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EFFECTIVENESS OF THE REAL ESTATE (REGULATION AND DEVELOPMENT), ACT 2016 FROM THE PERSPECTIVENESS OF CONSUMER IN THE GUJARAT STATE: A STUDY- Shashwat Pritesh Shah¹**Abstract**

Since 2015, there have been colossal pressure on the real estate market due to the halting of the ongoing construction projects or stalling of their progress. More often, wherein they have invested life-time savings. Whereas, the construction developers were almost down and out, and debt-distressed as there were no regulations. What was imperative was transparent, on-time delivery of home projects to the home buyers. Neglect had been even faced from policy makers but it needed some solution. Then, regulatory bodies in all states have been established by the Government of India for the reformation of the real estate sector, fortification of the consumers and to bring about transparency, with the passing of RERA, 2016 statute. But, its provisions have been diluted further by the states. In this paper, we would study about the effectiveness of the RERA Act in the real estate market, in particular of Gujarat State, from the perspective of the consumer, and how consumers interest have been diluted by the state (s).

Keywords: Real Estate, Guj RERA, consumers, developer, disputes.

CHAPTER I**BACKGROUND OF RERA AND ITS IMPLEMENTATION IN GUJARAT STATE**

The Indian Economic growth is escalated due to the prominent role played by the real estate sector, which is also largest sector of employment and caters to nation building. The recent statistics discern that by the end of the last year i.e. 2022, the sector has generated 70million employments.² The real estate market is expected to reach around \$1trillion by the year 2030, which would be

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² *Law must keep up with tech progress: Justice Chandrachud* | India News - Times of India, The Times of India, <https://timesofindia.indiatimes.com/india/law-must-keep-up-with-tech-progress-justice-chandrachud/articleshow/90341606.cms> (last visited Sept. 30, 2023).

equivalent to ~20-30% of the GDP of the nation.³ But, the sector has faced the major halt since the year 2015, when most of the projects have either stalled or made little progress. The life savings that had been invested by the home buyers in the projects, did not have any rapid recourse for the resolution of the disputes with the builders, who were either cash-strapped, over-leveraged or were not responsive to the demands. And, what was incumbent was the on-time delivery of the possession to the home buyers. There had been little to no concern from the policy makers end, but having said that the issue warranted major attention. It was then that the Government of India had come up with the plan to establish the regulators in all the states and the union territories, for the transformation of real estate sector, which forms largest in the nation, in order to bring home transparency and effective resolution of the consumer disputes.

With the bringing in of the legislation Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “RERA”), the real estate sector which hitherto has been unregulated, has been brought under the watershed and realm of the regulation. Implying thereby, that the sector which hitherto did not have any tribunal for the regulation of the disputes nor any precedence of the case, has been regulated for improvising the governance at the state and national level, and *“for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to 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.”*⁴

Hitherto, more often than not, it has been witnessed that the home buyers were facing problem in lack of the documentation of the properties, or were being subjected to the harassment and troublesome at the behest of the developers. Thus, in order to promote the transparency and creep into the opaqueness of the real estate sector, the statute has been enacted. The two major pillars of the enactment are the fortification of the rights of the real estate home-buyers and secondly time bound completion of the projects by the developers.

³ *Real estate's GDP boost*, The Hindu, <https://www.thehindu.com/real-estate/india-economy-real-estate-building-construction/article67226655.ece> (last visited Oct. 3, 2023).

⁴ *Preamble*, Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India).

Under the enactment, in particular Section 20 of the RERA, the housing department of the State or Ministry is empowered and conferred with the powers to establish the RERA authority in the state, which would function in accordance with the provisions of the Act, and the rules which maybe be made by the State government in this behalf, as the real estate falls into the State List of the Constitution, therefore, the States can adopt the enactment with own modifications or amendments.⁵ This paper in particular deals with the effectiveness of the RERA in the state of Gujarat. The Gujarat State has the RERA authority named as ‘GujRERA’, which is an autonomous body of the State and does not report to any authority.⁶

