

Real Estate (Regulation and Development) Act 2016

- P.K.K Vasishta

Property law is the area of law that governs the various forms of ownership and tenancy in real property and in personal property, within the common law legal system. In the civil law system, there is a division between movable and immovable property. Movable property roughly corresponds to personal property, while immovable property corresponds to real estate or real property, and the associated rights, and obligations thereon.

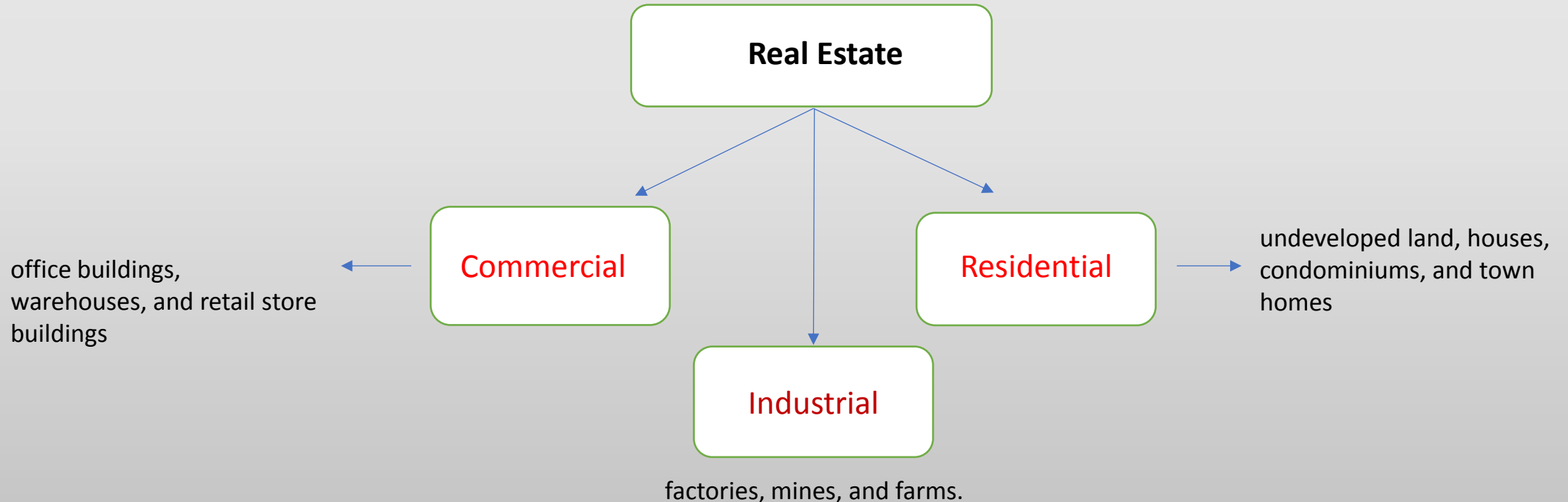
Contents

- Back ground
- Existing laws
- Need for RERA
- Overview of RERA
- Significant provisions
- Effect of RERA on the market
- Position in other countries
- Way forward

REAL ESTATE

Real Estate - the land, including the air above it and the ground below it and any structure built on it as well as the natural resources of the land including uncultivated flora and fauna, farmed crops and livestock, water and minerals.

Real property is a less commonly used term and less commonly understood concept. Real property includes real estate, and it adds a bundle of rights. This bundle of rights consists of the rights for property owners to use their property as they see fit. In this way, real property consists of both physical objects and common law rights; real estate only consists of physical objects.



