

# Regulatory Public Policies: A Study on the Status of Real Estate (Regulation and Development) Act, 2016

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**Abstract –** *There are different types of public policies; they are distributive, redistributive, regulatory, and the constituent public policy. The regulatory policies are aimed to regulate someone or some organizations from doing unlawful activities that are pre-determined by some act or legislations. The Real Estate (Regulation and Development) Act 2016 is a regulatory type of public policy that aimed at the regulation of some unsolicited activities that existed in the sale, construction, and development of real estate business. Being a developing and second-most populous country in the world, India requires building millions of houses for the poor, middle class, and the rich. It was a decades-long demand from different stakeholders to create legislation to control the illegal trends that existed in the real estate sector. The RERA, thus created, now act as a legal body that could control every type of bad trends from the real estate sector of India. As a regulatory policy, this law is important in its usefulness because the land for human existence is a close part of human life everywhere, especially to those who don't have even a piece of land to dwell or those who need business space to do business and to the industrialists to start industries. This study gives thrust to the importance of the Real Estate (Regulation and Development) Act as a policy that could initiate changes in the behavioural pattern of those who are into this business. The popular outlook towards the regulatory type of public policies is sometimes different. Some believe that the regulations of any kind are against the principles of liberal democracies and some others believe that the regulations are necessary to control the corporates and greedy businessmen from exploiting the general public. Insofar as the Real Estate (Regulation and Development) Act 2016 is concerned, it is a real saviour of the millions of people who are aspiring to acquire a house as their own. For the creation of a just society, where the resources are justifiably distributed, we need to implement some serious policies which can control men from snatching the space that is common to all.*

**Keywords –** *Real Estate, Regulatory Public Policy, Promoters, Real Estate Regulatory Authority.*

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## INTRODUCTION

Public policies can change the life pattern of the entire citizens of a particular country, now and then, within a short period or long period. Generally, the public policies are the proposed course of action to attain some pre-defined purposes envisioned by the governments. From the first decade of India's independence to the present decade, numerous policies are formulated and implemented for the wellbeing and the development of the Indian nation. In this regard, the definition of public policy by Thomas Dye is very important. According to him, public policy is 'anything a government chooses to do or not to do' (Dye, 1972: 2). There are various types of public policies, they are distributive, redistributive, constituent, and regulatory.

The Real Estate (Regulation and Development) Act, 2016 is a regulatory type of public policy that aimed to regulate the real estate activities in the states.

Regulation is a law, rule, or order prescribed by an authority to regulate the conduct of its participants. Any organization may use its authority to regulate the conduct or activities of those who engaged with it. Generally, the regulatory policies are framed by governments to execute control and restrictions on certain specific activities or behaviour of different participants. This act aims to regulate and promote the real estate sector by regulating the dealings between buyers of land, real estate agencies, and promoters of residential as well as commercial lands. The major provision of this Act is the establishment of the regulatory authority at the state level called "Real Estate Regulatory Authority" (RERA) for monitoring the real estate sector and arbitrating disputes relating to it.

Result-oriented action rather than random behaviour is the hallmark of public policy (Basu, 2012). As a regulatory policy, this law is important in its applicability because the land for human existence

is an inseparable part of human life everywhere, especially to those who don't have even a piece of land to dwell or those who need business space to do business and to the industrialists to start industries. Being the second populous country in the world India is in a drastic need to build houses for millions. Therefore, we need to build millions of houses both in urban and rural areas. The urban housing shortage is estimated at 18.78 million in 2015 and the rural housing shortage stood at 14.8 million by the same year.

## REAL ESTATE-MEANING

"Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his *person*: this nobody has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others."

John Locke

Real estate means property, land, and buildings on earth. It is real in the sense that it is real, or physical in nature. Real estate is the property consisting of land and the buildings on it, along with its natural resources such as crops, minerals, or water. Real estate can be broken into two different parts, real and estate. *Realis* is a Latin term that means existing and true. The term *estate* can be traced to Latin and even French. Derived from the Latin term *status*, which means state or condition, it's combined with *stare*, which means to stand, and its French derivative is *estat*. The English definition for the term today, is property/possessions or an individual's interest, ownership or property.

