



Reforms in Real Estate Sector

RERA-2016





**RERA has strengthened the trust
between the customers and the
real estate developers”**

- Prime Minister, Narendra Modi
(13 February 2019)



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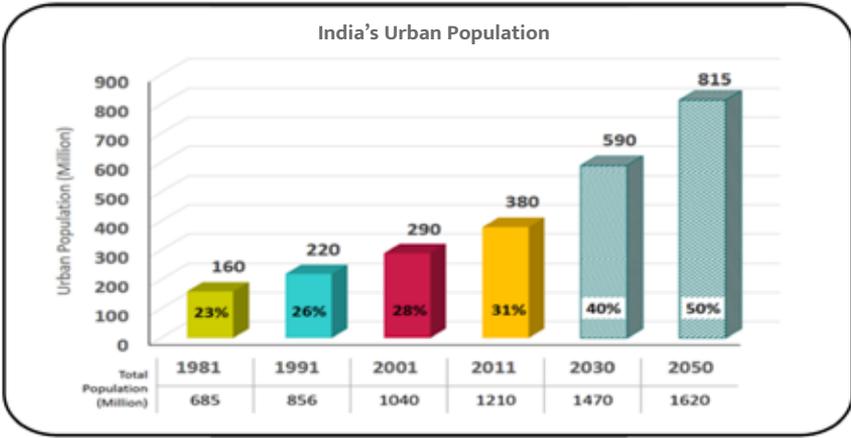
Introduction



India is witnessing rapid urbanisation. According to Census 2011, India's urban population was 37.7 crore, which is projected to grow to about 60 crores by 2030. Urbanization in India has become an important and irreversible process, and it is an important determinant of national economic growth and poverty reduction.

In such scenario, Real Estate sector has an important role to play. The Real Estate sector contributed around 7 % to India's GDP in 2018-19 and its share is expected to grow to around 13% of India's GDP in 2025. As per Economic Survey 2017-18, the sector employed around 4 crore people in 2013, which is estimated to be around 5.5 crore in 2020. It is a sector with strong forward

and backward linkages, particularly with the core sectors of the economy, such as steel, cement, and other building materials and directly/ indirectly impacts 270 different industries. Clearly, growth of Real Estate Sector has serious socio-economic gains to offer.



Real Estate Sector: Issues before Reforms

- Prior to initiation of the reforms, Real Estate Sector was facing various issues and irregularities such as duping of homebuyers by builders through various malpractices, rampant use of black money, diversion of funds and lack of accountability.
- In the absence of any specific law to regulate this sector, homebuyers were constrained to seek remedy under the laws such as- Indian Contract Act and Consumer Protection Act, involving lengthy litigation process. There was no recourse to any speedy grievance redressal mechanism in case of any genuine problem faced by either the homebuyers or developers. In other words, for want of a preventive law, recourse was made to curative measures.

- Despite full payment, homebuyers were facing problems regarding the timely completion and delivery of homes. Builders would unscrupulously divert funds to other lucrative investments and the homebuyers would not only lose their life time savings but also be saddled with the burden of repaying the loan along with interest to the banks with no roof of their own over their heads.
- Due to one-sided agreements tilted heavily in favor of developers, homebuyers were forced to pay various extra charges including cost escalation whereas developers were not held responsible even in case of any contravention of promised deliverables. Moreover, there was unequal rate of interest to be paid by the promoters and buyers in case of default or delays thus bringing inequity and injustice in operations.
- Home buyers would fall prey to unscrupulous builders, luring them to invest in non-approved projects, promising high returns. Developers used to mislead the homebuyers by making false promises regarding various features, layout and amenities of the project but later

retracted on the same.

- Terms such as- super buildup area, carpet area, covered parking etc. were used arbitrarily by developers to their advantage thereby cheating the homebuyers. The homebuyers paid for super area whereas they got very less actual usable space in their flats/homes.
- Real Estate Agents, who play a vital role in real estate transactions, were not regulated and in many instances used to defraud innocent homebuyers.
- On the other hand, developers had to seek umpteen numbers of sanctions and approvals through complex processes before commencement of project construction. For example- even a simple task of getting the project layout map approved would take years, resulting in delays and cost escalation.