Under the RERA, the obligor has been put on the developers to disclose all the quintessential details about the projects, like the size of the carpet area, time by when the project would be completed, what is the design and what is the layout structure, etc. The Act further makes is mandatory that all the brokers and the agents are registered. The major chunk of the funding of the RERA comes the registration of the projects, so the body is in that terms autonomous and is not dependent on the State for the funds for its functioning. But there are some States, wherein there are not much projects, so the authority is financially dependent on the funds from the State government for its functioning.⁷

Apropos the precedence of the cases, it has been stated by the erstwhile chairman of the GujRERA Mr. Amarjit Singh, who opined that the authority follows the precedence that has been laid down by the consumers forums, who have come to the rescue of the consumers in getting the possessions after long years of wait.⁸ And, as regards the functioning and working staff of the GujRERA, he stated that “*We have a team of lawyers and CAs who are working with us to look at legal and financial aspects. The lawyers ensure the documents are legally sustainable, while the team of CAs ensures the mandated amount of funds are kept in the escrow account and used for the concerned project only.*”⁹

CHAPTER II

IS IMPLEMENTATION IN THE GUJARAT STATE LEADING OR LAGGING BEHIND?

⁵ State List 7th Schedule Constitution

⁶ https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html

⁷ Ibid.

⁸ Ibid

⁹ <https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-1190626002501.html>

One of the states that is leading in the implementation of the RERA, is the state of Gujarat. Around 5 thousand real estates projects were ongoing in the state of Gujarat, in year 2019, which is second highest in number, after the state of Maharashtra.¹⁰ Also, there has been rise in the registrations of the developer projects and the real estate agents, during such time period.¹¹ But, even after the formation of the GujRERA, it took two years to get the presiding officer for the Appellate Tribunal of the GujRERA, which is called as ‘GujREAT’, where the challenge against the decisions of the GujRERA is preferred. For the interregnum period, the presiding officer of the Food and Safety Tribunal had been working ex-officio as the member of the Tribunal, but even then there was no technical member.¹²

“The learned AGP has pointed out that the vacancies have now been filled up and the Appellate Tribunal is operational. However, it may be relevant to note that the vacancies have been filled up only in the month of September-2023, after the directions issued by this Court. For the aforesaid, while rendering the writ petition as infructuous, we are constrained to observe that there is a considerable delay on the part of the State Government in filling up the posts for a period of more than two years, and as such, it is necessary to observe that no such situation should arise in future.”¹³

There is mandate under the clause 3 of the Section 43 of the RERA, which states that “every bench of the Appellate Tribunal shall consist of at least one Judicial Member and One Administrative or Technical Member”¹⁴, and needs highlight herein is that the absence of the member in the tribunal, can causes serious ramifications. The RERA Act has been brought into force for the speedy and efficient disposal of the home-buyers disputes, and without there being any presiding officer or the technical member, the disputes also gets stalled thereby rendering the whole purpose of the enactment futile and meaningless. Another reason is that if any decision is passed in the absence of

¹⁰ Gujarat second in number of works under RERA | Ahmedabad News - Times of India, The Times of India, <https://timesofindia.indiatimes.com/city/ahmedabad/state-second-in-number-of-works-under-rera/articleshow/69104539.cms> (last visited Oct. 3, 2023).

¹¹ Ibid.

¹² Ahmedabad News – Latest & Br, Ahmedabad Mirror, <https://ahmedabadmirror.indiatimes.com/ahmedabad/cover-story/big-bang-rera-reform-fails-to-serve-purpose-in-absence-of-full-time-appellate-tribunal-judge/articleshow/73051036.cms> (last visited Oct. 3, 2023).

¹³ Nipun Praveen Singhvi vs State of Gujarat 2023 Livelaw (Guj) 157

¹⁴ Real Estate (Regulation and Development) Act, 2016, § 43, cl. (3), No. 16, Acts of Parliament, 2016 (India)

any member of the tribunal, then such decision could be set aside by the court of law.¹⁵ If that is the case, then all the decisions that have been passed in the absence of the technical member would be set aside, thereby benefitting the developers, and at the cost of the home-buyers.

