

Real Estate (Regulation and Development) Act, 2016 (RERA)

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Manifest Pedagogy

Real Estate as a topic has been in news for many seasons – a model Act for it and more importantly demonetization as an initiative to curb black money in Real Estate. The innovative way of asking a question on this topic would be when it is linked to Land Reforms topic in Post-Independent India.

In news

The Ministry of Housing and Urban Affairs (MoHUA) plans to push through some of the suggested changes to the RERA (Real Estate Regulatory Authority) Act, 2016, through a 'Removal of Difficulties' order

Placing it in syllabus

1. Post-Independent India is consolidation – Land Reforms (not mentioned explicitly)
2. Indian Economy

Static dimensions

1. Land Reforms as part of Economic Consolidation project in Post-Independent India
2. Problems in Real Estate in India

Current dimensions

1. Provisions of Real Estate Act
2. Criticism against it
3. "Removal of Difficulties" clause

Content

“Removal of Difficulties” refers to the difficulties in implementation of the Act under it.

Removal of difficulty clause in real Estate act

- Section 91 of the RERA Act gives the Centre power to issue orders to make provisions to remove difficulties in implementing the Act.
- Removal of Difficulties’ order, does not require Parliamentary approval for amendments

Problems of Real Estate sector in India

▪ Unending project delays

Construction delays have plagued the sector for quite some time now. While developers are at fault for using the funds of one project for another, there exists other underlying factors.

▪ Land availability

At present, there are several ongoing infrastructure projects in the country that are expected to change the dynamics of real estate in India. These include the Metro Rail in major cities and infrastructure projects such as road widening or expansion. However, acquiring land for such projects is a herculean task.

▪ High property prices

Property prices in Indian markets have gone way beyond the buying capacity of the common man. Until 2016, taxes accounted for almost 25-30% of the total cost of a property. With the Goods and Service Tax (GST), the tax on under-construction properties has come down to 12%. However, the stamp duty and registration charges are not subsumed into GST.

▪ Outdated building bye-laws

Our cities are gasping for space, and the current Floor Space Index (FSI) norms in the cities are not on par with the current requirements

- **Rising Input Cost**

Real estate is a capital and labour intensive industry, thus a rise in the cost of labour creates issues in the development of the project. Furthermore, unfair practice of certain sections of distributors and cement industry by raising the price creates issues in the project completion.

- **Funding**

Developers face a major challenge with funding. Lack of industry status does not allow developers to access funds at an affordable rate (except for affordable projects).

- **Facing the Regulatory Pressure**

Some regulatory rules made by the government impacting the industry, positively and negatively. The developers would face the impact of RERA, restricting to new construction and focusing more on completing the projects. As the supply of ready-to-move-in properties will increase, developers will face the challenge of completing the project on mentioned deadline.

Real Estate (Regulation and Development) Act, 2016 (RERA) and its provisions

The landmark legislation Real Estate (Regulation and Development) Act, 2016 (RERA), marking the beginning of a new era in the Indian real estate sector and a step towards reforming the real estate sector in India, encouraging greater transparency, citizen centricity, accountability and financial discipline.

Key provisions

The core objective of this transformative legislation is to ensure regulation and promotion of real estate sector in an efficient and transparent manner and to protect the interest of home buyers.

Establishment of Real Estate Regulatory Authority

- Establishment of one or more Real Estate Regulatory Authority in each State/UT, or one Authority for two or more States/UTs, by the appropriate Government for oversight of real estate transactions;
- To appoint one or more adjudicating officers to settle disputes and impose interest and computation;

Registration of Real Estate Projects and Registration of Real Estate Agents

- Mandatory registration of real estate projects and real estate agents who intend to sell any plot, apartment or building, with the Real Estate Regulatory Authority

Mandatory Public Disclosure of all project details:

- Mandatory public disclosure norms for all registered projects like details of the promoters, layout plan, plan of development works, land status, status of the statutory approvals, disclosure of pro-forma agreements, disclosure of names and addresses of real estate agents, contractors, architect, structural engineer etc.

