

RERA: Heading towards Transparency & Accountability

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The Real Estate sector is heading towards a new horizon of transparency and accountability under Real Estate (Regulation and Development) Act, 2016 (RERA).

After initial apprehensions and hiccups, real estate sector as well as state governments is accepting the new change whole heartedly. As of May 25, 2019 Thirty States/UTs have notified rules under RERA; Four North Eastern States (Arunachal Pradesh, Meghalaya, Nagaland and Sikkim) are under process to notify the rules under RERA.

Twenty eight States/UTs have set up Real Estate Regulatory Authority (Permanent - 20, Interim - 08) and Twenty one States/UTs have set up Real Estate Appellate Tribunal (Permanent -13, Interim – 08). Regulatory Authorities of twenty three States/UTs have operationalized their websites under the provisions of RERA.

40,994 Real Estate Projects and 32,065 Real Estate Agents are registered under RERA across the country. Top five states (*as tabulated below*) have accounted for around 82% of total projects and around 80% of total agents registered under the Act across the country.

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Sl.	State/UT	General Rules	Establishment of Regulatory Authority	Establishment of Appellate Tribunal	Web Portal	Registered	
						Projects	Agents
1	Maharashtra	Notified	Permanent	Permanent	Setup	20,854	19,977
2	Gujarat	Notified	Permanent	Interim	Setup	5,482	925
3	Uttar Pradesh	Notified	Permanent	Permanent	Setup	2,619	2,863
4	Karnataka	Notified	Permanent	Interim	Setup	2,581	1,426
5	Madhya Pradesh	Notified	Permanent	Permanent	Setup	2,185	549
6	Others (23 States/UTs)	-	-	-	-	7,273	6,325
Total						40,994	32,065

Source: Ministry of Housing and Urban Affair dated May 25, 2019

Note:

- Others relate to the remaining 23 States/UTs who have already established the Regulatory Authority till such date.
- 6 States/UTs (i.e. Arunachal Pradesh, L'dweep, Manipur, Meghalaya, Nagaland and Sikkim) are yet to establish the Regulatory Authority.
- West Bengal has enacted a separate act namely 'West Bengal Housing Industry Regulation Act, 2017' and as of May-19 over 430 real estate projects and 220 real estate agents have registered under WB-HIRA Act, 2017 across the state (Source: WB HIRA Website)
- RERA, 2016 is not applicable to the state of Jammu & Kashmir

The Key provisions of the Act which will drive discipline and transparency are as under:

- ❖ **Compulsory Registration:** The act has made it mandatory that every real estate project which is fulfilling the criteria i.e. total area to be developed exceeds 500 sq. mtrs. or more than 8 apartments are proposed to be developed in any phase; laid down under the act, must be registered with its respective state's RERA. Promoter shall provide detailed information about the enterprise, projects launched in past five years, the sanctioned plan, layout plan with proposed specifications, plan of development works to be executed, proforma of allotment letter and agreement for sale. The act also forbids promoters to advertise, market, book and sell or offer for sale, or invite persons to purchase in any manner without registering the projects with the Real Estate Regulatory Authority established under this act.
Apart from Projects, now real estate agents must also register themselves with its respective state's RERA. This will discourage soft sale of any project and will in turn give better clarity and remove any ambiguity around regulatory approvals required for the project.
- ❖ **Separate Account:** The Act requires a declaration to be signed and submitted by the promoter, that seventy percent (70%) of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose. However, the promoter shall withdraw the amount from the said account only after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
This will prevent diversion of funds from one project to another with improved assurance of timely completion of the existing on-going projects.

