

The Real Estate Act 2016

(Regulation & Development)

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The act aims to improve organization and bring credibility in the Indian Real Estate sector.

The Real Estate (Regulation and Development) Bill 2016 was passed by the Rajya Sabha and the Lok Sabha in March 2016 to bring changes in the existing structure of the Indian Real Estate sector. The bill finally came in to effect as an act on May 1 2016. It took 8 years for the act to become a reality since it was first proposed in 2009 at National Conference of Housing Ministers of States and UTs. The respective state governments were entrusted to formulate model rules for the act within a period of six months¹; whereas, the deadline for setting up Regulatory Authorities and Appellate Tribunals was set as one year.

Now it has been more than two months since the RERA came into effect and several states such as Maharashtra, Madhya Pradesh, Andhra Pradesh, Uttar Pradesh, Haryana, Karnataka, Bihar, Orissa and Gujarat have already notified their rules. The Housing Ministry had notified the rules for five Union Territories - Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, and Lakshadweep last year itself. Urban Development Ministry had notified the same for National Capital Region of Delhi.

Introduction of this act is aligned to the objective of providing 'housing for all by 2022' as envisaged by the Indian Government and restore the confidence of people in the Real Estate sector. India faces a severe housing shortage coupled with sky-high Real Estate prices. However, the Real Estate and housing sector are largely unregulated and opaque, with consumers often being unable to procure complete information, or to enforce accountability against builders and promoters in the absence of effective regulation.

However, even after more than two months of the Act becoming a reality, there still exist a lot of questions and doubts among the common man. Objective of this paper is to try and simplify the major highlights of the Act and to understand the impact it will have on the Real Estate sector.

A brief outline of the act

- The act defines the structure, roles, and responsibilities of various bodies that will govern the Real Estate act.
- It includes the procedures for the registration of the new Real Estate projects, promoter and brokers along with their roles and responsibilities.
- It also defines the penalties that will be imposed in case of any violation by the promoters, brokers or buyers.





The act will be governed by a state level body - RERA (Real Estate Regulatory Authority)ⁱⁱ

All States and UTs will have to establish RERA within one year of commencement of the act. A state may have more than one RERAs or multiple states may share a single RERA depending upon population and size of the territory. RERA will have the responsibility of executing the functions and powers as defined in the act.

Functions and powers of RERA

- Fixing standard fees for various procedures as defined in the act
- Recommend Register and regulate Real Estate projects and Real Estate agents
- Publish and maintain a public website which contains updated details of registered projects
- and facilitate government to create measures to ensure effective execution of the act
- Impose penalty on promoters, allottees or brokers if they fail to comply with requirements of the act.
- RERA will have powers equivalent to civil court while investigating violations of this act. Furthermore, RERA can use these powers in obtaining books of account and other documents, summoning and enforcing the attendance of people and examining them on oath and issuing commissions for the examination of witnesses or documents

Apart from RERA, the act defines formation of Central Advisory Council and Real Estate Appellate Tribunal. The key responsibilities of the Central advisory council will be to advise on issues related to the implementation of the act, address major questions of policy and ensure protection of consumer's interest. The function of Real Estate Appellate Tribunal will be to settle disputes between developers and buyers and resolve complaints the developers, buyers or brokers may have with regards to the decisions taken by the authority.

Act mandates registration of all projects with RERA; exempts projects limited to land area of 500 sq.m. or 8 unitsⁱⁱⁱ

- In order to register, the promoter will be required to submit an application along with detailed information of his project to RERA. The information includes details of the promoter's company, brief detail of the project to be launched, copy of the approval and commencement certificate, layout plan, specifications of the project, and allotment letter. In addition to this, the attachments should also include declarations of legal title of land, time frame and maintaining 70% of the amount raised from the buyers in a separate bank account.