Real estate sector in India

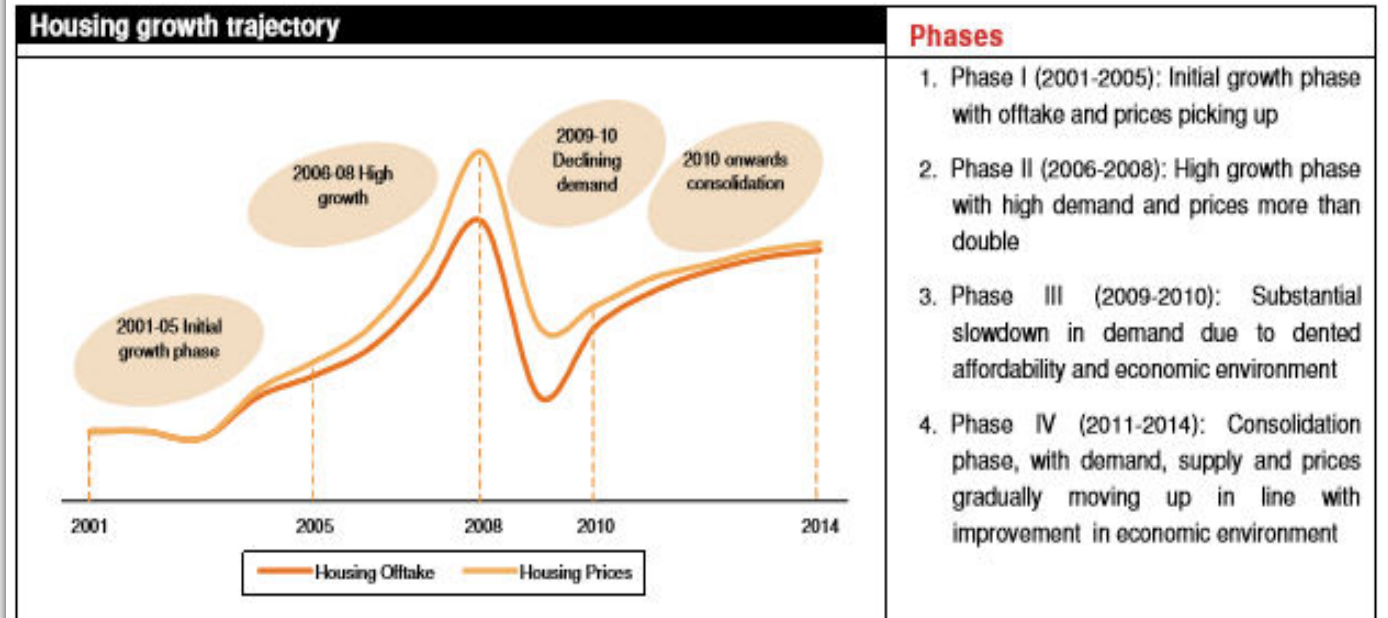
- Real estate sector in India benefitted from 3 independent events.
 1. 9/11 terrorist attack.
 2. Government of India opening up 100% FDI in real estate sector
 3. Post 2008 financial crisis.
- Real estate market in India is estimated to be valued at USD 12 billion and with a 30% YoY growth.
- Contributes to 5-6% of the GDP of India.
- Has 76,000 companies operating in this sector.
- It's largely unorganised and regulated by virtue of individual state laws.

Residential real estate industry has witnessed stupendous growth in the past few years owing to the following reasons:

- Continuous growth in population
- Migration towards urban areas
- Ample job opportunities in service sectors
- Growing income levels
- Rise in nuclear families
- Easy availability of finance

Demand for houses increased considerably whilst supply of houses could not keep pace with demand thereby leading to a steep rise in residential capital values especially in urban areas.

Broadly, residential real estate industry can be divided into four growth phases, as can be seen in the chart below:



Real estate sector in India

- Existing central legislations and state legislations governing the aspects related to “Land”.
- Real estate sector grew as a compliment to the growth in the service industry, i.e., retail, hospitality and entertainment industries, economic services, industrial and information technology sector and the residential sectors and vice versa.
- Large number of small players form a major chunk of real estate developers.
- Post 2005, the real estate sector grew exponentially, owing to large foreign investments and rising income levels.
- Capital intensive. Financing was a major hurdle, high net worth individuals financed the projects at high interests and anticipating high risk.
- Prices of the properties were sky rocketing.
- There is no single regulatory authority for regulating the real estate sector.
- The problem is with the residential real estate sector, the commercial real estate sector is highly organised and heavily self regulated.

