

# INTRODUCTION

The real estate sector is one of the most globally recognized sectors. Real estate sector comprises four sub sectors

1. HOUSING,
2. RETAIL,
3. HOSPITALITY,
4. COMMERCIAL.

The growth of this sector is well complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations. The construction industry ranks third among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy.

It is also expected that this sector will incur more non-resident Indian (NRI) investments in both the short term and the long term.

**ADVANTAGE  
INDIA**

**Robust  
Demand**

- Increasing incomes, urbanisation and economic growth are driving residential and commercial realty demand in India. It has also become a preferred asset class for investments.

**Attractive  
Opportunities**

- Segments like warehousing, hospitality and affordable houses are growing at a fast pace in India, presenting wider opportunities for investors.

**Policy  
Support**

- Government of India's aim of 'Housing for All by 2022' is driving residential development activity, while the Real Estate (Regulation and Development) Act (RERA) 2016 is making the sector more transparent.

**Increasing  
Investments**

- Driven by increasing transparency and returns, private investments in the sector have surged. In 2017, India ranked 19th out of 73 countries in attracting cross-border capital to its property market.

# BEFORE YOU BUY OR SELL A HOUSE PRIVATELY

If you choose to buy or sell a house privately without a real estate agent being involved it's important to get an independent valuation of the house, and to get advice from a lawyer experienced in residential property before any contracts are signed.

If you are selling your own house you should:

- \*Get an independent valuation so you know what your house is worth
- \*Talk to a licensed agent and ask them to give you a valuation
- \*Involve knowledgeable friends or family in the process
- \*Find out who the actual buyer is before you accept any offers
- \*Find out what the process is if something goes wrong
- \*Be wary of unrealistic offers or claims
- \*Make sure you have disclosed any information that could be relevant to a buyer
- \*Make sure you don't sign anything unless your lawyer has reviewed and approved it
- \*Take your time and not feel pressured into closing a sale quickly.

# IMPORTANT DOCUMENTS

- While buying any property, the following documents must be thoroughly scrutinized.
- 1. Jamabandi
- 2. Chittha
- 3. Land Revenue (Khajana)
- 4. Non Encumbrance Certificate
- 5. Non-Litigation Certificate

Primarily, there are 3 reasons for the necessity of Consumer Protection in real estate industry:

**1. REAL ESTATE BUSINESS INVOLVES A LARGE AMOUNT OF MONEY.** Therefore, malpractices against consumers would result in large amounts of losses for them. On the other hand, consumer protection would benefit enormously to the consumers and is in their best interests and other agents tied to the industry.

**2. THE REAL ESTATE INDUSTRY IS 'CONTROLLED' BY REAL ESTATE AGENTS.** When governments formulate policies to improve the real estate industry they ask people who represent real estate agents. They rarely ask people who represent consumers. Therefore the consumers have no say in formulation of policies that regulate the industry. The real estate industry not only deceives consumers, it also deceives governments.

**3. CONSUMERS LACK KNOWLEDGE.** *Lack of knowledge* and information on part of consumers about the industry also causes them to be exploited. They are misinformed, cheated and often end up losing large amounts of money at the hands of fraud agents because of such lack of information.[5]

# REAL ESTATE (REGULATION & DEVELOPMENT ACT, 2016

Real Estate Regulatory Authority ([RERA](#)) Bill was introduced by the UPA 2 government in 2013.<sup>1</sup>In December 2015, the [Union Cabinet of India](#) had approved 20 major amendments to the bill based on the recommendations of a [Rajya Sabha](#) committee that examined the bill. The Bill had been referred to a select committee, which had given its report in July 2015. However, Congress, Left and AIADMK had expressed their reservations on the report through dissent notes. The bill got approval of the *Rajya Sabha* on 10 March 2016 and by the Lok Sabha on 15 March 2016.

## REGISTRATION

The Real Estate Act makes it mandatory for all commercial and residential real estate projects where the land is over **500 SQUARE METRES, OR EIGHT APARTMENTS**, to register with the Real Estate Regulatory Authority (RERA) for launching a project, in order to provide greater transparency in project-marketing and execution. For ongoing projects which have not received completion certificate on the date of commencement of the Act, will have to seek registration within 3 months. Application for registration must be either approved or rejected within a period of 30 days from the date of application by the RERA. On successful registration, the promoter of the project will be provided with a registration number, a login id, and password for the applicants to fill up essential details on the website of the RERA. For failure to register, **a penalty of up to 10 percent of the project cost or three years' imprisonment may be imposed**. Real estate agents who facilitate selling or purchase of properties must take prior registration. Such agents will be issued a single registration number for each State or Union Territory, which must be quoted by the agent in every sale facilitated by him.

## **BENEFITS PROVIDED**

The Act prohibits unaccounted money from being pumped into the sector and as of now 70 per cent of the money has to be deposited in bank accounts through cheques is now compulsory. A major benefit for consumers included in the Act is that builders will have to quote prices based on carpet area not super built-up area, while carpet area has been clearly defined in the Act to include usable spaces like kitchen and toilets.



# ASSAM REAL ESTATE (REGULATION & DEVELOPMENT) RULES 2017

RERA is a quasi judicial authority and all the ongoing and future real estate projects have to be registered under it,” adding that RERA is the authority to address the issues between the purchaser and the builders/promoters.

If a builder has 10 projects, all the projects will have to be registered under RERA individually.

There are four elements under the RERA Act - RERA authority, real estate project promoter, realtor (agents who sell property) and the purchasers.