- However, the act will exempt projects in which the area of land is limited to 500 square metre or 8 units.
After successful registration, the promoter will be responsible to update the details of his project on a quarterly basis on RERA's website.
- 70% of the fund collected from the buyers will have to be deposited into a separate account and this amount should be used only for the purpose of construction.
- Promoter will be able to sell units only on carpet area basis as opposed to the existing trend of super built or built area.
- To ensure that the builders abide by their responsibilities, the act defines stringent penalties to prevent violations^{iv}.
 - **Violation**-Promoter advertises his project without registration.
 - **Penalty**- up to 10% of the estimated project cost. In case the promoter continues the violation and fails to pay the penalty he will have to face imprisonment of up to 3 years
 - **Violation**- Promoter fails to register his project.
 - **Penalty**- up to 5% of the estimated project cost
 - **Violation**- Promoter provides any false information while making an application to the Regulatory Authority. **Penalty**- up to 5% of the estimated project cost
 - **Violation**- Promoter fails to comply with other provisions of the act including failure to update project information.
 - **Penalty**- up to 5% of the estimated project cost

Even brokers will have to register^v

- In addition to the promoters, Real Estate agents/brokers will also be required to register with Real Estate Regulatory Authority (RERA).
- The registration will permit the broker to operate in the specific territory or state. It will be valid for a limited time period after which it will ha
- Registered brokers will be responsible to facilitate only registered projects and help buyers to obtain complete information of the project
- In case a broker fails to comply with the above responsibilities, he will have to face a penalty up to 5% of the project cost every day until he continues the violation. In case the broker violates a direction issued by the Appellate Tribunal, he may even have to face imprisonment for a period of up to three years.

Act empowers buyers to obtain complete information on the projects^{vi}

- The act will give buyers the right to obtain complete information on the project which includes sanctioned plans, layout plans, approvals and stage-wise time schedules.
- Buyers will be entitled to claim refund of amount paid in addition to compensation in case the builder fails to comply with the terms of contract or in case a buyer incurs a loss because of false advertising.





On the brighter side, the act will effectively safeguard buyer's interest

- Buyer's money will remain safe as builders will have to lock 70% of the funds to escrow account and will be used only for the construction of the respective project. Effective system for dissemination of information will ensure that buyers will be fully aware and updated on minutest details of the project in which they will be putting their hard earned money. This will leave very less room for fraudulent practices. Further to this, introduction of carpet area based pricing will add a considerable amount of transparency in the transaction. Creation of appellate tribunals will ensure that the act is implemented honestly without any discrimination, corruption or favouritism.
- Introduction of the act will bring organization and discipline to the Indian Real Estate sector. As a result, the projects will experience a significant improvement in terms of quality and credibility. This in turn will boost investment from both foreign and domestic players leading to reduction in the cost of funds.

....however there are few shortcomings

- The act fails to address accountability of government authorities in executing its role and responsibilities within the stipulated time frame, this may cause delays in getting approvals and subsequently the completion of the project.
- With the introduction of this act, the promoter will have to go through an additional layer of approvals and no provision has been made to rationalise the number of approvals required for a project or expedite approvals through a single window mechanism.
- The act has no clarity on under construction projects which will not comply with the new regulations.
- Any existing Real Estate regulation will continue to co-exist with the new act. This will create lot of confusion in the implementation.
- The act unnecessarily burdens promoters with a defect liability period of 5 years as this is a very long period during which damages may even occur on account of poor maintenance which is the sole responsibility of the occupants. Hence, the act needs to introduce an appropriate mechanism to identify the root cause of defect and make the responsible party, whether promoter or occupant, accountable for the defect.





References

- ⁱ Press Information Bureau, Government of India
- ⁱⁱ Chapter V, VI, VII-The Real Estate (Regulation And Development) Act, 2016
- ⁱⁱⁱ Chapter III-The Real Estate (Regulation And Development) Act, 2016
- ^{iv} Chapter VIII-The Real Estate (Regulation And Development) Act, 2016
- ^v Chapter III, VIII-The Real Estate (Regulation And Development) Act, 2016
- ^{vi} Chapter IV-The Real Estate (Regulation And Development) Act, 2016

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