To curb this remedy, it has been assured by the government of the Gujarat, that there would be appointment of the judicial officer for the Appellate tribunal, and also there would be allocation of the building for the tribunal, which till now has been functioning from the tribunal of the Food and Safety Tribunal.¹⁶

CHAPTER III

RESOLUTION OF THE DISPUTES

One of the method/mode of bring about resolution between is the mode of the conciliation, which is kind of alternative dispute resolution, wherein the one person called conciliator resolves the issue between parties, and then they come to the agreement. Such agreement is then morphed into the settlement agreement between the parties, and they would be bound by it. And, if there is infraction of kind clause or part of such agreement, then complaint could be filed. In order to reduce the burden on the courts of law, such methods have evolved. As per National Judicial Grid, total ___ cases are pending in the courts, and if juxtaposition is made with the Supreme Court of the United Kingdom, then there are only 37 cases pending.¹⁷

Albeit, some of the states have adopted the alternative methods of the dispute resolution, whereas other states are still clogged with the court method, which more often than not are slow and lengthy. One of the strategy regarding such alternative methods has been provided under the clause (g) of the Section 32 of the RERA, which states : “32. *Functions of Authority for promotion of real estate sector.—The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on...*

¹⁵ Satish Nandgaonkar, *Single-member bench can't decide RERA appeals: HC*, Mumbai Mirror (Oct. 7, 2019), <https://mumbai-mirror.indiatimes.com/mumbai/other/single-member-bench-cant-decide-rera-appeals-hc/articleshow/71471298.cms> (last visited Oct. 3, 2023).

¹⁶ *Gujarat's realty regulator to finally get its judicial teeth*, Ahmedabad Mirror, <https://ahmedabadmirror.com/gujarats-realty-regulator-to-finally-get-its-judicial-teeth/77642959.html> (last visited Oct. 3, 2023).

¹⁷ *Current cases - The Supreme Court*, The Supreme Court, <https://www.supremecourt.uk/current-cases/> (last visited Oct. 3, 2023).

(g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; ...”¹⁸

This above section provides for the conciliation method to be used instead of the traditional legal method of courts. But, the success of such method is dependent on how well the conciliation bench has been designed. Thus, it becomes all the more important that such ADR mechanisms are considered and implemented by the RERA of the states. So, the deficit of the trust which is plaqueing in this real estate sector, could be weeded out with the help of the ADR mechanisms, and another feature is that it is in consonance with the incentives of the builders and developers.

ADR Mechanism/ RERA Conciliation Benches

In spite of all the benefits that revolve around the ADR mechanisms, only few states have adopted the model, which are Maharashtra, Gujarat, Uttar Pradesh, Haryana, Karnataka, and Madhya Pradesh¹⁹, which is only 21% of the RERA of all states. But, in the states which have such model, the pro-active role is only played by the Maharashtra and UP. It is high time that the state of Gujarat also undertakes to implement conciliation bench in full form. And also if the juxtaposition if made between the conciliation bench and the RERA, then it can be said that in the former the timeline is provided to the homebuyer, and they tend to give solution in small time frame. It has been said that. *“In case of bench proceedings, it takes about four or five hearings to pass an order, whereas in case of conciliation forums, it typically takes one or a maximum of two meetings”* by Mr. R.D. Paliwal, conciliator, NCR bench, UP RERA²⁰.

Further that, solution is provided by the conciliation bench of the RERA in the first meeting, and in another 2-3 meetings, possession or the compensation to the homebuyer is provided then such method shall be favoured. The National President of the NERDCO has opined that *“In most instances where there is a problem between a homebuyer and the developer, an informal conversation tends to sort out differences. An aggrieved homebuyer wants a simpler solution—and that’s what conciliation forums offer—instead of going in for formal proceedings. It not only*

¹⁸ Real Estate (Regulation and Development) Act, 2016, § 32, cl. (g), No. 16, Acts of Parliament, 2016 (India)

¹⁹ *Real Estate Disputes: Need For Conciliation Benches In Every RERA, Know How It's Useful - News18*, News18, <https://www.news18.com/business/up-rera-conciliation-process-maharera-online-real-estate-8515807.html> (last visited Oct. 3, 2023).

²⁰ *Rera’s conciliation forums act as a short cut for aggrieved buyers*, mint, <https://www.livemint.com/money/personal-finance/rera-s-conciliation-forums-act-as-a-short-cut-for-aggrieved-buyers-1567529369522.html> (last visited Oct. 3, 2023).