- ❖ **Insurance:** The promoter shall obtain all such insurances as may be notified by the appropriate Government including title of the land and building as a part of the real estate projects and construction of the real estate project. The act also provides that promoter shall hand over all insurance papers to the association of the allottees.
This will protect the interest of home buyers against title defects and construction defects.
- ❖ **Allottees' control over promoter:** The act provides control of allottees over promoter by making allottees' approval mandatory in certain situation, like written consent of two third of allottees for any significant addition or alteration in the sanctioned plan or for transferring majority rights to the third party.
Once the majority of allottees, having booked their units in the project, the promoter shall enable, within a period of three months, the formation of an association/society/co-operative society, as the case may be under the laws applicable.
- ❖ **Promoter's functions and duties:** The Act lay down the explicit functions and duties of promoters which not only bring transparency and certainty but also accountability. Provisions like creation of webpage and provide details of the project for public viewing, to obtain the completion certificate or occupancy certificate from the competent authority, to execute and register conveyance deed in favour of allottee along with undivided proportionate title in common area to the association of allottees, defect liability period of 5 years for construction, not to accept more than 10% of the cost of the unit from the allottee without entering into a written agreement and etc.
- ❖ **Establishment of the regulatory authority:** The act has made it mandatory to establish Real Estate Regulatory Authority (RERA) in each state and union territory. Its functions include protection of the interests of the stakeholders, accumulating data at a designated repository and creating a robust grievance redressal system. The act has also provided time line for disposal of application within 60 days to prevent time lags.
Further, the act provides for the Real Estate Appellate Authority (REAT) which shall provide platform to appeal any order, decision or direction of RERA by aggrieved person.
- ❖ **Penalty and punishment:** To ensure that violation of the Act is not taken lightly, stiff monetary penalty (up to 10% of the project cost); revocation of registration, return of amount and compensation to allottees, freezing of project bank account and imprisonment (up to three years) has been prescribed against violators.

Act's bearing on Credit Ratings:

Given the rating concerns in the Real Estate Sector, emanate from issues like project execution delays, defective land title, quality of construction, fund diversions, launch of new projects from the cash flows of an existing relatively mature project, lack of transparency and passable availability of information, the enactment and successful roll out of the RERA Act has been recognized as a critical step towards creating a positive impact in the rating of the Real Estate entities.

The Act focuses on creation of a mechanism that regulates and addresses the said issues in an efficient and transparent manner. Accordingly the RERA provisions on penalties for delay in project completion/ violation of act, maintenance of escrow account for curtailing fund diversion, regular information availability on the portals, if followed in good spirit by the Real estate developers, will not only boost the investor's confidence besides consumer satisfaction but will facilitate the Credit rating Agency to assign a fair rating and monitor the same.

Further it is apparent that as various states establish the Regulatory authorities; and as these state authorities come to function at optimal efficiencies, real estate will be a profoundly transformed industry. However, points mentioned above about how over a period of time various states emerge, will determine how the sector's performance will be in those states and ultimately will have a bearing on Ratings. Currently ratings are mostly based on micro market specific strengths & issues.

Challenges and way forward

The implementation of the Act has been most effective in the West and North India. Maharashtra, in particular, has led the way in terms of proactive enactment, with the state accounting for around 52 per cent of the total projects registered across the country. In terms of exhaustiveness of infrastructure, including website coverage for paperless and footfall-less working concept, smoothness of arbitration proceedings and conciliation forum for complaint resolution as well, the State stands at the fore. On the other hand states like Uttar Pradesh has diluted the RERA provisions in the favour of developers by altering the definition of 'on-going projects' and easing the penalty provisions for non-compliance. Further the state of West Bengal has enacted a separate Act (WB-HIRA) with dilution in the definition of garage, force majeure and power of the regulatory authority, in favour of the developers. Therefore, RERA to be effective, it is important to follow the law-in-spirit than law-in-letter.

Further, there are still some practical issues for which there is lack of clarity, in RERA 2016, as of now, like

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- Who can file a complaint with Regulatory Authorities viz. whether only registered allottee or any group of unregistered allottees?
- What are the rights of agents in case he has not been paid for his service by the home buyer or developer and so on?
- What are the minimum standards of quality of construction while assessing construction defects in any project?
- How will the RERA Authority enforce its order in the absence of adequate power unlike civil courts?

To remove difficulties in its implementation and to deal with practical issues like above, in December 2018, the government has constituted a committee under its Joint Secretary to suggest recommendations to strengthen the real estate law RERA. The panel will look into the suggestions received at the four regional workshops on RERA conducted by the Competent Authority and will then submit its recommendations to the Ministry.

The efficacy of the rules and the judicial system under the Real estate Appellate tribunal will also determine the future of consumer confidence in the real estate sector of that particular micro market/state. Also the shape of real estate may differ over a period of time in different states depending on the way regulations emerge under RERA in these markets/states. However, it may take time up to 5 years from the date of implementation. Nonetheless the Act has the potential to be a distinguishing factor as it causes to

- Cease the avenue of fund diversion, to a greater extent,
- Bring accountability for promoters,
- Help stakeholders to exercise caution while taking decisions and
- Bring transparency in the sector

While RERA promises to transform the Real Estate Industry into an organized, transparent and a customer friendly sector, one has to wait and watch to really understand the impact it will have in the long run. **As of now, we can call RERA, a work (act) in progress!**

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