A middle class person wants to construct his own house, wants to buy a flat. Builders lobby shows him a beautifully printed booklet and the helpless soul falls prey to it. He is not having any technical knowledge, he pays the installments but he is not getting the promised house in time. A middle class makes one house in his whole life and in it he invests all his capital. Brothers and Sisters, we have put a check by passing the “Real Estate Bill”, so that a middle class should not face any problem if he wishes to own a house. We have worked for this.

- Prime Minister, Narendra Modi
(15 August 2016)

Enactment of Real Estate (Regulation and Development) Act, 2016 [RERA]

In view of various issues plaguing the harmonious development of Real Estate sector and to protect the interest of homebuyers, need for specific legislation was being felt for a long time which culminated in enactment of The Real Estate (Regulation and Development) Act, 2016 [RERA].

Genesis of RERA:

A Concept Paper on legislation for regulation of real estate was prepared in 2008. However, due to various reasons it could not see the light of the day. Thereafter in 2014, work on proposed legislation recommenced with great fervor. After detailed deliberations and consultations with all

stakeholders, The Real Estate (Regulation and Development) Act, 2016 [RERA] was passed in both the houses of parliament in March 2016.

Certain Sections of RERA were notified with effect from 1 May, 2016 and remaining sections from 1 May, 2017.

RERA: Withstanding the legal scrutiny

The constitutionality / legality of the provisions of RERA was challenged through various Writ Petitions in various High Courts. Accordingly, Hon'ble Supreme Court of India by an order dated 4 September 2017, passed its direction to High Court of Judicature of Bombay to take up the connected matters together and assign the cases to a particular Bench for expeditious decisions of the matters within two months.

Accordingly, in line with the directions of Hon'ble Supreme Court of India, the controversies involved in the present petition, has been authoritatively concluded by the Hon'ble High Court of Bombay vide its judgement dated 6th December 2017 and has held various sections of

the Real Estate (Regulation and Development) Act, 2016 as constitutional, valid and legal.

Key Provisions

- RERA was enacted to ensure regulation and promotion of Real Estate Sector in an efficient, transparent and accountable manner and to protect the interest of homebuyers. This transformative legislation seeks to address vital issues of fair transactions, timely delivery and quality construction through speedy adjudication of disputes, thus empowering the home buyers.
- Enactment of RERA marked the beginning of a new era in Real Estate Sector and a step towards reforming the sector, encouraging greater transparency, citizen centricity, accountability, and financial discipline.
- **Establishment of Regulatory Authorities, Adjudicating Officers and Appellate Tribunals for speedy dispute resolution:** To ensure

faster resolution of dispute, each State/UT has to establish its own Real Estate Regulatory Authority and Appellate Tribunal and also appoint Adjudicating Officers. For faster disposal, the cases are to be decided within sixty days from the date of application/appeal.

- **Applicability of RERA:** RERA extends to residential and commercial real estate. It applies to both private and public bodies engaged in sale.
- **Mandatory Registration of Projects:** Under provisions of RERA, homebuyers' interests are protected as only all the projects (above 500 sq mtrs. and above 8 apartments) registered with Regulatory Authority can be launched thereby obviating possibility of any misrepresentation/false promises by the developers.
- **Registration of Real Estate Agents:** All agents dealing in real estate projects also need to register with respective State Real Estate Regulatory Authorities. No deposit or advance to be taken by developer without first entering into agreement for sale with homebuyer.

- **Project details to be furnished before Registration:** At the time of registration of project, developer has to furnish specific details related to project: Sanctioned plan, layout plan and specifications of the proposed project, proforma of Allotment Letter, Agreement for Sale & Conveyance Deed proposed to be signed with homebuyers; number, type and the carpet area of apartments & garages, Time period within which project is to be completed.
- **Separate Bank Account for each project:** 70% of the amount collected from homebuyers for a project must be maintained in a separate bank account and only be used for construction of that project only and land cost. Withdrawal of money from this account shall be done after certification of engineer, architect & chartered accountant in regards with of project completion.
- **Online Information of registered projects:** Through the online portal, the homebuyers are empowered to take the informed decision to buy their dream homes as well. Further, promoter has to quarterly update the relevant details of the project along with project status.

