

# Influence of RERA on Real Estate Sector

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**Abstract – For the past few years, there has been an air of pessimism in the market about the real estate sector. There are various reasons which have affected the growth of the sector negatively. The recent announcement of the Real Estate Regulator Bill (RERA) which was passed by the Indian Parliament in March 2016 has ushered a new era in the Indian property market. This bill lays the groundwork for a more accountable and transparent system in construction and buying and selling of properties. This also provides the much needed cheer and hope for both buyers and investors.**

**Keywords: - RERA, Real Estate, MOFA**

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## 1. INTRODUCTION

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.

The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plots, apartments or buildings, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority. This Bill will ensure greater accountability towards consumers, and significantly reduce frauds, arrest delays and the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum

standards of accountability and a fast track disputer solution mechanism

## 2. OBJECTIVES OF STUDY

1. To establish the Real Estate Regulatory Authority for regulation and promotion of the real Estate sector.
2. To compare the MOFA with Maha RERA on various aspects

## 3. CHRONOLOGY OF EVENTS LEADING TO REGULATION OF REAL ESTATE SECTOR INCLUDING BOTH RESIDENTIAL AND COMMERCIAL SEGMENTS

Sr. No	Date	Event
1	May, 2008	Ministry of HUPA first prepared a Concept Paper on Regulation of real estate sector and a model law for Legislation by States/UTs.
2	2011	Conference of Ministers of Housing suggested a central law for regulation of real estate sector
3	July, 2011	Ministry of Law & Justice too suggested central legislation for regulation

4	June, 2013	Union Cabinet approved Real Estate Bill, 2013
5	August, 2013	Real Estate Bill was introduced in Rajya Sabha and was referred to Standing Committee Report of Standing Committee was laid on the Tables of both Houses of Parliament
6	February, 2014	Report of Standing Committee was laid on the Tables of both Houses of Parliament
7	February, 2014	Attorney General upheld validity of central law for regulation of the sector
8	April, 2015	Union Cabinet approved official amendments based on recommendations of Standing Committee
9	May, 2015	Matter referred to the Select Committee of Rajya Sabha
10	July, 2015	Report of Select Committee tabled in Rajya Sabha
11	December, 2015	Real Estate Bill, 2015 incorporating several modifications based on Select Committee report and stakeholder consultations was approved by the Union Cabinet
12	10 March, 2016	The Real Estate (Regulation & Development) Bill, 2016 passed by Rajya Sabha
13	15 March, 2016	Lok Sabha passed the Bill as passed by Rajya Sabha
14	25 March, 2016	President gives assent to the Bill
15	15 April, 2016	59 Sections of the Act were notified making them effective from May 1, 2016 enabling preparation of Real Estate Rules, setting up of Regulatory Authorities and other infrastructure
16	28 October, 2016	Real Estate Removal of Difficulties Order
17	19 April, 2017	Remaining 32 Sections of the Act notified making them effective from May 1st this year requiring registration of projects within three months from tomorrow

18	1 May, 2017	New era begins for development of real estate sector in an atmosphere of investor confidence Different States and Union Territories have notified their rules on different dates and some of the States Are yet to notify the rules. On the date of going into publication, the latest of the state to notify the rules Was Karnataka. On 10th July 2017, they have notified "Karnataka Real Estate (Regulation and Development) Rules, 2017.
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#### 4. SALIENT FEATURES OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

- Establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector.
- Ensure sale of plot, apartment of building, as the case may be, or sale of real-estate project, in an efficient and transparent manner.
- Ensure protect the interest of consumers in the real estate sector.
- Establish an adjudicating mechanism for speedy dispute redresses and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority (RERA)
- Regulates transactions between buyers and promoters of residential real estate projects.
- Establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs).
- Residential real estate projects, with some exceptions, need to be registered with RERAs.
- Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs.

- Registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.
- Amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount.
- Right to Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioners.
- Imposes stringent penalty on promoter, real estate agent and also prescribes imprisonment.

