction of that particular project by Developer it leads to proper utilization of fund and leads to timely possession of property to Buyer.

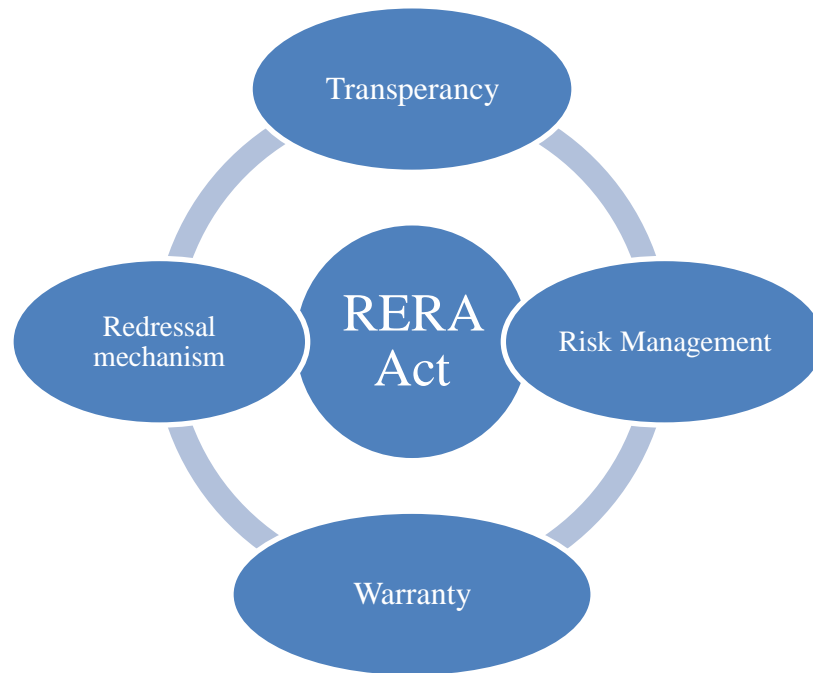
VI. FEATURES OF RERA ACTS

There will be a special forum for buyer, REAL ESTATE REGULATORY AUTHORITY, where they can file their complaint. This authority will be commissioned within one year as soon as the act comes into implementation.

- 1 The developer has to register their project under RERA before starting the project, in case project is divided into different phases then each phase will be considered as a different project and has to register separately.
- 2 The project which does not have a land area more than 500 square meters or the number of units does not exceed eight, does not need to register under RERA.
- 3 According to this act the developer has to sell apartment on carpet area and cannot continue to sell on super-built area that includes the common area, shaft, exclusive balcony etc.
- 4 Developer has to open an escrow account in which 70% of the money of the allottees has to be deposited and that money can only be used for the construction of the project. To withdraw the money from escrow account the developer needs a letter from CHARTERED ACCOUNTANT, ARCHITECT and ENGINEER. And the withdrawal will be in the proportion of completion of project.
- 5 After the developer applies for the registration of the project, the authority in 30 days has to reject or accept the application. If the authority failed to do this then the project is deemed to be accepted.
- 6 If the developer is found to be violating any rules, or making default in doing anything that is required to be done or is involved in any kind of unfair means then authority has the right to revoke the application number.
- 7 The promoter cannot accept more than 10% of the advance payment as a token amount for the sale of apartment, plot, as the case may be before coming into the written agreement of the sale of the unit.
- 8 The promoter cannot make any addition or alteration in the approved plan, design, structural design etc., without taking the consent of the allottees. At least 66% of the allottees should agree to the alteration, or addition to the plan or design then only developer can change it.
- 9 In case there is any structural defect, defect in the quality of workmanship, construction and brought to the notice of developer within the five years from the handing over the possession to the society, the developer has to rectify within thirty days without charging any extra amount for repair works.

10. In case the developer is not able to hand over the possession of the unit on time due to any reason than he is liable of paying the money back to the members with interest and compensation according to the act.
11. In addition to the establishment of the Regulatory Authority, the Bill also proposes to establish a Real Estate Appellate Tribunal (Appellate Tribunal) within one year from the date of commencement of the Act.
12. There are various penalties for the various misconduct by the developer and even by the buyers.

VII. BENEFICENT OF RERA ACT



Risk Management: It reduces the risk of developer getting bankrupt or insolvent and give buyer a trust support to buy the property. It gives buyer the right to revoke back is booking and also can for compensation and interest in case the buyer feels that he is cheated.

Transparency: It brings total clarity in favor of customers, Promoters, dealers, agents, builders it must provide accurate disclosures, registration number on the website also on the advertisement along with the allotment letters, payment modes and amount to be paid through electronic medium. It is a possible way to alter the corruption between agents and builders. Buyers can obtain the taxes with stamp duty on the form.