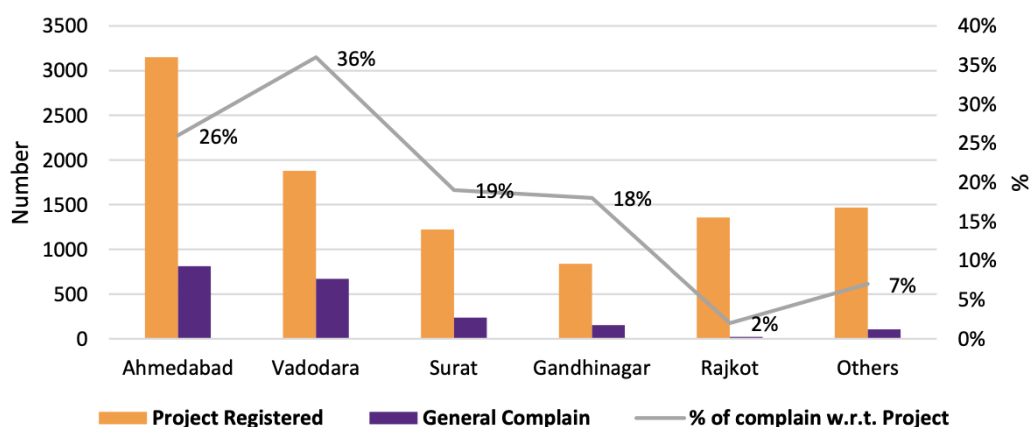
reduces legal hassles but also helps the ultimate goal of completing the project and handing over the possession.”²¹ In order curb the slow and lengthy court proceedings, it is imperative that the alternative methods of the resolutions are developed. The initiative of the conciliation benches of the RERA, shall also be established in the Gujarat state.

Redressal of grievance in the Gujarat

The hearing of the disputes of the consumers is done by the GujRERA in the full-swing, and it has been revealed that the developers and the builders are more willing to settle the disputes, than to be involved in the lengthy court process. Between one year from 2018-2019, disputes in more than 220 cases have been resolved and settled by the GujRERA under Section 31 of the RERA.²²

Inspite of there being provision and forums for the settlement of the disputes, there is lack of awareness among the consumers for the disputes. More often than not the cases oscillate between the low quality material being used in the flat, lack of amenities, major concern of the delayed possession owing to the non-completion of the project within the stipulated time frame by the builder and the developer. One of the main objective and aim of the RERA is resolution of the consumer-developer disputes, for such power quasi-judicial powers have been conferred. Any person who is aggrieved by the act of the other, can file the complaint either in the offline or online mode, with the relevant documents required thereto.

District wise Projects Vs Complaints



(Source: Annual Report, GujRERA, Government of Gujarat²³)

²¹ Ibid.

²² GujRERA: Builders settle 99% of cases filed by citizens | Ahmedabad News - Times of India, The Times of India, https://timesofindia.indiatimes.com/city/ahmedabad/gujrera-builders-settle-99-of-cases-filed-by-citizens/articleshow/70165840.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited Oct. 3, 2023).

²³ https://gujrera.gujarat.gov.in/resources/staticpage/Annual_Report_2021-22/Annual_Report_2021-22.pdf (last visited Oct. 3, 2023).

Execution powers of the GujRERA

District	Authority		Adjudicating	
	Filed	Disposed	Filed	Disposed
Ahmedabad	727	487	84	80
Vadodara	529	376	143	140
Surat	224	104	12	12
Gandhinagar	119	93	34	34
Rajkot	19	8	2	2
Others	93	70	14	13
Grand Total	1711	1138	289	281
% of Disposed	67%		97%	

In order to deal with the execution process, the regulations have been notified by the RERA Authority, i.e. GujRERA in the year 2021. Such notification has been done in exercise of the powers that have been conferred on the GujRERA under the Section 85 of the RERA. The power conferred to execute is akin to the powers of execution of the civil court. If there is wilful disobedience on part of the party, then the regulations also provide for the provision of the civil imprisonment.

(Source:Annual Report, GujRERA, Government of Gujarat²⁴)

As it can be seen from the above table, the majority of the disputes are from the Ahmedabad region, but there has been resolution and settlement of the 70% cases. The region on the second number is the Vadodara, followed by the Surat and Gandhinagar.