Under the RERA Act, a RERA authority comprising two members – a retired judge and a real estate expert - has to be formed. **THE ASSAM GOVERNMENT IS YET TO FORM THE AUTHORITY AND TILL THEN THE GMDA TOWN PLANNER HAS BEEN APPOINTED AS THE RERA INCHARGE.**

Any ongoing project without occupancy certificate will have to come under RERA. After the projects are registered under RERA, the promoters and realtors will have to stick to the promises made in the agreements with the purchaser. Any promoter/realtor failing to fulfil the promises made while selling the project can be punished by the RERA authority.

## **BENEFITS TO PROMOTER**

The RERA rules are beneficial even to the promoters. If the purchasers do not make payments on time, they will have to pay 2% extra on the prime lending rate of the bank

# **EXISTING LEGISLATIONS FOR CONSUMER PROTECTION IN REAL ESTATE SECTOR**

- 1. CONSUMER PROTECTION ACT, 1986**
- 2. INDIAN CONTRACT ACT, 1872**
- 3. SPECIFIC RELIEF ACT, 1963**
- 4. INDIAN PENAL CODE, 1860**
- 5. COMPETITION ACT, 2002**

## **CONSUMER PROTECTION ACT, 1986**

The Act defines the term 'service' which includes 'housing construction.' Therefore the realty sector falls within the ambit of this Act and an aggrieved consumer can approach the Councils set up under this Act and claim relief. However, there is a limitation here that the Act only provides for pecuniary damages and compensation; it doesn't provide for specific performance. Thus, the recourse available to an aggrieved consumer in real estate industry is only curative and not preventive.

## **INDIAN CONTRACT ACT, 1872**

The recourse available to an aggrieved person under this Act does not stipulate specific performance. Just like the Consumer Protection Act, 1972, the relief granted is only curative and not preventive. In case of breach of contractual obligations, the Act doesn't provide for specific performance but pecuniary compensation for damage caused.

## **SPECIFIC RELIEF ACT, 1963**

This Act, however, provides for specific performance as one of the recourses available to the aggrieved consumer. Though it is only limited to situations where “there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done” or “when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief”. Thus, a person dispossessed of immovable property without his consent (other than in due course of law) can recover possession by a suit filed within six months from the date of dispossession.

## **INDIAN PENAL CODE, 1860**

Under criminal law, namely, the Indian Penal Code (IPC) the recourse available to an aggrieved homebuyer or a realty consumer is to file a criminal complaint for criminal breach, which if established, entails punishment but does not provide any preventive provisions. Therefore, criminal law too, does not mandate specific performance of contractual obligations.

# COMPETITION ACT, 2002

While the Competition Law in India is gaining momentum in the real estate industry, it does not provide for making good any loss suffered by individual consumers. It prohibits specific offences like abuse of dominant position, monopoly, etc., but doesn't lay down the provisions for prevention or specific performance by agents in real estate industry.



## **BRIG. (RETD.) KAMAL SOOD VS M/S. DLF UNIVERSAL LTD. (CAUSING DELAY DUE TO DELAY IN GOVERNMENTAL PERMISSIONS, SUCH AS, APPROVAL OF ZONING PLAN, LAYOUT PLAN AND SCHEMATIC BUILDING PLAN)-**

This case raised some interesting issues before the National Consumer Dispute Redressal Commission (NCDRC), for instance:

- 1.Can a builder give alluring advertisement promising delivery of possession of the constructed flat to the consumer within the stipulated time, and, subsequently, on his failure, turnaround and contend that as governmental permissions, such as, approval of zoning plan, layout plan and schematic building plan, were not given, the delay in construction should not be the ground for grant of compensation to the consumer?
- 2.Secondly, whether the consumer should suffer by paying escalation cost due to such delay?

The NCDRC observed that the aforesaid practices were unfair trade practice on the part of the builder to collect money from the prospective buyers without obtaining the required permissions such as zoning plan, layout plan and schematic building plan.

NCDRC stated that it was the **duty of the builder to obtain the requisite permissions or sanctions such as sanction for construction, etc., in the first instance, and, thereafter, recover the consideration money from the purchaser of the flat/buildings.**

Secondly, in such a case, if there is any express promise that the premises would be delivered within the stipulated time, and, if not done so, **escalation cost is required to be borne by the builder.**

## SHRI YOGESH SHARMA & ANR., VS M/S UNITECH LIMITED

The NCDRC in the case observed that the builder ought not to have accepted money and entered into agreement with the buyers without approval of the building plans by GNIDA (Greater Noida Development Authority). If the opposite party chose to accept money from the flat buyers and enter into agreements, undertaking to give possession within a particular time frame, without having possession of the land and without approval of the building plans, it is **only itself to blame for a situation in which the construction got delayed on account of the delay in approval of building plans and physical delivery of the land to it on the spot.**

## VISHAL ARYA V. UNITECH LIMITED

In this case, the Complainant was aggrieved by the inordinate delay caused in completion and possession of his flat booked with Unitech. The Complainant in the case had deposited the entire amount of flat with Unitech and according to the Agreement the possession of flat was assured by March, 2009. However, the construction of flat had not yet even started. Aggrieved by this, the Complainant prayed either for immediate delivery of flat or refund of the entire amount alongwith interest and litigation charges. In reply, Unitech contended that the delay was caused by *force majeure* circumstances which was beyond its control.

In the case, Commission was of the view that there was a sheer deficiency in the services of Unitech and they were only enjoying the fruits of deposited amount and on account of mental agony suffered by the buyers, the **Commission directed Unitech to refund the entire amount alongwith interest @10% p.a. and also to pay Rs. 2.50 lac as compensation to the Complainant for mental agony.**