Mandatory registration: Builders must register with the housing regulatory projects and submit all the details of project to the state government authority. Any development of apartment or building can be judged through the mentioned details in future

Redressal Mechanism: A specialized grievance department is setup in order to give the judgment on issues as early as possible. This act will lead altogether will organize the real estate sector and will construct a bridge of trust between the buyer and the developer

Warranty: RERA will provide 5-year warranty for structural defects such as electric fittings, tap leakage etc. It helps to maintain the interiors for a time period. It reduces the ambiguity from the buyers to pay extra expenses on such issues. It leads buyer convince in terms of maintains of property.

VIII. DISADVANTAGES OF RERA ACT

Restrictive Nature: Due to many restrictions on the developer, there is a problem of cash in the sector and hence they have to look for various sources from where they can get cash, this leads to the increase in the price of the unit which also leads stuck towards fund diversification.

No scope for Diversification: The growth will be stagnant because 70% of the money of the developer is block in escrow account and that can also need to cash crunch in the sector. Due to which fund Diversification is become difficult.

Imbalance Demand and supply: There will be a supply-demand imbalance if the project is compliance to all the given rules and regulation. Giants' developer can develop 2-3 projects within two years and small developer may not get the profit margin which they used to get before RERA Act.

Legal Action: If the developer found guilty in any case than he may be punished up to three year of imprisonment or 10% penalty of the total cost of project. This may further delay the possession of the unit and buyer has to wait longer, leading to his financial problems.

Absence of rental Agreement: RERA doesn't include any rental agreements it totally depends upon the buyer to maintain the rental agreement which denotes the agreed and disagreed part clearly to save the property and make a proper use of it.

IX. CHALLENGES IN RERA ACT

According to the report published by magic bricks, 74% of the home buyers are unaware about the online process to check the status of the project according to the RERA, also people do not know whether the project is register under RERA or not. They do not have the necessary details about the project like, carpet area, payment modes, registration number, etc.

Special Tribunal

There is a special tribunal for the cases of real estate project under RERA, then also buyer can go to consumer forum and lodge the complaint. For e.g. Buyer A goes to RERA tribunal and lodge the complaint and Buyer B goes to consumer forum and lodge the same complaint against the same developer on same project than both the judgment is valid and applicable. This sort of system creates a problem for developer and also create a sense of ambiguity in the mind of buyer who wants to lodge the complaint.

Structural Defect

Structural defect is the responsibility of the developer, developer has to ensure that there are no such defects before the handling of project, and even after handling the project any such defects occur than he has to rectify it. Structural defects and workmanship are two different things, but in the act, it is mention under same section. The start date for both the thing is same, whereas the start date for structural defects should be on the date of completion certificate, whereas the start date for workmanship should be the date of the possession and should be only for one year, unlike the structural defects which the developer has to maintain for five years.

Area Complication

Carpet area is defined weakly in the ACT. Carpet area is very critical and the price of the unit is defined on the base of the carpet area. Carpet area is something that the buyer will get to use when he gets the possession. There are some weak links in the definition of carpet area and it should be corrected so that no one can get the undue advantage of the act. Like according to the act, balconies are excluded for carpet area calculation, whereas for developers cost is same for building the carpet area. Developers are now not interested in constructing the balconies, and seeking the climate of our country balcony is necessary.

Overloaded Burden on Developer Part

RERA talk about the rights and duties of the developer but does not mention much about the rights and duties of the real estate agent who is equally important link in this industry. Clauses much be included defining roles and duties of the real estate project.

State Differentiation in Act

As RERA is a central law, it required the co-operation of the states. Every states and UT need to establish their own real estate regulatory authority and have to frames the rules. So, every state has fabricated the rules according to their convince and therefore the act to much extent is diluted. Due to change in the system by the states many developer and agents have to wait for the registration number. After the act became the law in 2016, all the states and union territory were asked to notified the law in their assembly within six months and establish a regulatory body by May 2017. However, many states have failed to meet both the deadlines. There are some states which are rapidly resolving the issues and complaints that are filed by buyer or developer, whereas in some states the authority is sitting on a huge pile of the complaints and are very slow at resolving the issues related to the buyers, and this has become one of the reason for the projects getting delayed, as in some cases the developer has to wait for the judgments from the authority to continue with the work.

Funding Complication

Real estate industry is a very capital-intensive industry, RERA ask the developer to block 70% of the money into escrow account and can only be withdrawn in accordance with work done. This rule restricts the developer from expanding his business as he will not have as many funds as he may require to expand the business. After the implementation of RERA the number of launches of real estate project in the country has decreased, because of clearance that are the developer need to get and also their money is block in escrow account, they thus does not have enough liquidity to purchase new land for new projects and have to wait until their ongoing projects get the clearance certificate and they can withdraw the money from escrow account, this has hamper the real estate sector in many ways.