(Source:Annual Report, GujRERA, Government of Gujarat²⁵)

CHAPTER IV

²⁴ Ibid.

²⁵ Ibid.

ISSUES INVOLVED WITH RERA

RERA had come into force in the year May 2016, whereby within six months the states were enjoined to make and notify the rules in accordance with the Act, and within an year i.e. by May 2017 set up the regulator. But, despite that many states have failed to do so. But when done, some of the provisions have been diluted by the states, whereas others like the State of West Bengal has drafted another RERA for its own.

It has been stated by the National Convenor for the RERA that *“Given the high level of project delays and cheating cases, RERA's enactment after eight long years of wait (its first concept paper came in 2008) had raised hopes among home- buyers. But lack of seriousness and slow pace of its implementation by several States has come as a setback.”*²⁶ The main cause of the concern was that since the RERA has not been implemented in all the states, till then no amendment shall be made in the enactment. There some issues with the implementation of the RERA, which are hereinafter as follows:

1. ***The aspect of the rehabilitation of some of the redevelopment projects is out of the RERA purview:*** States shall consider that the redevelopment of the projects or tenanted buildings shall be brought within the realm of RERA. At present, it is not included within the RERA domain. It has been ruled by Maharashtra that the redevelopment would not be brought in RERA realm.²⁷ In the recent case in the Maharashtra concerning the redevelopment vis-a-vis RERA, it has been held by the tribunal that- *“Section 3(2) (c) of the Act (RERA Act), has specifically and expressly exempted the rehabilitation part of a redevelopment project from the requirement of registration, if it does not involve marketing, advertising or selling. Further that “Unless and until there is a sale or publicity or advertisement etc, the said registration of rehabilitation project is not required and thereby, provisions of Act will not be applicable for such projects.”*²⁸

It further held that *“Redevelopment projects are of hybrid nature and rehabilitation components (PAA) do not fall within the purview of the Act (RERA Act). Thereby, flat taker appellant being in*

²⁶ *Blow to housing societies: Rera won't hear redevelopment disputes | Mumbai News - Times of India*, The Times of India, <https://timesofindia.indiatimes.com/city/mumbai/blow-to-housing-societies-rera-wont-hear-redevelopment-disputes/articleshow/62531455.cms> (last visited Oct. 3, 2023).

²⁷ MR. JAY THAKURAL MR. RAJEN DHRUV, BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL MUMBAI APPEAL No. U-6/2021

²⁸ Ibid.

the rehabilitation component, is not entitled to any relief under the provisions of the Act and as such, complainant has no locus standi under the provisions of the Act.”²⁹

Thus, from the above it can be discerned that when the owners of the some old building decide to get it revamped with the builder, then more often than not they are shifted to some apartment interregnum, but such redevelopment project is not enjoined to be registered by the builder under the RERA currently. Even the existing owner would not be fortified by the provisions of the RERA, neither would get shelter under the Consumer Protection Act.

2. *Deadlines are more often than not breached:* The homebuyers and consumers prior to the coming in force of the RERA were at the mercy of the builder in order to get the possession, which was more often than not delayed and deadlines were breached, but the coming of the RERA, the developers are now required to register their projects within 01 year mandatorily.

Though under the RERA the extension for such registration could be done for another one year, but being aware of the allottee’s interest, it could be extended beyond one year as well.³⁰ The delays that happen may not always be subjected to the builders, as they themselves are required after the registration to approach the various authorities in order to get the approvals and the certificates. The delay in getting approvals for the amenities like electricity or water, further aggravates the delay of the project, for which the builder cannot be blamed and due to which the construction is stalled. And, on each step the approval is required to be taken, then in such cases, construction is delayed. Hence, there shall be single window for the clearance. In this it is pertinent to reproduce the Section 32 of the RERA which states “32. *Functions of Authority for promotion of real estate sector.—The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on,— ... (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project; ...*”³¹

3. *RERA orders implementation:* Any order passed by the RERA Authority would not be of any benefit, unless the authority is empowered for the execution of the order. The provisions could be

²⁹ *Incomplete projects in Indore & Bhopal get MP-RERA breather - ET RealEstate*, ETRealty.com, <https://realty.economictimes.indiatimes.com/news/industry/incomplete-projects-in-indore-bhopal-get-mp-rera-breather/68377731> (last visited Oct. 3, 2023).

