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# Assessing the Impact of the Real Estate (Regulation and Development) Act, 2016: A Critical Inquiry

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## ABSTRACT

*The Indian Parliament approved the Real Estate (Regulation and Development) Act of 2016, that seeks to form a separate Real Estate Regulatory Authority to promote the sector and regulate the real estate industry. It also set up a Central Advisory Council to counsel the governing on the issues pertaining to the real estate sector. This act additionally provides for a separate adjudicating system to facilitate expedited conflict settlement, as well as the formation of an appealing tribunal to hear and resolve regulatory authority appeals.*

*The act empowers the Real Estate Regulatory Authority to deal with all the aspects related to real estate sector and publishing all the related documents including the detailed site plans on its website. It also requires the Authority to keep a list of all the projects, agents and promoter and their details on its website.*

*The act imposes multiple obligations on the promoter and buyers. The act's primarily makes the project details public and imposes restrictions on promoters regarding the direct use of funds obtained from buyers for the purpose of development, as well as a cap on receiving cash deposits from buyers. Whereas the buyers are required to pay the required amount on time with interest in case of delay.*

*The act is expected to face serious troubles in its implementation as the matters related to real estate were primarily dealt by the local and state governments with the union government having a very limited say, but since the current act aims at transforming the whole system of real estate management, the states are unlikely to reciprocate to it and the disputes are visible.*

**Keywords:** *Real Estate Development, Real Estate Regulatory Authority, Real Estate Appellant Tribunal, Black Money.*

## I. INTRODUCTION

Indian real estate is one of them world's fastest expanding marketplaces. Following the implementation of liberalization policies in the country, the Indian real estate industry has

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evolved into one of the world's fastest expanding sectors. The Indian infrastructure is heavily reliant on the real estate sector, as economic prospects and demand for commercial and residential space continue to grow.

The Indian real estate sector was previously unorganized and dominated by traditional small businesses, it quickly transformed into a far more organized and dynamic sector, supplying a significant amount to the GDP and becoming the most acknowledged sector around the world. This sector is the country's second largest employment providing enterprises and is expected to grow further with the expansion of the business atmosphere and the rising need for workplaces and urban and semi-urban housing.

The real estate sector is divided into four sub-sectors: housing, hospitality, business, or retail. The housing industry accounts for more than 5% of the national GDP, while the other three categories are still emerging.

The main reasons as to why the real estate sector in India is booming are the increasing demand of housing and the fact that the middle class is growing while having tremendous rise in disposable income which they are willing to invest. The entry of professional players with expertise in the dealings of the sector has brought in confidence of general public.

Another very important aspect of the real estate sector is that other than generating high levels of direct employment, it stimulates the employment demands of more than 250 other ancillary industries, making the whole picture grow even bigger.

With the recent ease in foreign direct investment laws and the emergence of India as an attractive offshoring destination, high investments from Non-resident Indian are expected in the sector in the coming times. In Press Note No. 2 of 2005, the Government of India approved FDI up to 100% under the system of automatic approval in township, housing, transportation, and the building process projects for development. This will bridge the housing shortage and will attract new or improvised technologies in the sector.

Despite such innovative and lucrative steps taken by the government the real estate sector still faces many issues which are still required to be addressed. The fundamental issue is inconsistencies in the rules governing Special Economic Zones (SEZs). Other significant difficulties include the shortage of definitive property rights and a lack of title insurance. As of currently, the real estate sector has not been recognized or granted Industry status, resulting in increased challenges with finance, approvals, and procedural concerns.

Since the real estate sector in developed countries has reached to a saturation, the global estate players are now looking forward to India as a new investing destination which is expected to

last long because of its strong economic fundamentals and demographic factors. Because of the fact that the sector has enormous capacity to attract major foreign investments into the country, and the government has introduced it in the national assembly.

On March 25, 2016, the President signed the bill, which seeks the creation of a Real Estate Regulatory Authority to promote real estate in India. It further aims at speedy redressal of disputes pertaining to real estate and establishing appellate tribunals to hear the appeals pertaining to the decisions, orders, and directions given by the Real Estate Regulatory Authority.

## **II. CONSTITUTIONAL VALIDITY OF THE ACT**

According to the enactment of the Act, the state governments regulated the sector through their urban or rural or residential development acts. Another conflicting issue was that many states who were having their own laws to regulate real estate contains provisions which are inconsistent with the current central act and therefore, the states preferred to continue with their own legislations.

