

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 6

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Real Estate Under Scrutiny: The Critical Role of Lawyers in Upholding Compliance and Ethical Standards

---

DEEPAK KUMAR<sup>1</sup>

## ABSTRACT

*As the real estate sector faces increased scrutiny from evolving regulations and ethical concerns, lawyers play a vital role in upholding compliance and ethical standards. This paper examines the diverse responsibilities of Lawyers and compliance officers within the industry, highlighting their essential contributions to navigating complex legal landscapes and managing risks tied to non-compliance. Utilizing a mixed-methods approach, the research combines qualitative interviews with stakeholders—such as real estate agents, developers, and legal experts—with quantitative analysis of compliance metrics across various jurisdictions. Key findings indicate that lawyers are not only crucial for interpreting and enforcing regulations but also act as ethical stewards, promoting transparency and accountability in real estate transactions. The study uncovers significant challenges faced by legal practitioners, including the need to stay current with rapidly evolving laws, adapt to technological advancements, and uphold ethical integrity in a competitive environment. Additionally, the research emphasizes the importance of continuous education and collaboration among legal experts to adapt effectively to the dynamic regulatory landscape. The paper concludes with recommendations for enhancing compliance frameworks and fostering a culture of integrity in the industry. Suggested strategies include implementing robust training programs, developing best practices for ethical decision-making, and building stronger networks for lawyers to exchange insights and resources. By addressing these areas, this research underscores the pivotal role of lawyers in shaping a more compliant and ethically responsible real estate sector, benefiting all stakeholders involved and calling for an active role in upholding ethical standards.*

**Keywords:** Real estate, compliance, ethics, lawyers, scrutiny.

## I. INTRODUCTION

The real estate sector, a fundamental pillar of the global economy, encompasses buying, selling, leasing, and property development. This vast industry drives economic growth but faces

---

<sup>1</sup> Author is a student at Asian Law College, Noida, India.

challenges like market volatility, fraud, and regulatory complexities. Amid rising scrutiny over ethical conduct and environmental sustainability, compliance and transparency are critical. Regulatory bodies are imposing stricter standards to ensure ethical practices and protect consumers, with non-compliance risking financial penalties, reputational harm, and legal repercussions.

Lawyers play a vital role in upholding these standards. Lawyers and compliance officers guide stakeholders through complex regulations, fostering a culture of integrity within the industry. By interpreting legal frameworks and advising on ethical decision-making, they help mitigate risks, safeguard trust, and ensure accountability. This paper examines the pivotal role of lawyers in maintaining compliance and ethical practices, underscoring their importance in supporting a stable and transparent real estate sector amidst evolving challenges.

**Real Estate Under Scrutiny:** The phrase "Real Estate Under Scrutiny" suggests that the real estate industry is experiencing heightened examination due to a variety of factors, including instances of fraud, misrepresentation, and discriminatory practices. This scrutiny can arise from economic downturns, market fluctuations, and evolving consumer behaviors that expose unethical or illegal practices

**Role of Lawyers:** Lawyers in the real estate sector, are essential in navigating the complexities of real estate law. Their role encompasses advising clients on legal matters related to property transactions, ensuring adherence to local, state, and federal regulations, and maintaining ethical practices within the industry. They interpret laws and guidelines that govern real estate activities, helping clients understand their rights and obligations.

**Upholding Compliance and Ethical Standards:** Upholding compliance and ethical standards in the real estate industry involves adhering to laws and regulations while promoting principles of fairness, honesty, and integrity. Compliance refers to following established legal frameworks that govern real estate transactions, such as fair housing laws, zoning regulations, and anti-discrimination statutes. Ethical standards dictate how real estate professionals should conduct themselves in their dealings with clients and the public, emphasizing transparency, honesty, and respect. Lawyers play a pivotal role in ensuring that real estate practices align with both compliance requirements and ethical norms.