³⁰ Ibid.

³¹ Real Estate (Regulation and Development) Act, 2016, § 32, No. 16, Acts of Parliament, 2016 (India)

made for the authority to take aid from the District Collector in order to get the order executed, by various modes, like recovering through the warrant, imposition of the penalties, fees or any arrears of the payment. For such purposes, any warrant passed by the RERA Authorities could be sent for the execution to the State Administration, which can execute it in the timely and efficient manner. But having said that, problem also arises because the RERA Authority is not empowered to let know about the manner of the execution of the warrant to the State Authorities.

For such purposes, it becomes imperative that feedback or the real-time updates are provided from the administration's end, or status is uploaded on the online portals. Usually, a time period of 45 days is provided to the developer for abiding by the order and executing, and if he fails, then in such cases the homebuyers can approach the RERA Authority again for the execution. In this light it be pertinent to state Section 40 of RERA which states : *"40. Recovery of interest or penalty or compensation and enforcement of order, etc.—(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue."*³²

4. Lack of information on the online portals: Within the year of the establishment of the RERA Authority, the State government ought to have launched the websites in this regard, but the states of Manipur, Nagaland, Sikkim have not notified the rules, and Arunachal Pradesh, Assam and Tripura have not launched their websites. The States which have launched the websites, claim that many cases have been resolved by them, but either the data has not been uploaded on the website or they falsely claim. The information of the cases against the developers does not have any information on the website of RERA of UP State. It has been affirmed by the Chairman of the RERA Authority of UP, that the information would be uploaded on the website soon.³³ The main purpose and intent of the launching the website by the State government, under the enactment, was to keep the homebuyers and customers informed about the details pertaining to the case, date of the possessions, contact information about the registered agents, and much more. Even there is mandate under the enactment for enabling the customers to file online complaints. Since, there are states which have

³² Real Estate (Regulation and Development) Act, 2016, § 40, No. 16, Acts of Parliament, 2016 (India)

³³ Rera's three-year report card shows gaps in implementation, mint, <https://www.livemint.com/money/personal-finance/rera-s-three-year-report-card-shows-gaps-in-implementation-1557237162103.html> (last visited Oct. 3, 2023)

not launched the website or if they have launched there is not sufficient information, that runs contrary to the purpose and intent of the enactment to launch the website by the state government. Since, the information is not available on the website, thus people are clueless about how to file the complaint under RERA. What is needed that the website of the State RERA is user-friendly such that it is accessible to the users and other stakeholders. What is also important is the publication of the updates every quarter, so that information is given to the homebuyers about the verified projects. For taking the informed decision by the homebuyers, as to the status of the project or the availability of the housing units, it is all the more important. Also, the copies of the orders or judgments that have been pronounced by the RERA authorities, are either not uploaded in real-time or uploaded after some week, this is the biggest source of mis-information.

5. Patchy Roll-out and Implementation on a Pan-India Basis: The implementation of the RERA has not been done by some states in letter and spirit, as in some of the states the appellate tribunal or permanent authority has not been established, or there is no adjudicating officer, or no web portal. The way could be shown by the other states leading in the RERA, to the other states, such that they can also implement the RERA in letter and spirit for the benefit of the stakeholders.

6. Need to Bring in Government as a Stakeholder: Albeit, all the stakeholders have been considered by the RERA, yet the government also being the stakeholder of RERA had been left outside the realm and domain. There is no obligation imposed by the enactment on the State government to sanction or clear the building projects in specific time frame. Like, in some of the cases, albeit the project is completed by the developer and application for OC has also been given but yet not been cleared by the government. The power to issue the directions shall be vested in the State authorities, which could be done by extending the rigours of the Section 37 RERA.³⁴

7. Deterrent to Joint Ventures: Though the joint ventures are the prime focus of the RERA, but under there is discouragement of alliance between the owner of the land and the developer. Since, there is paucity of the funds to purchase the lands, therefore developer place reliance on the joint ventures in order to buy land. But, with this problem is that some of the owners of the land would be skeptical about the project and would not thus want to do tie-up as joint venturing. As a corollary, the supply of the land is reduced, and thereby increasing the prices thereof.

