

Real Estate Bill: Easing out many concerns but not all

Background

Real estate sector in India is highly unregulated in nature and a deployment avenue of black money too. In the past, many efforts had been put in to regulate the sector, but there had been no conclusive action in this direction and in the absence of any regulator for the sector, professional practices did not develop fully in the sector. Draft real estate bill was first prepared in 2009 for creating regulatory mechanism for the real estate sector on the lines of other regulatory bodies for other sectors such as insurance and telecom. The Real estate (Regulation and Development) Bill, 2013, was first introduced in August 2013 in Rajya Sabha by the erstwhile UPA government to promote the transparency and ethical business practices in real estate sector. The aim of the bill is to regulate contracts and transfer of the property both of which are in concurrent list of Indian Constitution. Various organizations, real estate companies and consumer group opposed several clauses and recommended few changes. A Parliamentary Standing Committee was formed to look into the suggestions and to incorporate the changes. These amendments were approved by the government in Union Cabinet Meeting held on April 07, 2015. The amended Bill is pending in the Rajya Sabha. On becoming an Act, Real estate legislation is expected to provide boost to the 'Housing for all by 2022' mission of the government by enabling increase in flow of investment. Under this bill, Real Estate Regulatory Authority (RERA) will be formed by every state and Union Territory within a year from the date of becoming an Act which will regulate the real estate transactions and will register all the projects, promoters, developers and real estate agents. Also, a separate Appellate Tribunal shall be formed for speedy disposal of the disputes in the real estate sector.

Key concerns being addressed by the Bill

Standardization in the sector and extension of the bill to commercial properties

The Bill will bring the much needed standardization in the sector by introducing standard definitions such as 'apartment', 'building', 'carpet area', 'common areas', 'planning area', 'real estate project', etc. Introduction of the concept of 'carpet area' which has till now been ambiguously sold as super area, super built-up area, etc., will curb the unfair trade practices. For customers, it shall be easy to compare different projects with the common concept of 'carpet area' and he/she will get an exact idea about the price of the property in different areas and for different developers. It will infuse the professionalism and promote planned development of the sector.

Original bill was to safeguard the interest of home buyers. However, recent amendments increase the scope of the bill to commercial properties also. Appellate tribunal will also serve to commercial real estate disputes, while the Bill has provision of three members Appellate Tribunal for a state which might lead to inadvertently piling up of cases. Ongoing projects which have not received the completion certificate will also come under the purview of the RERA and require registration with the authority within 3 months once the Bill becomes the Act.

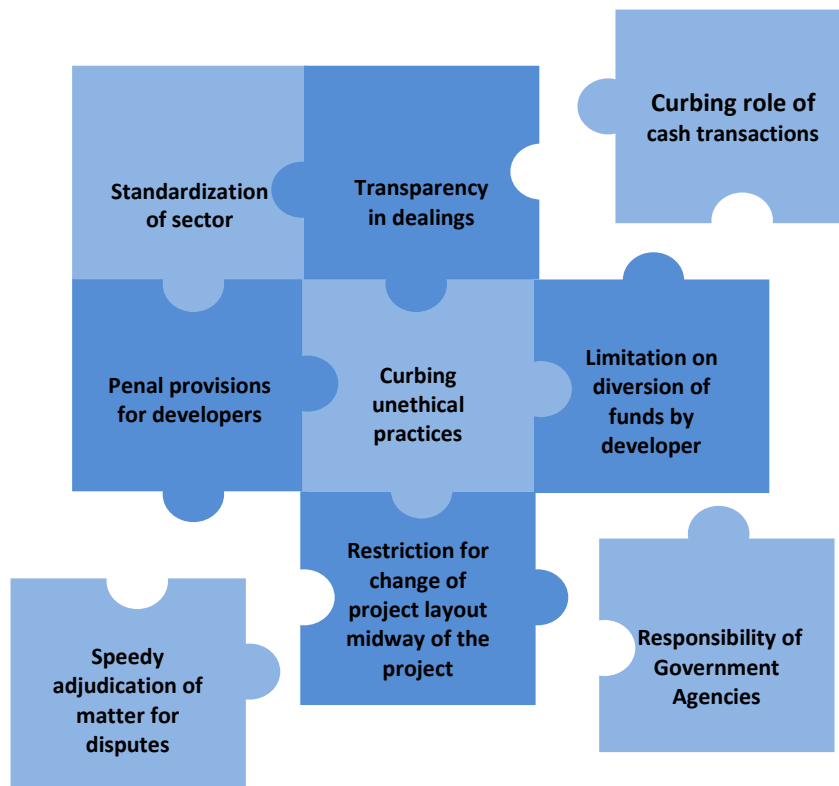


Fig: 1 – Issues addressed by the Bill and key grey area remaining

Transparency in dealings

According to the provision of the bill, it is mandatory for developers to register each project where the area of land proposed to be developed exceeds 1,000 square metre or number of apartments proposed to be developed exceeds 12. The developers will have to enclose all the documents like brief details of company, approval and sanction of competent authorities, layout plan, number and carpet area of apartments, completion date of the project, details of contractor, structural engineer and

architect, declaration supported by affidavit for complying of provisions of bill during development of the project, etc., which will create transparency and accountability of all the stake holders involved in developing the project and ensure protection of customer’s investment. Customers will be having an access to all the critical information through regulatory authority which will reduce the fraudulent practices.