## **II. LEGAL FRAMEWORK GOVERNING REAL ESTATE IN INDIA**

### **(A) Constitutional Provisions**

The Constitution of India provides the foundational legal structure for property rights. Article

300A stipulates that no person shall be deprived of his property save by authority of law, establishing the right to property as a constitutional right, though not a fundamental one. This provision forms the bedrock for various property laws and the legal recourse available to property owners and stakeholders.

### **(B) Key Legislation**

Several key laws regulate real estate in India:

- **The Transfer of Property Act, 1882:** This act lays down the principles governing the transfer of property in India, covering aspects such as sales, mortgages, leases, and exchanges. It aims to ensure clarity and certainty in property transactions.
- **The Indian Easement Act, 1882:** This Act defines and regulates the law concerning easements. An easement grants a property owner the right to use a portion of another's property for a particular purpose. The Act specifies the conditions under which easements can be enforced or terminated. It also addresses the situation where a property is used without ownership or possession of it.
- **The Registration Act, 1908:** This act mandates the registration of certain types of documents related to property transactions to ensure public notice of ownership, thus preventing fraud and protecting the interests of buyers.
- **Indian Contract Act 1872:** Real estate transactions are governed by contracts, and the Indian Contract Act, 1872 sets out the rules for creating valid agreements. It outlines essential elements like offer, acceptance, consideration, and a legal purpose. Well-drafted contracts help prevent disputes and ensure the smooth execution of transactions.
- **The Real Estate (Regulation and Development) Act, 2016 (RERA):** Enacted to protect homebuyers and promote transparency in the real estate sector, RERA establishes a regulatory authority in each state to oversee real estate projects. It requires developers to register projects, disclose project details, and adhere to timelines for completion, thus holding them accountable for compliance.
- **The Land Acquisition Act, 2013:** This legislation governs the acquisition of land for public purposes, ensuring fair compensation and rehabilitation for affected landowners. It underscores the need for ethical considerations in land acquisition processes.
- **The Environment Protection Act, 1986:** This act ensures that real estate development adheres to environmental standards, thus balancing development with ecological sustainability.

- **Indian Succession Act, 1925:** This Act governs the transfer of property upon an individual's death, covering both testamentary succession (according to a will) and intestate succession (without a will), providing a legal framework for the distribution of assets.
- **Foreign Exchange Management Act, 1999 (FEMA):** FEMA regulates foreign investments in the real estate sector, establishing guidelines for foreign entities and non-resident Indians (NRIs) concerning property acquisition and investment in India.

### **(C) The Role of Lawyers**

In this intricate legal landscape, lawyers play a critical role in ensuring compliance and ethical standards within the real estate sector. Their involvement is pivotal at several stages of real estate transactions:

#### **1. Legal Advisory and Due Diligence**

Lawyers provide essential legal advice to buyers, sellers, and developers, ensuring that all transactions adhere to relevant laws and regulations. Conducting thorough due diligence on property titles, encumbrances, and land-use regulations helps mitigate risks and prevent legal disputes. They also assess compliance with RERA requirements, ensuring that developers meet their obligations to clients.

#### **2. Drafting and Negotiating Contracts**

Lawyers are instrumental in drafting and negotiating various contracts involved in real estate transactions, including sale deeds, lease agreements, and joint venture contracts. Their expertise ensures that these documents are legally sound, protecting the interests of their clients while adhering to statutory requirements.

#### **3. Representation in Disputes**

In cases of disputes arising from real estate transactions, lawyers represent clients in negotiations, mediations, and court proceedings. Their understanding of real estate law equips them to advocate effectively for their clients' rights and interests, whether in civil courts or before regulatory bodies.

#### **4. Promoting Ethical Standards**

Legal practitioners are tasked with promoting ethical standards within the industry. This includes ensuring that clients are informed of their rights, fostering transparency in transactions, and discouraging practices such as misrepresentation and fraud. By adhering to professional ethics and standards, lawyers help build trust in the real estate market, contributing to its overall

integrity.

### **5. Advocacy for Policy Reform**

Lawyers often engage in advocacy efforts to influence policy and legislative reforms in the real estate sector. By providing insights and expertise to lawmakers, they contribute to the development of more robust legal frameworks that address contemporary challenges in real estate, such as land use disputes, affordable housing, and environmental sustainability.