There are four types of real estates, they are residential, commercial, industrial, and vacant land. The Real Estate (Regulation and Development) Act 2016 aims to control the unholy affairs existing in the real estate sector of Indian states by providing uniform legislation applicable to all Indian states and Union territories.

## THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT

The main component of this act is the establishment of Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure the sale of plot, apartment, or building or sale of real

estate projects, efficiently and transparently. This will also protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

## REGULATIONS INTRODUCED BY THE ACT

- The important thing that is binding to all the constituent states of India is the creation of their real estate regulator and set of rules to govern the functioning of the regulator. It seeks to address issues like delays, price, quality of construction, title, and other changes. Delays in projects are the biggest issue faced by buyers.
- The promoter has to maintain a separate escrow account (an escrow account is an account where funds are held in trust whilst two or more parties complete a transaction) for projects. A minimum of 70 percent of the money from investors and buyers will have to be deposited in it and be used for the construction of the project and the cost borne towards the land.
- The developers will have to keep the buyers informed about their other ongoing projects.
- The builders have to submit the approved plans for their ongoing projects and the alterations made afterward. They also have to furnish details of revenue received from allottees, how the funds were utilized, and the timeline for completion, and delivery that will need to be certified by an Engineer/Architect/practicing Chartered Accountant.
- It is mandatory to register real estate projects and real estate agents operating in respective states under RERA. The details of all registered projects should be informed via the website for the purpose.
- If any issue is highlighted by buyers about the quality of construction, in front of the regulator within the period of five years of construction, the developer will have to rectify the same by 30 days.
- Developers are banned to advertise their projects without registering it with the regulatory authority of the state. After registration, all the advertisement inviting investment and sale will have to bear the unique RERA registration number.

- After registering the project with the authority, developers have to furnish details of their financial statements, legal title deed and supporting documents.
- If the promoters failed to deliver the building within the agreed deadline, the promoter will be liable to return the entire money invested by the buyers along with the pre-agreed interest rate mentioned in the contract based on the contract given by RERA.
- After developers register with the regulator, a page will be created for the builder on the regulatory authority's website. The developer will be given login credentials using which it will upload all the information regarding the registered projects on the regulator's website. The number, type of apartments, plots, and projects and their completion status will be updated on a maximum quarterly basis.
- The developers are not permitted to ask for more than 10 percent of the property's cost as an advanced payment booking amount before actually signing a registered sale agreement.
- The regulator enjoys the power to fine and imprison errant builders based on a case by case basis. The imprisonment can go up to a period of three years for a project.

## **THE REAL ESTATE REGULATORY AUTHORITY (RERA)**

The Real Estate (Regulation and Development) Act insists the state governments and the union territories constitute a real estate regulatory authority within one year to exercise the powers conferred on it and to perform the functions assigned to it by the Act. The Real Estate Regulatory Authority consists of a Chairperson and not less than two whole-time Members appointed by the Government. The Chairperson and other Members of the Authority are appointed by the Government on the recommendations of a selection committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with housing and the law secretary from amongst persons having adequate knowledge of and professional experience of at least twenty years for the chairperson and fifteen years for the members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration. The chairperson and members shall hold office for a term not exceeding five years from the date on which they appointed upon their office, or until they attain the age of sixty-five years, whichever is earlier. They are not eligible for re-appointment.

After the establishment of the Regulatory Authority, all applications, complaints, or cases pending with the designated authority, shall be transferred to the regulatory authority thus established and shall be heard from the stage such applications, complaints, or cases are transferred.

The essence of RERA is to prove a regulatory mechanism for ensuring the timely construction and hand over of real estate projects and to provide for the protection of the legal rights of the house or flat purchasers. The Act aims at protecting the contractual rights but also ensures several statutory rights unto the allottees. (Sarpotdar, July 2017)

This new legislation, therefore, is a step in the right direction and is expected to remove the long-lasting issue of late delivery of projects. This law will not eliminate the responsible senior players from the business. This will also attract investments in the sector and restore the confidence of the buyers and other stakeholders in the sector.

