

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016..... a boon for the flat buyers

INTRODUCTION

The Real Estate (Regulation and Development) Act, 2016 came into force on May 1, 2016 while only some sections being notified by the Central Government. This Act comes as a relief to the various customer or the new home buyers who are scared of the various builders to get trapped in their cycle of delayed possession of providing with the flats and demanding of additional money on pre-agreed amounts. This act also comes as help to resolve the confusion for the new flat or apartment buyers as whose project to trust as under this act a new authority will be set up viz. Real Estate Regulatory Authority which will in turn set up an online portal to provide with various details relating to the builders or the promoters to bring transparency in the system. The Act aims to regulate the real estate sector, bring clarity for both the buyers and sellers and reform the sector. It envisages establishment of a regulatory and appellate authority for settlement of grievances, registration of real estate projects and contains various pro-allottee pro-buyer provisions. Further, the Act aims to increase transparency and accountability in real estate sector by regulating the buying

and selling of commercial and residential units or projects and timely completion of project by the promoters. It is expected to boost the confidence of the home-buyers and is touted by many as a step in the right direction and a major game-changer.

APPLICABILITY

The central government has notified sections- 2, 20-39, 41-58, 71-78, and 81-92 to come into force from May1, 2016. The states and UTs that have notified this law are Andhra Pradesh, Bihar, Gujarat, Kerala, Maharashtra, Odisha, Uttar Pradesh, Chhattisgarh, Andaman & Nicobar Islands, Chandigarh, Dadra & Nager Haveli, Daman & Diu, Delhi, and Lakshadweep.

WHAT THIS LAW CLARIFIES

This Act helps in defining the various terms relating to the real estate building projects as a result clearing the confusion between the consumers and the builders, these terms include carpet area-This excludes the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. The builders can sell the apartments on

the basis of the carpet area. This act is moreover a pro-allottee act and not from the builders perspective point of view, however it suits the current situation where the builders are more powered against the allottees as whenever there is problem in the agreement between the buyers and the builder. The buyer approaches the court for the same; the builder is always ready with his team of lawyers while the buyer is burdened financially with time to get the justice done. There has been cases where the builder is delaying to provide with possession of the apartment as result the buyer who have taken loans from the banks, they keep paying the EMI's of the bank and also the rents for the current house they are living which is a fault on the part of the builder for which the buyers have to suffer. From the point of view of allottees, this act works as great support system for them as it brings out a transparent system. In accordance to this act the builders are supposed to first register themselves with the Real Estate Regulatory Authority to continue with the future business otherwise the promoters cannot go forward the project or advertise about the project. For registering with the regulatory authority they will have to submit the various permissions and approvals undertaken from the governments and certificates obtained, there infrastructure plan, the layout, the detailed plan on what all and how many apartments or units will be constructed, only then they will be provided with the registration. All these

details will be uploaded on the online portal of the authority with the details of the promoter which is available to all the buyers or allottees. The progress in the work of the construction or other approvals has to update on the web portal on time to time majorly on the quarterly basis. Even the real estate agents also who are working with them in selling their flats will also have to get themselves registered. Through these portals the customers as well as RERA can track their work progress and there past records. RERA will also upload a defaulter list on their website about all those have defaulted in their work and inform the government about the same through which the buyers can be aware about the various fraud builders.

Before the Act, the real estate regime was regulated by numerous legislations like the Indian Contract Act, 1872, the Transfer of Property Act, 1882, Urban Land (Ceiling and Regulation) Act, 1976, and the Registration Act, 1908, The Consumer Protection Act, 1986, Land Acquisition Act, 1894, The Specific Relief Act, 1963, these regulation only made the procedure of getting justice more time consuming, long and burdened.

All the problems related to estate had to majorly taken to consumer court which includes a long procedure for the buyers while now there is an authority to govern, an appellate to look into the

appeals and a council to advise to the central government under this act.

PRACTICAL IMPACT ON PROJECTS

Under the act the promoters will have to park the 70% of the funds collected from the allottees in the escrow account in the bank so that money collected for a particular project is used for the same and not in starting a new project. All the accounts of the promoter will get audited in every six months to prevent any fraud. The promoter cannot make any major changes in the layout plan or in the project as against promised before without the permission of the association of the allottees or the allottee. Now only 10% advance can be taken by the promoter as advance for the flat, apartment under the act. It also provides the consumers with the benefit that if the real estate builder's registration has been revoked due to some kind of default then RERA provides the opportunity to complete the project either with help of the appropriate government or the association of the allottees. Approval of the two third of the allottees is required in case of transfer of his majority rights and liabilities in respect of the real estate project. The act also specifies the work of the authority to regulate the work of the promoter as well as the real estate agents. All these regulations builds up confidence in the promoter as result people will be more willing to invest in the promoter's project. Investment flats option will also go out of the window as those opportunistic

investors who used to give the down payment or token money for booking the flat and later selling the same at higher prices. This act also penalises the promoters for not adhering to rules and regulation of the act such paying 5-10 percent of the project as penalty or serving 3 years in jail.

CONCLUSION

As this act plays as a boon for the new buyers in the real estate sector and governs the promoters on the other side it fails to address to the issues of genuine builder. This act also fails to address the other various issues of the buyers. As this act helps in increasing the confidence of the buyers in the real estate sector but for builders it is like getting new set of approvals and licenses. Builders go through a lot of issues such as delay in payments from allottees side can delay the project work for which the promoter can be penalised. Delay in taking permissions for various phases of construction which can vary from state to state and can include permissions nearly 50 -60 from various government departments which is a very hefty work for the promoter. However this act should have taken care of such issue by giving power for the same to get the permission cleared a little early as these permissions can take nearly 6 to 16 months. Ideally all governments should start an online portal for the verification of such permission and in getting the various certificates. Builders according to this act have to park 70% of their funds into

the escrow accounts, so that they are not able to use those for starting up another project other than the projects for which they money was received from the allottees. However this in turn will raise the estimated costs as this will put pressure on the balance sheet of the builders and builders will have to borrow money at higher rate of interest. It does not cover up the issues of allottees of already completed projects before the commencement of the act as these already built up flats might be faulty or having such problems as they might have obtained the completion certificates due to some or the other way. There are several projects that are exempted from registration such as where the land proposed to be developed is less than 500 square meters, where the promoter receives completion certificate prior to the commencement of Act or where the renovation, repair or re-development does not involve marketing, advertising, selling or new allotment of any plot, apartment or building. Government has taken a good step to by passing the legislation after being stuck for 9 years to improve the current situation of the real estate sector. Even though this is a well drafted legislation for the current situation but for this act to affect the function in the real estate sector positively in the long run it still needs some change addressing the other various issues of the people.

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