High Price Rise

The price which were expected to become stable or go down, after the implementation of RERA has actually gone up, because now the developer has to sell the property at carpet area and so they have increased the per square f price of the property. Also, the broker and real estate agent have to register under RERA and have to pay respective fees, their brokerage fees have also gone up. The developer has to take care of all the structural defects for 5 years, so developer will also try to cover that cost from the cost of the property and so the price of the property has gone up.

Penalties

Due to higher penalties on missing the deadline of completing the project, developer tends to write a completion date much longer than the actual in order to be safe. This also give time to developer to perform the construction activity slowly when they do not have enough money to continue with the projects. Buyers may get misguide due to the completion date given by the developer.

X. SUGGESTIONS

Relaxation in regulation

To reduce the time taken for approvals, digitisation of the documentation/approval and outsourcing of certain type of work to competent parties should be initiated. Projects should be classified under two categories, LOW RISK projects and HIGH

RISK PROJECT. Some permission should automatically granted to low risk projects, and high risk projects should grant permission online within 15-30 days of application.

Concession in legal provision

Provision for punishment should be intact in all states, according to central RERA imprisonment upto 3 years or fine to the amount of total estimated cost of the project or both is applicable to developer, buyer, and real estate agent, whosoever does not comply to rules and regulation. But except kerala all other states and UT have added a clause to compound the offence to avoid imprisonment.

Complete clarification

Central RERA law should clarify on uniform payment schedule. Currently the law states that 10% advance is taken when signing a sale agreement, but no further clarification is made on payment of the rest 90% of the payment. Gujarat and Maharashtra has link all the payment instalments with the stages of construction. Similar model should follow in central RERA law and all the states should be notified to link the payment schedules with the stages of construction.

Relaxation in Fund utilization

The percentage of the amount that should be deposit in escrow account should be reduce to 60%, this will give more cash to developer on hand to invest in different project and the growth of the market will not be sluggish. If the demand exceeds the supply than the rates of the real estate property will increase and may go out of the reach of the middle class people. And also, states should not allow to dilute this clause. Some states to some extent have diluted this law by removing PROPORTIONAL WITHDRAWAL clause.

Structured

Structural defect should be clearly defined in the central law. Some states have diluted the clause by removing DEFECT LIABILITY word from the clause, and hence make developer less vulnerable to the trouble form the members after he hand over the project.

RERA specifies that any change to the plan, design or anything should be done after getting the permission of the 2/3rd allottees. But this same law does not specifies the time by which the allottees should collectively come to a conclusion on allowing the developer to do any alteration. This may lead to the delay in the construction of the project. Any such delay which is out of control of developer should be noted at correspondence time should be extended for the completion of project.

RERA should act as a support to real estate industry, the biggest issue in this industry is always about cash, RERA should provide incentive to REIT and pension funds to invest in the real estate projects. By this way industry will always be available with the cash and thus developer will be encouraged to expand their business. All the legal barrier should be abolished through this act. Set up the IT network to monitor all the projects register under RERA and for quick redressal of the complaints.

Land title insurance should be available to the developers, the primary issue in this sector is land dispute. By providing land title insurance the developers can be assured about the ownership of the land.

Carpet area should be re-define in the law, and area like the balconies should be consider as a part of carpet area so as developer include balconies in their design.

States which are yet to notified the law should be deemed that they have notified the central law and will continue to act as per the central law.

In RERA it is stated that the complaints should be solved in 60 days, but in real it is not happening, there are complaints which are pending from more than 180 days. The procedure of solving grievances should be improve and the authority which does not solve the complaints in 60 days should be punished harshly.

RERA should also check technically the completion date given by the developer and also suggest to the developer to change the completion date if the project can complete before the date mention by the developer in the registration documents.

XI. CONCLUSION

Indian real estate sector, Prior to 2016 was functioning in a very Hayward and unorganized way. It was RERA which has the capability to clean up this sector and make much more organized sector which can become the driver of the Indian economy. With government's goal of HOUSE TO EVERY INDIAN by 2022, it was necessary that some type of discipline is injected in real estate sector so that they can help government in fulfilling the dream of giving house to every Indian. Even from the developer point of view this act was necessary so that they do complete projects timely and does not face any judicial difficulties and also become more agile before launching the projects. The act is a remarkable change in improving the efficiency of the government in regulating the Real Estate Sector. This focus on transparency, safety, imposes penalties on errant builders and follows the regulatory mechanism in the field .there is a benefit to the buyer as this new act has become the trust bridge between buyer and developer. But there are some issues which need to be addressed and also the scope of this act should be modified as it can become more business friendly to the sector. There as some challenges which are faced by various stakeholder due to implementation of this act. Buyers should be made aware about their rights; this can bring more transparency to the transaction. RERA add a greater accountability to the developer as they have to deliver project on time and with the said quality and size of the unit. Some changes to this act can make this act a transformation tool of real estate sector.

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