Why is it important for us?

- The real estate sector directly contributes the economic development of the nation.
- Contributes 5% or more to the GDP of the nation.
- It is a USD12 Billion industry.
- Increased foreign investments suggests growing investor confidence in Indian investment scenario.
- The real estate sector is a major employment driver, being the second largest employer next only to agriculture.
- This is because of the chain of backward and forward linkages that the sector has with the other sectors of the economy, especially with the housing and construction sector.
- About 250 ancillary industries such as cement, steel, brick, timber, building materials etc. are dependent on the real estate industry.

Existing laws governing the real estate sector

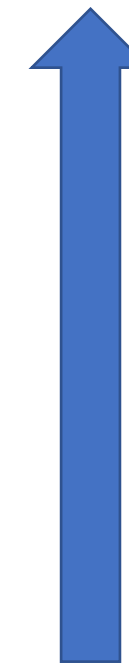
- **Central Laws**
 - **Transfer of Property Act, 1882.**
 - **Indian Contract Act, 1872.**
 - **Indian Registration Act, 1908.**
 - **The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013.**
 - **National Building Code (BIS)**
- **State Laws:** In addition to these central laws there are other state laws which govern the planned development rules for the development of the buildings, regulate the Floor Area Ratio or Floor Space Index and formation of societies and condominiums.
 - **Rent Control Act**
 - **Stamp Duty**
- The problem with State laws are they are diverse and apart from the above mentioned laws, there are other laws such as **Hyderabad Metro Development Authority governed under HMDA Act, 2008**, applicable to 7 districts of Telangana.
- This particular act prescribes the standards and the procedure for any real estate project.

Real Estate Development Model

- Sharkawy proposed this model in 1994, all the other models are purely based on this.
- This model denoted the usual process adopted by developers in developed countries.
- Hard to replicate this model in developing countries like India, subject to the complex heterogenous mix of developers in India.
- The process in India is a reverse of this process.

Sharkawy's Model for Real Estate Development Process

STAGE	TASK
(i) Pre-development phase	<ul style="list-style-type: none"> a. Customer analysis, b. Competitor analysis, c. Government approval, d. Pricing, e. Private financing decision,
(ii) Document development phase	<ul style="list-style-type: none"> a. Site planning, b. Design, c. Cost budgeting, d. Bank financing decision, e. Cash flow analysis, f. Branding
(iii) Product development phase	<ul style="list-style-type: none"> a. Land acquisition, b. Construction, c. Advertisements
(iv) Post development phase	<ul style="list-style-type: none"> a. Sales.



 I
N
D
I
A
N
P
r
o
c
e
s
s

Sharkawy first propounded the model illustrated above.

Real Estate Development Model (Indian Perspective)

- The model is hard to adopt in India owing to the heterogenous mix of developers.
- Taking inspiration from the developed nation's practices is the best bet for India.
- Though nations like USA and UK have no regulatory authority to regulate the real estate sector, a collective practice among the developers to follow such models make the sector in those nations seemingly organised and formal.
- A closer look at RERA seems to mandate such model on a large scale through a legislation.
- Lesson Learnt from Bellaire's Owners Association vs. DLF and others.
 - National Consumer Dispute Resolution Commission (NCDRC) levied a Rs. 6.5 Billion fine on DLF group for creating unfair agreements and not following the prescribed procedure. Further, the commission also stressed upon a specific need to have a certain mechanism so that there is proper governance in the sector.
 - That was one of the

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

- The Real Estate (Regulation and Development) Act, 2016 was deemed necessary to boost the investor confidence in the market and to create a mechanism to protect the customers in the real estate market.
- The Act came into force from 1 May 2016 with 59 of 92 sections notified. With Rajya Sabha and Lok Sabha passing the bill on 10th and 15th March, 2016 respectively.
- The Central and state governments are liable to notify the Rules under the Act within a statutory period of six months.
- Applicable to whole of India except Jammu and Kashmir
- Real estate regulatory authority (RERA) is the governing authority.
- The law is not Retrospective.