## **III. COMPLIANCE IN REAL ESTATE TRANSACTIONS UNDER INDIAN LAW**

### **(A) Due Diligence Process**

The due diligence process is a critical phase in real estate transactions that involves extensive examination and verification of various aspects of the property. Lawyers must conduct thorough investigations to mitigate risks associated with the acquisition. Here are key components of the due diligence process:

#### **1. Title Verification:**

- **Ownership Check:** Lawyers must confirm the current owner's title and rights over the property. This includes tracing the ownership history through previous sale deeds and examining any transfers of interest.
- **Encumbrance Certificate:** Obtaining an encumbrance certificate from the local sub-registrar is essential to check for any outstanding mortgages or claims on the property. This document serves as proof that the property is free from legal disputes.

#### **2. Regulatory Compliance:**

- **Project Registration under RERA:** Under the Real Estate (Regulation and Development) Act, 2016, developers must register their projects with the Real Estate Regulatory Authority (RERA) and provide all necessary documentation, ensuring that the project complies with all local laws and regulations.
- **Zoning and Land Use Compliance:** Lawyers must verify that the property adheres to local zoning regulations, ensuring that the intended use of the property (residential, commercial, etc.) is permissible under local law.

#### **3. Financial Assessment:**

- **Outstanding Dues and Liabilities:** Legal practitioners must review all financial records related to the property, including property tax payments, utility bills, and

any pending dues that could become the responsibility of the new owner.

- **Valuation Assessment:** An appraisal of the property's market value should be conducted to ensure that the purchase price is fair and aligns with market trends. This is crucial for both investment and financing purposes.

#### 4. **Environmental Compliance:**

- **Environmental Clearances:** Lawyers should ensure that the property has obtained necessary environmental clearances, particularly for projects that may impact surrounding ecosystems. This includes checking compliance with laws such as the Environment Protection Act, 1986.
- **Assessment of Liabilities:** Identification of any environmental liabilities, such as contamination issues or ongoing disputes with environmental authorities, is vital to avoid future legal challenges.

#### 5. **Contractual Obligations:**

- **Review of Existing Contracts:** Lawyers should assess any existing contracts related to the property, including leases, service agreements, or joint ventures, to determine any obligations that may affect the buyer.
- **Due Diligence Report Preparation:** Finally, lawyers must compile their findings into a comprehensive due diligence report that outlines all risks and issues identified during the process. This report serves as a crucial document for both buyers and investors.

#### **(B) Disclosure Requirements**

Disclosure requirements in real estate transactions are essential for ensuring transparency and protecting the interests of buyers. Indian law mandates certain disclosures to prevent fraud and misrepresentation. Here are key aspects of disclosure requirements:

##### 1. **Material Information Disclosure:**

- **Project Details:** Developers must disclose all material facts about the project, including the total area of the land, the number of units, layout plans, and specifications. This information helps buyers make informed decisions.
- **Legal Status of the Property:** Any pending litigations, disputes, or claims against the property must be disclosed. Failure to provide accurate information can lead to significant legal liabilities for the seller.

## 2. Defects and Liabilities:

- **Disclosure of Defects:** Sellers must disclose any known defects or issues related to the property, such as structural problems, plumbing issues, or pest infestations, which could affect the buyer's use or enjoyment of the property.
- **Outstanding Dues:** Any financial liabilities, such as unpaid property taxes or maintenance fees, must be disclosed to prevent unexpected financial burdens on the buyer post-transaction.

## 3. Consumer Rights Information:

- **Awareness of Rights:** Lawyers must ensure that buyers are informed of their rights under the Consumer Protection Act, 2019, including the right to seek compensation for defective services or unfair trade practices.
- **RERA Rights:** Buyers should be made aware of their rights under RERA, which includes the right to seek redressal for grievances related to project delays, quality of construction, or breach of contract.