**5. A COMPARATIVE STUDY OF MOFA AND RERA ON VARIOUS ASPECTS**

Issues	MOFA Provision Act, 1963	RERA Provision Act, 2016
Sale of Parking	Not Permissible.	Only covered car parking space / Garages including mechanical car parks.
Carpet Area	Balcony included, and net usable area was permissible.	<b>Includes-</b> Area covered by the internal walls of the apartment. <b>Excludes-</b> Area covered by the external walls, exclusive balconies, verandah areas, service shafts and terraces not included. 3% tolerance allowed. Compulsory re-measurement of flat at the time of possession.
Before Execution of Agreement	Not to exceed 20%	Not to exceed 10%
Proportionate charging of common areas	Chargeable	Chargeable
Deemed conveyance	Applicable within Six months of	Applicable within three months of completion

	notice	certificate of real estate project if date has not been specified in the agreement to sale.
<b>Defects Period</b>	3 Years	5 Years
<b>Refund of money only if delay for possession then refund of money with interest to the buyers.</b>	Simple interest @ 9% p.a. from the date sums are received.	Simple interest @ 2% + prevailing MCLR rate of the State Bank of India from the date sums are received.
<b>Formation of Society</b>	As soon as minimum number of person (60%) require to take flats. Within 4 months of 60% occupation.	Within 3 months of date of 51% of allottees that have booked their apartments.
<b>Conveyance</b>	If no period mention within 4 months of formation of society.	If no period mentioned, then for single building within 3 months of issue of occupation certificate or 51% of total number of allottees in the building/ wing having paid full consideration whichever is earlier. In case an apex body has to be formed if no date is agreed upon the 3 months from the completion of the building.

<b>Extension of time for delivery of flats.</b>	<p>a). Non-availability of steel, cement, other building, water or electric supply.</p> <p>b). War, civil commotion or act of God.</p> <p>c). Any notice, order, rule, notification, of the government and/or other public or competent authority.</p> <p><b>Note-</b>The provisions of this proviso are not mandatory but negotiable.</p>	<p>a). War, civil commotion or act of God.</p> <p>b). Any notice, order, rule, notification, of the government and/or other public or competent authority.</p> <p>c). Excludes period of registration where actual construction not carried by promoter due to specific stay, injunction order to the project by any court of law, tribunal, competent authority, statutory authority, high power committee etc. or due to other mitigating circumstances as decided by the RERA authority</p> <p>d). If authority is convinced that due to no fault of the promoter there has been a delay he can get extension for the registration of the project.</p>
<b>Payment Terms</b>	Very stringent/Not practical therefore no developers used to follow.	Liberal and practical for promoters and allottees.
<b>Escalation</b>	Increase in local taxes, water charges, insurance and such other levies, if any, imposed local authority/government.	Escalation free except duty increase in account of development charges.
<b>Share of Outgoings</b>	In proportion to floor area of flat.	In proportion to carpet area.
<b>All Receipts</b>	Mentions maintain a separate account.	70% to be maintained with designated account and to be withdrawn as per progress of construction.
<b>Project Potential</b>	Till conveyance	Disclosure to be made about

	society formation any FSI increase would belong to developer.	expectation of FSI proposed to be utilized including expectation of future FSI or else consent of 2/3 <sup>rd</sup> allottees required.
<b>Interest</b>	Developer's discretion.	M.C.L.R. plus 2% of SBI Bank Rate.
<b>Termination</b>	Developer was entitled to terminate after notice on default of payment.	Developer was entitled to terminate after 3 installments not paid and notices given. Refunds must be made within 30 days.
<b>Specification of materials.</b>	Generic declaration would suffice.	To mention brand or price of product (Unbranded).
<b>Registration of Project.</b>	Not required.	Compulsory before any advertisement or receipt of payment.
<b>Insurance</b>	Of building	Of building and title.
<b>Disclosure</b>	To be available on site.	On the site and website.
<b>Title Liability</b>	Up to conveyance is done.	Liability in perpetuity.
<b>Offences and Penalties</b>	Imprisonment and nominal fines were prescribed.	Heavy fine linked with up to 10% of estimated project cost and imprisonment only if directions of authority not followed for both developers as well as allottees.
<b>Consent to change sanctioned plans</b>	Consent not required unless individual unit is affected.	Consent of 2/3 <sup>rd</sup> allottees required for making any major modification in sanctioned plans or revised plans.
<b>Development of project and amenities</b>	Phase wise development not mentioned.	Detailed phase wise development permitted along with different date of possessions for apartment and amenities.
<b>Unfinished project</b>	No provision of take over.	Authority with approval of state government may allow development of project by any other person including first right to take over and complete the project will rest with allottees who

		has purchased apartment in the said project.
<b>Marketing Agents</b>	Not required to be registered.	Registration is mandatory with RERA authority.

## CONCLUSION

The Act has turned around the legal outline for the real estate sector. While it may take some time for the execution of the various commitments under the Act such as the setting up of the authorities etc., there is maximum faith in the general public that the Act will achieve its target.

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