Reasons for introducing RERA

- To keep in check the increased delay's and late delivery of projects and to infuse transparency;
- The increased prices of the real estate sector and the ultimate increase in the cost of ownership for the customers;
- introduce professionalism and pan India standardization;
- Highly unregulated market and the people's interest;
- To discourage any unprofessional and Fly-by-night builders;
- To hold the developers liable in case of any irregularity;
- establish fast- track dispute resolution mechanism;
- promote good governance in the sector which in turn would create investor confidence.

PURPOSE

- An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the Real Estate sector.
- To ensure transparency in projects.
- To protect the interest of consumers in the Real Estate Sector and to establish an adjudicating mechanism for speedy dispute redressal.
- To provide proper information about the Builder.

IMPORTANT FEATURES

- It establishes the State Real Estate Regulatory Authority for that particular state as the government body to be approached for redressal of grievances against any builder. This will happen once every state ratifies this Act and establishes a state authority on the lines set up in the law.
- This law vests authority on the real estate regulator to govern both residential and commercial real estate transactions.
- This law makes it mandatory for developers to post all information on issues such as project plan, layout, government approvals, land title status, sub-contractors to the project, schedule for completion with the State Real Estate Regulatory Authority (RERA) and then in effect pass this information on to the consumers.
- The current practice of selling on the basis of ambiguous super built-up area for a real estate project will come to a stop as this law makes it illegal. Carpet area has been clearly defined in the law.
- The maximum jail term for a developer who violates the order of the appellate tribunal of the RERA is three years with or without a fine.

Features (ctd.)

- Currently, if a project is delayed, then the developer does not suffer in any way. Now, the law ensures that any delay in project completion will make the developer liable to pay the same interest as the EMI being paid by the consumer to the bank back to the consumer
- The developer cannot make any changes to the plan that had been sold without the written consent of the buyer.
- This puts paid to a common and unpopular practice by developers to increase the cost of projects.
- Lastly, every project measuring more than 500 square meters or more than eight apartments will have to be registered with the RERA.
- The law mandates every builder to keep 70% of collection from every project in Separate Bank Account.

MAJOR PROVISIONS

The Major Provisions in the Act relates to following aspects:-

- ❖ REGISTRATION
- ❖ PROTECTION OF BUYERS
- ❖ REAL ESTATE REGULATORY AUTHORITY AND APPELLATE TRIBUNAL

REGISTRATION

Who is liable to get Registration from RERA?

- ▶ All commercial real estate projects where the land is over 500 square metres.
- ▶ All residential real estate projects where the land is over 500 square meters or eight apartments, to register with the Real Estate Regulatory Authority (RERA) for launching a project.
- ▶ For on-going projects which have not received completion certificate on the date of commencement of the Act, will have to seek registration within 3 months.
- ▶ Real estate agents who facilitate selling or purchase of properties must take prior registration from RERA.
- ▶ 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.

What is the Process of Registration?

- ▶ Applicant has to file an application for registration with RERA in prescribed form along with prescribed fees and documents.
- ▶ 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.

What is the penalty for failure to get register?

- ▶ A penalty of up to 10 percent of the project cost or three years' imprisonment may be imposed.

PROTECTION OF BUYERS

- The Act prohibits unaccounted money from being pumped into the sector.
- As now, 70 per cent of the money has to be deposited in bank accounts through cheques.
- A major benefit for consumers included in the Act is that builders will have to quote prices based on carpet area and not super built-up area
- The common area has been clearly defined, thus cases like [*Jaypee Developers (Kalypso Court) vs Developers Township Property Owners Welfare Society*] are addressed.
- Carpet area has been clearly defined in the Act to include usable spaces like kitchen and toilets.
- Additionally the developers cannot engage in changing the layout plans arbitrarily. [*Supertech ltd. Vs. Emerald Court Owner-Resident Welfare Association*]

REAL ESTATE REGULATORY AUTHORITY AND APPELLATE TRIBUNAL

- Establishment of State-level Real Estate Regulatory Authorities (RERAs) to regulate transactions related to both residential and commercial projects
- RERAs will ensure timely completion and handover of projects.
- Appellate Tribunals will now be required to adjudicate cases in 60 days as against the earlier provision of 90 days
- Regulatory Authorities has to dispose of complaints in 60 days while no time frame was indicated in earlier Bill.