- **Mandatory mentioning of RERA registration Number:** Developers have to mention RERA registration number in each of his advertisement or prospectus.
- **Equal treatment for homebuyers & developers:** Developers are now legally obliged to pay similar rate of interest to homebuyers in case of delay.
- **Formation of Resident Association:** Developers have to enable the formation of Association of homebuyers/Residents and after paying all outgoings, execute a registered conveyance deed for common areas in favour of Association of homebuyers.
- **No change in project layout without consent of homebuyers:** Developers can't do alteration or addition in the sanctioned plans, layout plans and specifications of project layout, without the previous written consent of 2/3rd of allottees/ homebuyers.
- **Refund in case of delay:** If developer fails to complete the project as per terms of agreement for sale, homebuyer can either seek refund of paid amount along with interest or

ask for interest for every month of delay, till the handing over of the possession.

- **Penal Provisions:** RERA provide strict penal provisions of imprisonment in addition to provisions for refund, interest and penalty in case of non-compliance by developers, allottees and agent



RERA Implementation Status (Till 10 July 2021):



Other than West Bengal and Nagaland, **34 States/UTs** have notified rules under RERA.

30 States/UTs have set up Real Estate Regulatory Authority.

28 States/UTs have set up Real Estate Appellate Tribunal.

Regulatory Authorities of **27 States/UTs** have operationalized their websites under the provisions of RERA.

More than **67,313** Real Estate Projects and approximately **51,895** Real Estate Agents have been registered under RERA across the country.

More than **70,001** Complaints have been disposed-off by the Real Estate Regulatory Authorities across the country.

Measures for Homebuyers



Enhancement in deduction for interest on housing loan from Rs. 1.5 lakh to Rs. 2 lakh.



Rs. 1.5 Lakh additional deduction on Home Loan Interest for home loans availed from 1 April 2019 up to 31 March 2021 on affordable houses, up to Rs. 45 Lakh.



Increase in deduction limit for investments under Section 80C from Rs. 1 lakh to Rs. 1.5 lakh.



Moratorium of 6 (3+3) months to homebuyers, developers and other borrowers on payment of current dues falling between 1 March 2020 to 31 August 2020.



For capital gain tax, reduction in holding period for computing long term capital gains from transfer of immovable property from 3 years to 2 years. Exemption on capital gain has been extended for 2 houses and up to Rs 2 Crore.

INCOME TAX
1-2 yrs.
RELIEF

Income tax relief on notional rent from unsold housing stock extended from 1 year to 2 years

**NOTAX
LIABILITY**
20% LOWER

No Tax liability on either Buyer or builder under section 56(2)(x) or section 43CA of the Income Tax Act, if the Transaction value of Property is upto 20% lower than Circle rate.

**2
HOUSES**
EXEMPTION

Exemption of notional rental income from vacant house has been extended to 2 houses.

TDS THRESHOLD
**1.8-2.4
LAKH**
DEDUCTION

TDS threshold for deduction of tax on rent has been increased from Rs. 1.8 lakh to Rs 2.4 lakh.

HBA
HOUSE BUILDING ADVANCE
REDUCTION

Reduction in rate of interest on House Building Advance (HBA) from 8.5% to 7.9% with Maximum amount increased to Rs. 7.50 lakh to Rs. 25 lakhs. House cost ceiling increased from Rs. 30 Lakh to Rs. 1.25 Cr.

Before And After: A Paradigm Shift

S. No.	Category	Pre-RERA Situation	Post-RERA Situation
1.	Regulation	The Real Estate sector was largely unregulated till the year 2016, which resulted in various unfair practices, ultimately affected the interests of homebuyers adversely.	The Real Estate (Regulation & Development) Act, 2016 (RERA) ensures regulation and promotion of Real Estate Sector in an efficient, transparent and accountable manner and protects the interest of homebuyers.
2.	Malpractices	There were many cases of unscrupulous builders cheating the homebuyers by not delivering flats/homes despite full payment.	Unscrupulous activities followed by the few of stakeholders of the Real Estate Sector have sharply declined. RERA seeks to address vital issues of fair transactions, timely delivery and quality construction through speedy adjudication of disputes, thereby empowering the home buyers.