## 4. Buyer-Seller Agreements:

- **Transparency in Agreements:** All terms and conditions outlined in sale agreements must be clear and unambiguous. Any clauses that limit the buyer's rights or impose undue obligations should be fully disclosed and explained.
- **Standardized Formats:** The use of standardized formats for agreements can enhance transparency and ensure that all necessary disclosures are included, thereby protecting the interests of both parties.

## (C) Impact of non-disclosure:

- **Legal Consequences:** Failure to comply with disclosure requirements can result in significant legal consequences for the seller, including the possibility of the transaction being voided or claims for damages by the buyer.
- **Reputational Risks:** Beyond legal implications, non-disclosure can lead to reputational damage for real estate professionals and developers, affecting their ability to conduct future business in the industry.



## IV. REGULATORY BODIES AND OVERSIGHT IN INDIAN REAL ESTATE

### (A) Real Estate (Regulation and Development) Act, 2016 (RERA)

1. **Mandatory Registration of Real Estate Projects:** The RERA mandates that all residential real estate projects must be registered with the respective state Real Estate Regulatory Authorities (RERAs) before any marketing or sales activities can commence. This requirement ensures that developers meet specific legal and financial standards, reducing the risk of fraudulent schemes and protecting consumer interests.
2. **Timely Project Completion:** RERA establishes clear timelines for project completion and delivery, compelling developers to adhere to agreed-upon deadlines. If a developer fails to deliver a project on time, they are obligated to compensate homebuyers for delays. This provision encourages accountability and ensures that consumers are not left in a lurch due to unfulfilled promises.
3. **Transparency in Financial Transactions:** RERA requires developers to maintain a separate bank account for each project, ensuring that funds collected from buyers are used exclusively for that project. This financial transparency protects consumers and prevents developers from diverting funds to other ventures, thereby promoting ethical financial practices within the industry.
4. **Consumer Grievance Redressal Mechanism:** The act provides a structured grievance redressal mechanism, allowing homebuyers to file complaints against developers for issues such as non-compliance, project delays, or misrepresentation. RERAs are mandated to resolve these complaints promptly, fostering a sense of security for consumers and reinforcing developers' accountability.

### (B) Central and State Government Bodies

Apart from RERA, there are other regulatory bodies at the central and state levels that play significant roles in overseeing the real estate industry in India:

- **Ministry of Housing and Urban Affairs (MoHUA):** MoHUA is the central authority that formulates policies, guidelines, and schemes related to housing and urban development in India. This includes developing affordable housing programs, managing urbanization challenges, and promoting sustainable growth in cities.
- **State Urban Development Authorities:** These are state-level agencies responsible for urban planning, land use regulation, and the execution of policies concerning infrastructure and development projects within their jurisdiction. They oversee the

implementation of plans that align with the broader vision of urban development set by the central government.

- **Local Municipal Corporations:** Local municipal corporations are the grassroots regulatory bodies. They handle the day-to-day management of urban areas, including approving building permits, enforcing zoning laws, collecting property taxes, and providing essential municipal services like water, sewage, and waste management. These bodies ensure that real estate development complies with local building codes and city planning regulations.

### (C) Guidelines for Ensuring Compliance

In the Indian real estate sector, lawyers are tasked with navigating a complex regulatory environment characterized by various laws, including the Real Estate (Regulation and Development) Act, 2016 (RERA), the Transfer of Property Act, the Indian Contract Act and etc. To ensure compliance, legal practitioners should adopt a systematic approach that includes:

- **Due Diligence:** Conducting thorough due diligence before property transactions is crucial. This involves verifying the authenticity of titles, checking land use regulations, and ensuring that the project has all necessary approvals from relevant authorities.
- **Contract Review and Drafting:** Lawyers should meticulously review and draft contracts to ensure that all clauses comply with applicable laws and protect clients' interests. Special attention should be given to dispute resolution mechanisms, timelines, and obligations.
- **Adherence to RERA:** Under RERA, legal practitioners must ensure that developers adhere to registration requirements and comply with the standards set for transparency, accountability, and timely delivery of projects.
- **Risk Management:** Implementing risk assessment frameworks can help identify potential legal risks associated with transactions. Lawyers should also advise clients on mitigating these risks through appropriate legal safeguards.