Functions and Duties of Promoter:

- Disclosure of all relevant information relating to the project
- Adherence to approved plans and project specifications as approved by competent authorities
- Obligations regarding veracity of the advertisement or prospectus
- Rectification of structural defects within two years of possession

- Refund of money in cases of default

Compulsory deposit of 70 percent

- To compulsorily deposit 70 percent (or such lesser percent as notified by the Appropriate Government) of the amounts realized for the real estate project from the allottees in a separate account in a scheduled bank within a period of 15 days to cover the cost of construction to be used for that purpose

Functions of Real Estate Agents:

- Real estate agents to sell properties registered with the Authority
- Maintain books of accounts, records and documents
- Not to involve in any unfair trade practices

Rights and Duties of Allottees :

- Right to obtain stage-wise time schedule of project
- Claim possession as per promoter declaration
- Obtain refund with interest for default by the promoter
- Allottees to make payments and fulfill responsibilities as per the agreement

Functions of Real Estate Regulatory Authority

- The Authority to enforce the provisions of the Act
- To act as the nodal agency to co-ordinate efforts regarding development of the real estate sector and to render necessary advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector

Fast Track Dispute Settlement Mechanism :

- Fast track dispute resolution through adjudicating officers (Joint Secretary to State Government)

Establishment of Real Estate Appellate Tribunal :

- Real Estate Appellate Tribunal to hear appeals from the orders of the Authority and the adjudicating officer. The Appellate Tribunal is to be headed by a sitting or retired Judge of the High Court with one judicial and one administrative/technical member

Punitive Provisions:

- Punitive provisions including de-registration of the project and penalties in case of contravention of the provisions of the Act or the orders of the Authority or the Tribunal

Importance

With respect to Consumers:

1. RERA along with the Rules would ensure timely completion of projects. This is helping to achieve the vision "HOUSING FOR ALL". It prevents diversion of funds and protects the buyers' interests.
2. The Act helps to curb black money. It makes operations transparent – project information will be available – promoting informed choice for buyers. The Disclosure of 'Carpet Area' for sale curbs the unfair trade practices.
3. "Agreement for Sale Rules" has ended the one-sided agreements and Buyer exploitation in the sector.
4. Fast track dispute resolution mechanism through Real Estate Regulatory Authority and Appellate Tribunals across Country.
5. Provision of equal rate of interest to be paid by the promoters and buyers, in case of default or delays thus bringing equity in operations.

With respect to Developers:

1. The Act eliminates fly-by-night operators from the sector promoting genuine developers. It infuses credibility by making the sector mature and transparent.

2. Channelize investment into the sector.
3. Act/Rules would restore investment sentiment of consumers.
4. Regulatory mechanism will increase the confidence of the financial institutions in real estate sector.
5. Proper regulatory mechanism of the Act will increase foreign investment (FDI, ECB) in the real estate sector.

Criticisms:

- Making major amendments under the guise of a Removal of Difficulties order will be counter-productive and dilute the Act's effectiveness.
- Builders are demanding amendments to definitions that will change the very fabric of the Act

Test Yourself : Mould your Thoughts

(From now on question's will posted in our free [MANIFEST VLOG](#) initiative)

Prelims Questions

1."Removal of Difficulties" clause of Real Estate Act, 2016 was in news recently.

Consider the following statements :

1. Under it Central government gets the power to issue orders
2. The order needs Parliamentary approval to take effect

Which of the following statements is/are correct about it?

- a) Only 1
- b) Only 2
- c) Both 1 and 2
- d) Neither 1 nor 2

2. Which of the following is/are correct about "Separate Account" mentioned under Real Estate Act, 2016

Which of the following statements is/are correct about it?

1. It should be maintained with a Scheduled Commercial Bank
2. The request for withdrawals of funds by the developer must be certified by an engineer, architect and a Chartered Accountant

Select the correct answer using codes below

- a) 1 Only
- b) 2 Only
- c) Both 1 and 2
- d) Neither 1 nor 2