S. No.	Category	Pre-RERA Situation	Post-RERA Situation
3.	Diversion of Funds	Due to diversion of funds collected from homebuyers, there were issues of delay in construction & possession on agreed timeframe.	RERA Mandates that 70% of the amount collected from homebuyers for a project must be maintained in a separate bank account and can only be used for construction of that project and land cost. The practice of diversion of the funds collected from the homebuyers has reduced substantially.
4.	Lop-sided agreements	Due to lop-sided agreements tilted heavily in favor of developers, homebuyers were forced to pay various extra charges including cost escalation whereas developers were not held responsible even in case of any contravention of promised deliverables. Moreover, there was unequal rate of	In the post RERA era, format of 'Agreement to sale' has to be furnished at the time of registration under RERA. Homebuyers' interests are protected as only registered projects can be launched. Implementation of RERA is bringing in much required positivity, transparency and accountability in real estate sector.

S. No.	Category	Pre-RERA Situation	Post-RERA Situation
		interest to be paid by the promoters and buyers in case of default or delays thus bringing inequity and injustice in operations.	Moreover, after RERA both builders and homebuyers are treated equally so far as interests/penalties are concerned.
5.	Corruption	There was issue of corruption at various levels.	Due to a well established regulatory oversight mechanism, the incidence of bribery, money laundering, fraud and black money in the real estate sector has reduced significantly, thereby curbing the growth of parallel economy. It has boosted the confidence of investors as well.
6.	Misrepresentation / False promises	Developers used to mislead the homebuyers by making false promises regarding various features, layout and amenities of the project but later retracted on the same.	Developers are now legally obliged to ensure transparent, accountable and time-bound delivery of projects to the home buyers. Now, developers can't change the layout without the consent of 2/3rd allottees/homebuyers.

S. No.	Category	Pre-RERA Situation	Post-RERA Situation
7.	Delay in getting legal remedies	In case of a dispute, homebuyers had to wait for years to get relief from Courts.	Established fast – track dispute resolution mechanism and also ensured disposal of complaints within stipulated timeframe.
8.	Penal Provisions	There was no specific provision for penalty, interest, compensations from developers to homebuyers in case of frauds, misrepresentations or delays.	Specific provisions for refund, interest, compensation and penalty on all stakeholders in the event of contravention of legal obligations.
9.	Regulation of Real Estate Agents	Real Estate Agents, who play a vital role in real estate transactions, were not regulated.	Real Estate Agents dealing in the projects also need to register with respective State Real Estate Regulatory Authorities.
10.	Stalled projects	There were major issue of stalled projects due to non- adherence of developers of the promised deliverables.	Developers are now legally obliged to ensure transparent, accountable and time-bound delivery of projects to the home buyers under regulatory oversight framework of RERA.

Heralding Hope and Positivity- A Case Study

Beneficiaries Speak

The residents of one of the housing projects of Jai Prakash Associates Ltd. at Gautam Budh Nagar approached Uttar Pradesh Real Estate Regulatory Authority upon lapse of project registration. Because of extra-ordinary delay in the project, the allottees were not willing to pay the pending installments and the promoter did not have sufficient financial resources to complete the project without getting the pending payments from the allottees.

After exploring possibility of getting the remaining work of the project completed, Regulatory Authority intervened and constituted a committee under its conciliator and after

sustained deliberations with promoter and the allottees, an action plan was finalized and put in place to carry out the balance work of the project under strict supervision of the Authority with specific terms and conditions.

As per finalized plan, the promoter agreed to contribute Rs. 45 Cr and invest Rs.12 Cr upfront to give momentum to the project and further undertook to provide the required amount to ensure the completion within a year. It was also arranged that the allottees will pay their pending dues in four installments after the restart of the project. A joint committee of RERA, the Association of Allottees and the Promoter has been constituted for rigorous monthly monitoring of project progress.

The construction work has restarted in September 2020 and same is likely to be completed by June-July 2021. Accordingly, 302 allottees of the project who had almost given up on the possibility of getting their dream houses will soon be able to get the possession of their houses.

A new ERA- Media glimpses





Ministry of Information and Broadcasting
Government of India