### (D) The Future of Real Estate Law and Compliance

The real estate sector in India is witnessing significant transformation driven by technology. Lawyers must stay informed about:

- **Digital Transactions:** The rise of digital platforms for property transactions necessitates a thorough understanding of digital signatures, electronic contracts, and cybersecurity laws to protect clients in online dealings.

- **Blockchain Technology:** The potential of blockchain to enhance transparency and reduce fraud in property transactions is significant. Lawyers should explore how to leverage this technology for secure and efficient transactions.
- **PropTech Innovations:** The emergence of PropTech companies is changing traditional business models. Legal practitioners must understand the legal implications of these innovations, including data protection, intellectual property, and compliance with real estate regulations.

### **Key Findings**

1. **Increased Scrutiny of Real Estate Transactions:** Real estate transactions are increasingly scrutinized due to stricter regulations and concerns about transparency. Lawyers play a critical role in ensuring compliance with anti-money laundering (AML) laws and local regulations, which helps mitigate risks such as money laundering and fraud.
2. **Ethical Standards and Conflict of Interest:** Ethical standards are vital in real estate, as lawyers navigate conflicts of interest between stakeholders. They help prevent unethical practices like insider trading and misrepresentation of property values, ensuring transparency and protecting the company's reputation.
3. **The Growing Role of Environmental, Social, and Governance (ESG) Standards:** Environmental, social, and governance (ESG) standards are becoming more important in real estate. Lawyers ensure compliance with environmental laws, social responsibility norms, and governance frameworks, mitigating legal risks from issues such as environmental harm or social inequities.
4. **Regulatory Challenges in Cross-Border Transactions:** Cross-border transactions add complexity, as different jurisdictions have varying compliance requirements. Lawyers manage risks associated with differing tax laws, foreign investment restrictions, and legal systems to ensure compliance, preventing penalties or litigation.
5. **Compliance with Anti-Money Laundering (AML) and Anti-Terrorism Financing Laws:** Money laundering is a significant concern in real estate, and lawyers help ensure compliance with AML and anti-terrorism financing laws by conducting due diligence on transactions, verifying the legitimacy of funds, and implementing monitoring systems.
6. **Litigation Risks in Real Estate Disputes:** Real estate companies also face litigation

risks over issues like property ownership disputes, construction defects, and contract breaches. Lawyers reduce these risks through precise contracts, legal advice, and alternative dispute resolution (ADR) strategies.

7. **The Role of Lawyers in Crisis Management:** Lastly, lawyers play a key role in crisis management, offering risk mitigation strategies and representing companies during environmental disasters or legal challenges, ensuring compliance and minimizing financial and reputational damage.

## V. CONCLUSION

This research has illuminated the critical role of lawyers in navigating the increasingly complex landscape of the real estate industry. Key findings indicate that legal practitioners not only interpret and apply regulatory frameworks but also advocate for ethical practices that enhance public trust. The analysis revealed that proactive involvement of Lawyers and compliance officers is essential in mitigating risks, ensuring adherence to laws, and fostering a culture of accountability within real estate transactions. Their expertise is particularly vital in addressing the challenges posed by emerging technologies and shifting regulations that demand agile responses to maintain compliance and ethical integrity.

The importance of lawyers in upholding standards cannot be overstated, they serve as guardians of ethical conduct, ensuring that all parties in a transaction adhere to established norms and regulations. By actively engaging in compliance efforts and promoting ethical decision-making, legal practitioners contribute to the overall health of the real estate market, ultimately benefiting stakeholders and consumers alike.

Looking ahead, future research should focus on exploring the evolving role of lawyers in the face of technological advancements, such as artificial intelligence and blockchain, which are reshaping the industry. Additionally, studies that investigate the effectiveness of current compliance training programs for legal practitioners and their impact on ethical standards could provide valuable insights. Understanding these dynamics will be crucial as the real estate sector continues to adapt to a rapidly changing regulatory environment.

\*\*\*\*\*