Under the Indian Constitution's Seven schedule land and land development is a subject matter of State list, thereby empowering the states to legislate on them. Entry 18 of the state list authorizes the state government to enact land-related laws, including colonization, land rights, and land improvement.

The major aim of the act was controlling agreements between purchasers and promoters, promoting security for customers or standardization of business practices in the real estate industry. The bill focuses on the sale, buying, and building real estate for residential homes factories, or commercial reasons.

However, the scope of the bill pertains to transfer of property and contract between the seller and the buyer, which are a part of the concurrent list, the union government was also empowered to form laws with respect to the said subject matters. Therefore, the current The Real Estate (Regulation and Development) Act, 2016 was made under the said subject matters and was thus, held valid.

Thus, The Real Estate (Regulation and Development) Act, 2016 will superseded all other state laws, though as per the provisions of the act, the states can continue to regulate real estate with their own bills till the extent it is not inconsistent with the current act.

## **III. REAL ESTATE REGULATORY AUTHORITY**

It has been an issue of grave concern that the sector still deals with concerns of unfair buyer

agreements, illegal construction and lacks transparency. It has been pointed by The Competition Commission of India in its report that in the dearth of any single specific regulation and a channeled regulating mechanism is the primary reason for such problems which are further enhanced by poor grievance redressal.

Thus, to deal with this issue the act has provided the states or union territories to create state-level regulating authority to deal with matters pertaining to the real estate industry, called the Real Estate Regulation Authorities following the first year of the act's enforcement.

The primary functions of the Real Estate Regulatory Authority will be to bring transparency in the real estate sector. It ensures that the residential projects are register with the authority and their details are shared on the authority's website, thus providing a safe and trusted source of information bringing certainty and confidence among the people willing to invest in the projects.

The Real Estate Regulatory Authority will also assure that the purchasers, suppliers, promoters or the agencies adhere to the guidelines provided under the act. It will make sure that the obligations are adhered to and there are no violations of the rights of any party taking place.

The Real Estate Regulatory Authority is also responsible for aiding and advise the governments on policy problems linked to the establishment of real estate and it can even put forth the demands of buyers, sellers, promoters, and the agents to the government.

It is at the discretion of the state governments that, if it wishes, it can set up more than one Real Estate Regulatory Authority in the state or there may be a common Real Estate Regulatory Authority for two or more states or Union Territories.

The Real Estate Regulatory Authority is entitled to refer any case to the Competition Commission of India when it observes that any issue impacts healthy competition in the sector.

#### **(A) Composition of Real Estate Regulatory Authority:-**

Section 21 of this Act requires each Real Estate Regulatory Authority to have a Chairperson and at least two full-time members nominated by the government, as defined in section 2(g) of this Act. As stated in Section 22 of this Act, the chairperson and other members must be selected by the concerned government based on the suggestions and recommendations of the selection committee, which includes the nominee for Chief Justice of the High Court, the law secretary, and the secretary of the Department responsible for Housing.

The chairperson must have at least twenty years of professional expertise in urban development, housing, real estate development, infrastructures or public affairs and administrations.

The chairperson or members shall serve for a term of no more than five years from that date they take office or until they reach the age of sixty-five, whichever is earlier.

Before choosing anyone as a member or chairperson, the competent government must ensure that the individual does not have any financial or other interests that could jeopardize his activities as a member of the authority.

The chairman of the Real Estate Regulation Authorities has general supervisory powers. The chairperson also gives directives on how to carry out the authority's work and preside over the meetings of the authority.

**(B) Functions of Real Estate Regulatory Authority: -**

The Real Estate Regulatory Authority is empowered to deal with all matters pertaining to real estate in the state or within its jurisdiction. The Authority is authorized to offer recommendations to the appropriate authorities to preserve the rights of allottees, purchasers, supporters, and real estate agents. It can also advise the government on problems pertaining to the sector's development or any other concerns that it deems essential to promoting real estate within the state. It must also take initiatives to boost funding for this industry, particularly initiatives that promote financial support for affordable housing segments from banks and other financial institutions.

The Authority is also expected to take such measure to support the development of environment friendly and economically feasible housing. It must also facilitate amicable conciliation of disputes between various parties involved in the sector by facilitating a dispute resolution forum which may either be set up by the promoter or consumer association.

The authority must encourage grading of projects on different parameters along with grading of promoters to facilitate the buyers. The authority must register and regulate the projects and agents to develop confidence in the buyers and authorize the same by the government mechanism. The authority must also create a single window mechanism to ensure timely permissions and certifications so that the projects are completed on time.