One of the disadvantages of the Act is that the Government agencies such as sanctioning authorities, electricity board, and water Supply authorities, have been left out from the purview of the Act and there is no mention of project delays due to delays in obtaining completion certificates/essential connections from these agencies. The implementation of the Act will pose a big challenge in the initial few years but will make the sector a more organized one. Also, builders can hope to get bank finances at a slightly lower rate. The strict provisions of the Act will drastically reduce the number of players in the real estate market in a phased manner as well. (Sunder, 2016)

## **CENTRAL ADVISORY COUNCIL**

There is a central advisory council to advise and recommend the Central Government on every matter concerning the operation of this Real Estate (Regulation and Development) Act. The council also advises major questions of policy, protection of consumer interest, and to foster the growth and development of the real estate sector. The central advisory council consisting of representatives of different ministries like the Ministry of Finance, Ministry of Consumer Affairs, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Corporate Affairs, Ministry of Law and Justice, National Housing Bank, Housing and Urban Development Corporation, Niti Aayog, five representatives of State Governments to be selected by rotation, five representatives of the real estate regulatory authorities to be selected by rotation, and any other Central Government department as notified. The Central Advisory Council also consists of not more than ten members to represent the interests of the real estate industry, consumers, real estate agents, construction

labourers, non-governmental organizations, and academic and research bodies in the real estate sector.

## APPELLATE TRIBUNAL

There is an Appellate Tribunal known as the Real Estate Appellate Tribunal in every state and Union Territories. Every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative to technical Member. Appellate Tribunal Functioning under any law for the time being in force.

## REVIEW OF LITERATURE

The Gazette of India extraordinary published on 26<sup>th</sup> March 2016 by the Ministry of Law and Justice promulgating the Real Estate (Regulation and Development) Act 2016 remains the main source of information on Real Estate Regulatory Authority. The rules and regulations about the Real Estate Regulatory Authority (RERA) and its allied organs occupy an important place in this study. (gazette, march 26, 2016)

Public administration concepts and theories is a book written by Rumki Basu. There is a full chapter dedicated to public policy, its significance, and the factors determining the policy. According to this book, public policies are those, which are, developed by governmental bodies and officials, though non-governmental actors and agencies may also exert direct or indirect pressure or influence in the policymaking process

'Public policy and politics in India How institutions matter' is a book written by Kuldeep Mathur. This book throws light on the processes included in the public policy formation cycles of India. The chapter "the guidance for governance in India alternative sources of Policy advice' says that, through the years, India's democratic institutions have grown to give fuller representation to the country's people, providing them with a greater voice in determining public policy. (Mathur, 2013)

'Constitutional validity and adjudicatory measures of the real estate regulation and development Act 2016, is a scholarly article, which thoroughly analyses the legal validity of the provisions of this Act.

'Public policy Art and Craft of Policy Analysis' is a book written by R.K.Sapru that throws light on the different types of public policies and its importance in public life. A regulatory public policy facing different types of criticisms from powerful interest and pressure groups is common and they may determine the nature of public policies and the like is also a reality.(Sapru, 2013)

## CONCLUSION

The popular outlook towards the regulatory type of public policies is sometimes different. Some believe that the regulations of any simple kind are against the principles of liberal democracies and others believe that the regulations are necessary to control the corporate and greedy businessmen from exploiting the general public. Insofar as the Real Estate (Regulation and Development) Act 2016 is concerned, it is a real saviour of the millions who are aspiring to acquire a house as their own. For the creation of a just society, where the resources are justifiably distributing, we need to execute some serious policies which have the ability to control men from snatching the space that is common to all. The regulatory policies are concerned with regulation and control of activities. They seek to alter individual behaviour directly by imposing standards on regulated industries and are many possibilities to arouse debate. Housing for all is a long-lasting goal of every government in India, but to achieve this aim our country needs to build millions of houses both in urban areas and rural areas. The RERA now created by the Real Estate (Regulation and Development) Act, 2016, supervises the real estate industry in general and promoters of property in particular. The regulations thus created are becoming a blessing to the coming generations of India. The Prime Minister's scheme for housing for all and the like schemes by different state governments will help India to build a nation, where all the human have a house to live in. The regulations thus imposed through this Act will also remain a source of enthusiasm to the millions who have no houses as their own.

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