Hits & Misses of Real Estate Act

For Consumers

HITS

- Increased assertion on the timely completion of projects and delivery to the consumer.
- A step towards safeguarding their investment, as 70 per cent of the sales receipt will now be locked in an escrow account.
- An increase in the quality of construction due to a defect liability period of five years.
- Balanced builder-buyer agreements.
- Faster dispute resolution mechanism through dispute settlement forums and appellate tribunal.
- Sale on the carpet area to help improve transparency.
- An increasingly-regulated broker environment.
- Greater visibility into the developer's delivery track record.

MISSES

- The timelines of approvals by regulatory authorities have not been defined. Any delay in approvals from regulatory authorities could impact buyers as well.
- The Bill may lead to slightly higher prices of properties.
- New project launches might be limited as developers may not be able to launch without obtaining approvals, which could take two to three years.

Hits & Misses of Real Estate Act

For Developers

HITS

- Increased scope for eliminating casual operators, leading to the better organization of the sector.
- Minimum standards of governance and accountability have now been set to an extent, and there's potential for driving standardization and professionalism in the sector.
- Greater visibility into the developers' delivery performances, segregating the established and casual operators.
- Higher investment in the sector and a possible reduction in the cost of funds, leading to a lowered cost for the end users.

MISSES

- An additional layer of approvals may be introduced against the extended list of approvals already required for projects.
- No provision to rationalize the number of approvals required for a project or expedite approvals through a single window mechanism.
- Increased reliance on external capital to achieve high growth.
- Possible impact on joint venture arrangements.
- Potential delay in cash-flow realizations from projects.

Standing Committee recommendations

- **Carpet Area:**

- The Act defined the term Carpet Area and it mandated that the companies advertise according to the carpet as the concept of built up area and super built up area are no more recognised by the Act.
- The issue raised by the standing committee and the Select committee of the Rajya Sabha was regarding the definition of Carpet Area, in which the term “net usable area” is not defined.
- The Ministry of Housing and Urban Poverty Alleviation clarified stating that the definition clause included the terms ‘Balcony’ and ‘Verandah’ and referring to the National Building Code the terms Balcony and Verandah are defined so thus, reading Carpet Area with the NBC would determine the actual Carpet Area that can be advertised.
- Though the clarification was given by the Ministry, the same was not the recommendation to define the term “net usable area” was not defined in the Act.

Standing Committee recommendations

- **Commercial real estate:** The Model bill drafted by the Ministry in 2009 and the RERA Bill did not include the commercial real estate, but the Ministry received expert opinion to as to include the commercial real estate too hence the Act extends to the commercial real estate.
- **Penalty Provisions:** The committee based on the suggestions received recommended to decrease the quantum of penalty which was rejected by the ministry.
- **Delegation of authority to States:** The provision pertaining to delegating the authority to the individual states was considered going against the process of standardising the sector as it is evident rules notified by the States are very inconsistent and are ambiguous, further it is found that the rules have diluted to favour the developers.
- **50% instead of 70%:** The standing committee suggested for decrease of amount to be deposited in a separate escrow account to 50% than the existent 70%, which is not implemented.
- **500 sqmts:** The bill initially regulated property of minimum 1000 sqmts which basing on the committee suggestions dropped to minimum of 500sqmts or 8 apartments including all phases.

Standing Committee recommendations

- A thin line created between promoter and investor. The Select Committee recommends that the investor having two or more than that be termed as “promoter”.
- The term of the office of RERA reduced to 3 years or less, as against 5 years or less.
- The new provision recommended is that of the promoter bearing all liabilities till flat is transferred in the name of the allottee.

