

Grey Areas Around RERA

ARADHANA BHANSALI and HARSHIT MEHTA highlight the shortcomings of the Real Estate (Regulation and Development) Act, 2016 (RERA)

RERA was finally passed by the Indian Parliament this year. The objective of RERA is to bring transparency and accountability in the real estate sector by regulating buying and selling of commercial and residential units. However, if the same is not implemented in letter and spirit, it may not lead to desired results. There are a lot of concerns of promoter or developers in regard to practical application of RERA.

Major concerns of developers

Developers are required to register the project with RERA before marketing, advertising, booking and selling units in the project. In view of the same, the developers will not be able to offer the project at pre-launch, which is normally done at subsidised rates.

RERA also does not propose a mechanism of 'single window clearance' system to enable developers to procure all the approvals related to the development of a project from a single department or web portal. However, it is mentioned in RERA that the Authority will facilitate time bound project approvals and clearances for timely completion by making recommendations to the appropriate government. In reality, a single window system is imperative for RERA to be an effective piece of legislation. The mechanism will surely give a much needed impetus to expedite construction on the part of the developer, thereby benefitting not only the developer but ultimately the purchasers. It will also help remove duplicity or unnecessary approvals and documentation, and in turn will strengthen the transparency and accountability of the concerned departments.

Further, the provision for depositing 70 per cent of the amount received from allottees or purchasers in a separate dedicated account and utilisation of the same in the manner as stipulated under RERA, is an excessive overreach of the Authority in the business of developers; this will have a cascading effect on the overall progress of the project. On account of this, the developers will be compelled to source funds from other sources, generally at a higher rate of interest, the burden of which, will ultimately be passed on to the purchasers.

Moreover, under RERA, developers are required to obtain insurance in respect of title of the land, building and construction of real estate projects. At present, such insurance policies, which seek insurance against title to the land along with buildings, are hardly available. And if available, the costs will be passed on to the final consumer as an added cost on purchase consideration.

Also, under RERA, the Central Government by notification may establish a 'Central Advisory Council' (CAC), which in turn will recommend the government on matters concerning the implementation of RERA. Therefore, in other words, there may be excessive delays in identifying, monitoring and assessing concerns, difficulties and shortcomings in the implementation of RERA, due to this two tier approach in modifying or resolving any discrepancies.

Last, the punitive provisions under RERA may hamper the growth of the real estate sector as there are no exemptions provided in cases of genuine delays in implementation and completion of real estate projects by the developers. Therefore, the state government while drafting the rules under RERA should provide for all such instances of genuine delays, where the Authority may condone such delays or provide exemptions in all such instances. Essentially, stringent punishment must be awarded only to developers who wilfully and negligently commit defaults and are in breach of the provisions of RERA on a regular basis.

Our views

RERA has ticked all the right boxes in favour of the buyers and investors. But the cause for concern here, is not the protection envisaged to be given to the former class (the consumers), but the severity of the remedial provisions under RERA. RERA, while focusing on the former class, has completely undermined and overlooked the complications and difficulties of the latter class due to excessive regulatory provisions and procedures, thereby forgoing the essential balance of interest. The legislature must consider the opinions and suggestions of all concerned stakeholders as an integral whole and not make provisions tipping majorly in favour of one class i.e. the buyers and investors. Although housing is a basic and fundamental right guaranteed under the Constitution of India, a right to business and enterprise in a fair and honest manner is also safeguarded under the Constitution.

About the author: *Aradhana Bhansali* is Partner of *Rajani Associates* and *Harshit Mehta* is an Associate in the same firm.



Aradhana Bhansali