India in the current era is going through a phase of digitalization, and with reference to the Government's initiative of Digital India, the authority is required to facilitate the digitalization of land records along with the conclusive property titles and title insurance. It must maintain and publish on a website all the records associated with any project to be made public for public viewing, which must also include the applications for which registrations have already been granted.

The authorities additionally must keep a database, on the same website which include the names and images of the individuals along with the undertaking details for which the registration has been withdrawn or have been fined under the act together with the reasons. It is mandatory for the authority to keep an independent record for agents who have applied for registration, including those whose registrations have been rejected or cancelled.

The authority must create a robust and transparent grievances resolution procedure regarding any action of negligence or misconduct of competent authority or its officials. It can even impose penalty regarding any contravention of obligation casted on the promoters, buyer, or agents under this act.

The Authority must also ensure that the obligations and regulations framed under the act are compiled by the buyer, agents, and promoters. It must also be fixed via a regulation, a standard fee to be enforced on the purchaser, the promoter, or organization for each area under its jurisdiction.

**(C) Real Estate Appellant Tribunal: -**

This act directs the establishment of a Real Estate Appellant Tribunal, which will have the authority of a civil court and will address the appeals preferred by the appellant against any order or direction passed by the Real Estate Regulatory Authority. This Tribunal will exercise the appellant jurisdiction over the Authority's cases.

The composition of the Appellant Tribunal is likewise specified in the legislation. It will have a chairperson along with not less than two whole time members, one of whom will be a judicial member along with an academic or administrative member.

The Tribunal's Chairperson must have previously served as a High Court judge. The judicial member must have held a judicial post in the country for a minimum of fifteen years or be an advocate for at least twenty years working with real estate. The technical member must possess a minimum of twenty years of knowledge in development of cities, real estate development, or a similar subject.

The Chairperson of the Tribunal must be appointed by the government following adequate discussion with the Chief Justice of the High Court or the nominee he selects, whereas the other two members must be selected by the government based on suggestions made by the Selection Committee, which includes the Chief Justice of the High Court, The Law Secretary or the official in charge of this state's housing department.

The Appellant Tribunal is not restricted by the procedures under The Code of Civil Procedure,

1908, or the laws regarding admissibility of evidence outlined in the Indian Evidence Act, 1872. However, the Tribunal has the authority to issue a summons and compel any individual to appear and testify under oath. It may also need access to documents or manufacturing, as well as affidavit verification. The Arbitration Tribunal can additionally establish commissions to examine witnesses or documents, dismissing a complaint for defaulting, or pass *ex-parte* orders.

**(D) Central Advisory Council: -**

The Real Estate (Regulation and Development) Act, 2016 authorizes the union governance to form a Central Advisory Council. The Council will provide recommendations to the central government with subjects referring to that act's execution, as well as policy and consumer interest protection. The Council will also seek to promote the development and growing of the real estate business.

The Central Advisory Council will be chaired by the Union Minister in charge of the government's Department of Housing, who will also act as the Council's *ex officio* Chairperson. The Council will include the participation of representatives from the Ministry of Finance, Ministry of Urban Development, Ministry of Corporate Affairs, Ministry of Industry and Commerce, Ministry of Consumer Affairs, Ministry of Law or Justice, National Housing Bank, Niti Aayog, Housing and Urban Development Corporation, five participants from state authorities to be decided on a rotating basis, and identically on a rotating basis, participants from the Real Estate Regulatory Authority.

The Central Advisory Council must also include maximum of ten individuals from society who protect the interest of customers, real estate agents, the real estate business, non-governmental organizations, construction laborers, and research and academic thinktanks in the sector.

**(E) Obligations on Promoters and Buyers:-**

The Real Estate (Regulation and Development) Act of 2016 imposes obligation on both promoters and buyers. Under the act, promoters are now permitted to sell units based on carpet area, excluding the area covered by external walls, balconies, or verandahs. On the other hand, an allottee under the act, regardless of the number of apartments booked in his own name, or in the name of his family, or firm, organization, etc., will be treated as a single allottee.

During certification of the project, the promoters are expected to submit all project related information at the Real Estate Regulatory Authority's website, as well as site and layout blueprints and a completion timetable. If the project is delayed or the buyer suffers losses because of deceptive advertising or decides to step away from the scheme, the developer must reimburse the gathered amount along with penalties.



The act also imposes obligations on the promoters to utilize seventy percent of the entire sum received from the purchasers in the construction of the project, though the state government is empowered in the act to change this amount to less than seventy percent as in many cases the price of lands is more compared to the price of the project.