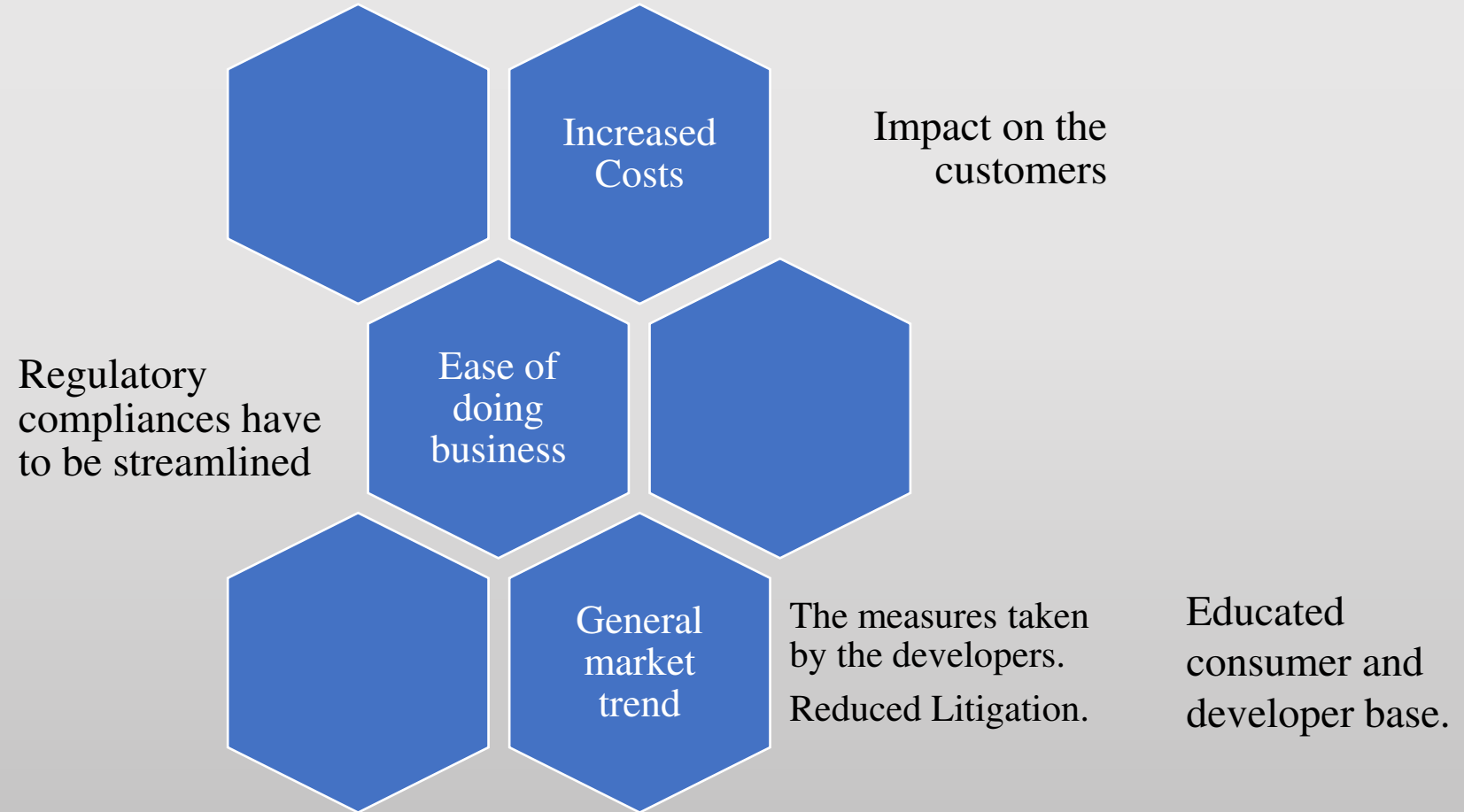
Effect of RERA on the Market

- The immediate impact would be on the on going projects and pending projects that are due for completion in 12 months or so.
 - The impact would be on the prices, i.e., an increase of 40-50% of the prices, subject to, if the developer selling the property on super built up areas as the usual norm is.
 - The carpet area on which the property has to be sold is 30-35% of the Super built up area.
 - The unsold inventory would either be scrapped by making the developers go to a loss or, they would be delivered subject to the new conditions
- Any financial impact on the market would be short term, as in the long term once there is standardisation across the sector prices would be transparent and would go down.
- There will now be a pressure to deliver projects on time and this pressure will be translated to contractors who in turn will demand much higher rates for construction. This, in turn, will lead to an upward pressure on prices for the end customer, however, on an overall basis the total cost of ownership for the customer will actually reduce even though the sticker price of purchase goes up
- The cost of ownership will be cut down and the value of the property would either be growing or will be standard, in any case the customer benefits.

Effect of RERA on the Market

- Before the introduction of RERA, the risk on account of delays, quality, title, and changes in the project were all borne by the customer. As a result, most customers had to deal with some sort of the default and were forced to bear the cost of this default. These costs will now be borne by the developer and there will be a consequential premium that the flat purchasers will have to pay for transferring this risk to the developer.
- The 70% cash to be used for the specific project adds to this, as there is no headroom for developers to satisfy this increased costs, the same would be then transferred to the home owners at first opportunity.
- 70% cash to be deposited acts as a deterrent as the actual cost of project may exceed 70% and the developers are forced to find other sources of finances.
- The Act does not bring the government authorities into the ambit who are responsible for the continuous changes in regulations, lack of transparency and predictability in functioning. If approvals are not streamlined in time, cost revisions and delays will become unavoidable. The outcome of this is going to be more expensive products for consumers. The World Bank in its report on Ease of Obtaining Construction Permit Index ranked India 185 out of 187 countries. This means India is in the same category as war torn countries where institutions have collapsed.