³⁴ Real Estate (Regulation and Development) Act, 2016, § 37, No. 16, Acts of Parliament, 2016 (India)

8. *Lack of Adequate Infrastructure / Manpower:* One of the homebuyer in the Orissa who had booked housing unit in the year 2011, to be delivered in 2013, has stated that “Orissa RERA does not even have a working phone number to guide.”³⁵ To his utter dismay when he got the information, not even the construction of the project had started, so he had to cancel the housing unit.

9. *In the Absence of Builder-Buyer Agreement, Developer Takes Undue Advantage:*

For the fortification of the homebuyers from the developers or builders who are delinquent, there are certain provisions under the RERA. Like, if under the homebuyer-purchase agreement, the possession has been promised by certain date, and is not delivered on such date, then in that case the complaint can be filed under provision Section 18³⁶ for the refund of the money paid along with the interest, or seeking the possession with the interest for delay.

Despite, there being the provision there are some issues like if there is no existence or execution of the homebuyer-builder agreement? There have been cases where-under albeit the project is registered with the RERA, token money is taken from the homebuyer, yet not agreement is signed. In such cases, the undue advantage can be taken by the builders, because there is no evidence of any agreement signed between the homebuyer and the builder.

CHAPTER V

PROTECTION OF THE CONSUMERS UNDER RERA

RERA vis-a-vis Consumer Protection Act

Before delving into this question, it would be pertinent to analyse the Section 100 of the Consumer Protection Act, which reads as hereinafter “100. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force”³⁷. From the provisions it can be discerned that this provision is in addition and not derogation of any other provision of the any other Act, implying thereby that enactment or existence of any other law in the force, which bolsters and emboldens the rights of the consumers, shall be treated in addition to the incumbent law, than supposed to be in derogation. The main aim and object of the Consumer Protection Act has been engrafted in its Preamble which

³⁵ Rera's three-year report card shows gaps in implementation, mint, <https://www.livemint.com/money/personal-finance/rera-s-three-year-report-card-shows-gaps-in-implementation-1557237162103.html> (last visited Oct. 3, 2023)

³⁶ Real Estate (Regulation and Development) Act, 2016, § 18, No. 16, Acts of Parliament, 2016 (India)

³⁷ Real Estate (Regulation and Development) Act, 2016, § 100, No. 16, Acts of Parliament, 2016 (India)

reads “An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto”³⁸, thus if there is grievance of any consumer, the relief is filing of the suit.

As a corollary, the enactment of the RERA Law, whereby the compensation is granted to the consumers/homebuyers against the developers or builders, is a law which is deemed to be in addition to the Consumer Protection Act, and not in derogation.³⁹ For example, from the decision of the RERA, the appeal can be preferred to the High Court, implying thereby that there is no derogation of one statute by the other, and thus both shall be read harmoniously in conjunction with each other.⁴⁰

What is the scope of the RERA Board

Albeit, the consumer forum is no under time-ticking clock for the adjudication of the disputes, whereas board of the RERA works on the strict time frame for the adjudication of the matter. The matter pertaining to the consumer forums concerns when the flat has been purchased by the homebuyer and there is deficiency in the flat or the quality of the material, provided he has received the certificate of the completion, whereas such cases do not file within the ambit of the Board of RERA; it concerns the disputes wherein the possession has not been handed over to the homebuyer, and malpractices have been employed by the developer.⁴¹

When there is non-delivery of the possession to the homebuyer by the developer or the builder, and no notice or certificate of the completion has been received, then in such cases the homebuyer or consumer shall approach the RERA Authority, whereas in any other cases, it would be prudent to file the complaint before the Consumer Forum, because any consumer cannot file same case before the two different authorities at the same time. Under the RERA authority, the consumer is enjoined to sign and file the undertaking that no other complaint before any other forum has been filed by

³⁸ Preamble Consumer Protection Act

³⁹ *All you need to know about “RERA” in India*, Indian Express (May 2, 2020, 4:30 PM) <http://indianexpress.com/article/what-is/what-is-rera-and-how-will-it-help-homebuyers-4635705/> (last visited Oct. 3, 2023).