This act also restricts the promoters to acquire a maximum of ten percent of the total price of the project as an advance deposit before signing into a legally binding agreement with the purchaser. On the other hand, the buyers must submit to make the required payments within the time and the terms laid down in the agreement signed by them with the promoter. In the cases of delay the buyer is liable to pay the interest on the said amount.

#### **IV. CONCLUDING REMARKS**

The Real Estate (Regulation and Development) Act, 2016 is enacted at the time when India is going through a phase of technological, commercial and industrial transformation. This act will regulate the different aspect related to sale, purchase and development of residential, industrial and commercial land in the country.

This act will bring uniformity in the regulations on land in India which was earlier regulated by the respective land and town planning acts of various states. But the major hurdle in the application of the act will be the fact that the authorization for real estate developments till date were mostly provided by municipal and state governments, and union government has a very limited say in the same. The other issue with the application of act is that various state governments had already shown their will to continue with their respective acts. The act is still unclear as to what extent the central government can regulate the issues contained in the act as majority some of these things fall within the jurisdiction of the states in the Indian federal structure.

The act aims at cutting down the lengthy procedures for taking approvals and project clearances. The standing committee suggested that the Real Estate Regulating Authority must direct the local state government to build a system with a single window for getting the project approvals.

The act has a very critical issue to deal with in the form of unclear and disputed land titles. The act is determined to bring transparency and development in the real estate sector, but the unclear land titles will prove a hurdle in the same.

Black money is a burning issue in the country, this act is supposed to cut down the amount of black money which is a high dominating factor in the sector. It is believed that since real estate sector contributes about 11% in the GDP of the country, the sector is highly vulnerable and

affected by black money. A uniform tax system and a proper mechanism laid down in the act can prove fatal to the involvement of black money in the country.

Even though the act presents a very beautiful and fancy picture of a properly regulate and governed real estate sector, but the application of the act will still face a lot of difficulty and the differences and disputes between the center and state governments in this regard are supposed to come out loud across the country.

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**V. REFERENCES**

1. Real Estate, India Brand Equity Foundation, [http://www.ibef.org/download/Real-Estate-AUGUST\\_2015.pdf](http://www.ibef.org/download/Real-Estate-AUGUST_2015.pdf) [Last Visited on December 24, 2023]
2. 10th Five Year Plan, 2002 – 07, Planning Commission, [http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2\\_ch7\\_6.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_ch7_6.pdf) [Last Visited on December 24, 2023]
3. <http://www.kpmg.com/in/en/issuesandinsights/articlespublications/documents/indian-real-estate-opening-doors.pdf> [Last Visited on December 24, 2023]
4. Volume I: Report of the Committee on Streamlining Approval Procedures for Real Estate Projects in India, Ministry of Housing and Urban Poverty Alleviation, January 2013, [http://mhupa.gov.in/W\\_new/SAPREP-march.pdf](http://mhupa.gov.in/W_new/SAPREP-march.pdf) [Last Visited on December 24, 2023]
5. <http://www.prsindia.org/administrator/uploads/media/Real%20Estate/Real%20Estate%20-%20Legislative%20Brief.pdf>, [Last Visited on December 24, 2023]
6. <http://www.crisil.com/pdf/capitalmarket/Industry-content.pdf> [Last Visited on December 24, 2023]
7. Belaire Owners Association vs. DLF Limited, HUDA, and Ors, CCI, Case No. 19/2010. August 12, 2011.
8. [http://gtw3.grantthornton.in/assets/Indian\\_Real\\_Estate\\_Sector\\_Handbook\\_2015.pdf](http://gtw3.grantthornton.in/assets/Indian_Real_Estate_Sector_Handbook_2015.pdf) [Last Visited on December 24, 2023]
9. 33rd Report: Computerization of Land Records, Standing Committee on Rural Development, May 11, 2016, [http://164.100.47.134/Isscommittee/Rural%20Development/15\\_Rural%20Development\\_33.pdf](http://164.100.47.134/Isscommittee/Rural%20Development/15_Rural%20Development_33.pdf) [Last Visited on December 24, 2023]
10. Black Money: White Paper May 2012”, Ministry of Finance, May 2012, [http://finmin.nic.in/reports/WhitePaper\\_BackMoney2012.pdf](http://finmin.nic.in/reports/WhitePaper_BackMoney2012.pdf) [Last Visited on December 24, 2023].

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