The Bill makes it compulsory for all state government to develop online portal within a year for submitting the project details online by developers and RERA will have to mandatorily either clear or cancel the project within 60 days of submitting the details.

Penal provisions for developers

Currently, in almost all the cases, developers include penal provisions only for customers w.r.t. delay in the payment, but there are no penal provisions for developers for delay in completion of the project in the Agreement to Sale / Sale Deed. Developers are conveniently drafting the Agreement to Sale / Sale Deed in their favour and not paying any penalties to customers for delay in completion of the project leaving the customers at their mercy.

The Bill has different penal provisions which may extend up to 10% of the total project cost and imprisonment up to 3 years for non-registration of project by developers, contravention to any provisions mentioned in the bill, failure to complete the project in given timeframe, etc. The Bill also provides significant powers to the RERA and Appellate Tribunal to cancel the project in case of persistent violations.

However, there is no provision if the delay in the project is mainly on account of delay in getting clearances from government agencies. For example, developer might have promised to provide running water and sewerage facility to the buyers. However, the developer, in turn, is dependent on the local municipality for these services. So, developer should not be made solely liable for deficiency in the services which leads to delay in project. Also, any leeway given to the developer will defeat the purpose of timely completion of the project given the rampant buck passing tendencies. Therefore, urban local bodies and development authorities should also be brought under the ambit of the Act.

Curbing unethical practices

The Bill proposes to register the real estate agents with clear responsibilities and functions which will lead to establishing the trail of money to the source, curbing money laundering and reduce the asymmetry prevalent in real estate transactions. However, the Bill should also put onus on the developers for not accepting any cash receipts from the buyers. Currently, there is no definite timeline for the developers for execution of Agreement to Sale / Sale Deed which results into inflow of large number of investors in the sector, thereby spiralling of property prices upwards. The Bill has proposed that a developer shall not accept a sum more than 10% of the cost of the unit as a customer advance without first entering in to a written agreement for sale with the customer. Also, it requires the developer to update the booking status of the project on a quarterly basis to RERA. Accordingly, it will eliminate the majority of the unethical practices widely prevalent in the sector.

Restrictions for change in project layout midway to the project

The provision in the Bill requires developer to take permission of two-third customers of the project for making any change in the layout plan and structural design. However, minor additions or alterations are permissible due to architectural and structural reasons. It will lead to increase in the decision power of buyers and reduces ill practices of changing layout during development for making monetary gain. The Bill allows the buyer to claim the refund along-with interest in case developer fails to deliver the committed specifications.

Limitations on diversion of funds by developer

The Bill makes it mandatory for the promoters to deposit 50% of the amount received as advance from the customers in the separate account within 15 days of receiving money which will be used to cover the construction cost during the development of project to ensure timely completion of the project and prevent diversion of funds.

When the Bill was first presented in the Parliament in 2013, it had a provision of 70% of the amount which is now reduced to 50% after deliberations with the industry as the cost of land needed to acquire, before announcing project, is significant part of the total project cost. The reduction in minimum balance to be maintained may not fully curb the unhealthy practice of developers to divert funds to other projects. However, it shall be a definite improvement over the current practices.

Conclusion

The Bill is expected to:

- a) promote transparency;
- b) encourage fair and ethical practices;
- c) ensure customer protection;
- d) increase trust of investors in the sector;
- e) facilitate speedy and specialized adjudication mechanism to settle disputes;
- f) increase liquidity in the sector;
- g) weed out non-professional builders operating in industry; and
- h) eventually lead to much required standardization.

The Bill could catalyze the foreign and domestic investment into sector which will provide boost to the Central Government's ambitious 'Housing for all by 2022' programme and GDP growth. The Bill might result in cooling down the prices of real estate in the short term, mainly due to offloading of inventory at

lower prices, as the sector is poised to move towards a regulated environment. Overall, the Bill has tried to address the major concerns of the sector, especially from the customer perspective. At the same time, upon improved transparency of the sector, lenders should be able to offer competitive rate of interest to the developers leading to decline in the project cost.

However, the Bill is not foolproof when it comes to the responsibility of the Government agencies whose delay in approvals may lead to the delay in project implementation. While RERA is supposed to serve home buyers as well as buyers of commercial properties, potential inadvertent fallout could be piling up of the cases in Appellate Tribunal due to constraint in government resources. It is also likely to lag on the front of curbing the pernicious role of black money and cash transactions. Nevertheless, with minor changes in the Bill, it shall largely address the constraining factors of the sector.

Credit Rating Perspective

With the enactment of RERA, following concerns being currently encountered during the credit rating of real estate developers are expected to reduce;

- Unregulated nature of the sector.
- Delays in completion of the project resulting into cost overrun and cash flow timing mismatches.
- Non-execution of Agreement to Sale & Sale Deed with customers creating doubt about the booking status of the project.
- Diversion of funds by developer leading to delay in completion of the project and its cash accruals.
- Lack of transparency and unreliability of information.
- High cost of borrowing.
- Limited funding options to real estate developers.

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