⁴⁰ *SoOLEGAL*, Find Top Lawyers, Case Manager, Consulting, Resource Centre | SoOLEGAL, <https://www.soolegal.com/news/delhi-hc-to-decide-does-rera-exclude-the-jurisdiction-of-consumer-protection-act-for-homebuyers> (last visited Oct. 3, 2023).

⁴¹ *The RERA Act – An Explainer - India Briefing News*, India Briefing News, <https://www.india-briefing.com/news/the-rera-act-an-explainer-14275.html/> (last visited Oct. 3, 2023).

him as regards the same dispute. There are certain rights which are in favour of the allottee if the possession is not delivered to him within the stipulated time frame, those are that the allottee can claim the amount that has been paid by him with the interest thereon, or could get the issuance of the occupancy certificate and within two months take the delivery of the possession. Under the RERA Authority, it is also incumbent for the builder or the developer to register their projects with the regulatory authority of the city, which shall be prior to even the advertising of the project or any sale of the project, failing which would warrant the punishment of “*imprisonment of 3 years or fine up to 10% of the total project cost*”. It is also incumbent upon the developer to upload all the essential details about the projects, and if any developer meets all the aforementioned criteria then he would be enabled to advertise for the project.

Is registration of complaint under RERA better than registration under Consumer Forum?

Apropos the malpractices in the market, that are prevalent by the developers and the builders, against the buyers or the consumers, prior to the coming in force of the RERA Act, the consumers were required to file the complaint before the Consumer Forum.

The juxtaposition between the RERA Authority and the Consumer Forum, is:

1. Firstly that under the RERA complaint can be filed by the any of the agencies or the consumer-complainant himself, but under the consumer forum only the agencies which are registered can file the complaint. Thus, it could be said that the RERA is the specific genes.
2. Second point of difference is that under the consumer forum, the process is akin to the courts which is slower and lengthy, and might take for the redressal upto 5-6 years, whereas in case of the RERA authority the disputes are resolved within few years. Therefore another feather in the cap for the RERA Authority is the speedy disposal of the cases.⁴²
3. Thirdly, the RERA Authority has been empowered and conferred with the power and control of the firms by having option to de-register them, and can make the order to the builder or the developer to complete the project within the time as maybe stipulated. In order to keep the consumers and homebuyer aloof from the lurch and penalising the builders, the RERA authority has been empowered. It can also discourage the further prospective projects to be undertaken by the builders, if there no sufficient funds. Wheres, apropos the consumer forum it can be said

⁴² *RERA v. Consumer Courts*, Legal Service India - Law, Lawyers and Legal Resources, <https://www.legalserviceindia.com/legal/article-3536-rera-v-consumer-courts.html> (last visited Oct. 3, 2023).

that since the scope and jurisdiction of the consumer forum is limited, therefore it acts in akin manner to the courts and executes the orders.

CHAPTER VI

CONCLUSIONS AND SUGGESTIONS

The law of RERA is still in its development stage, and holds stage for the amendments to be made in the future. One cannot even fathom what would world be, without there being the law of property. But at the same time, the challenges that come with it, both on the side of the homebuyers and developers and government on the other side, must also be looked into. Because in the aspect of the commercial real estate there is no say of the state authorities, owing to which the interest of homebuyers and consumers is affected and infringed. The delinquent practices are adopted by the developers and the builders, like selling the corner housing units for higher price, in order to gain and avoid the losses, and thereby duping the customers.

In the case of “*Ganesh Somasundaram v. M/s.Alliance Groups Pvt Ltd.*” wherein it has been alleged by the complainant that the developer had charged more for the parking and corner housing unit, it has been held by the authority they cannot look into the aspect of the company as they do not have the jurisdiction. Hence, the statute shall be amended such that the authority is empowered to look also into commercial aspects of the real estates. The projects which have been started prior to the coming in of the RERA, 2016 would not come under this ambit.

The issue under RERA is non-availability of the staff in order to check if the projects had been registered or not, nor there any mechanism in order to check the actions of the promoters, the only bridging gap between the homebuyer and developer, are the registered agents.

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