Effect of RERA



Similar Legislations in other countries



- Real Estate is regulated at numerous levels.
- No single regulatory body, but multiple
- Department of Housing and Urban Development
- Legal contracts protects the end user, not federal laws.
- State real estate licensing laws and code of ethics in place.



- There is an absence of regulator to monitor the sector.
- Financial Services Authority (FSA) under Bank of England, regulates investments in real estate.
- Property MI descriptions Act, 1991.



- No regulatory authority, in principle.
- General Civil Code.
 - Damage compensation in case of delay and delivery property deviates from the description in a guaranty or a brochure.



- Introduced regulation for real estate in 2010.
- “New State 10” by State Department of Real Estate- enforces accountability on local government to control the prices.
- Rules by the local governments.
- Sales contract; Mortgage contract.
- No other provisions to safe guard the end user



- Land ownership and planning controlled by public sector.
- Based on demarcated use, the regulatory authority will govern
 - Housing Development Board - residential
 - Jurong Town Corporation (JTC) – industrial.
- Contracts act as the fundamental tool for claiming compensation through legal means.



- UAE considering the establishment of Federal Real Estate regulatory authority.
- Proposing Real Estate Investor Protection Law.
- Emirates – Dubai – RERA & Ajman (ARRA)

Way Forward and Conclusion

- The legislations is a step in the right direction if the shortcomings are addressed.
- Sense of Professionalism in the sector will be guaranteed.
- Errant developers and late delivery and regulation of prices.
- Though the legislation is perfect to regulate the market, this did not address the major issue of streamlining the approval process rather this legislation extends it.
- Increased time to get approvals.
- Possibility of increased red-tapism.
- No solution to the unfair clauses in the contract.
- Have to wait and see the long term effect of this legislation on the sector.
- Timely delivery, Prices would be on check and transparent.
- Increased foreign investments.
- Increased scope of preferentialism.

Sources

- www.naredco.in/notification/pdfs/FINAL_India_Real_Estate_Digest_ALL_pages.pdf
- www.prsindia.org
- Scconline.com
- www.mondaq.com/india/x/509314/real+estate/The+Real+Estate+Regulation+And+Development+Act
- www.mhupa.gov.in/writereaddata/Select_Committee_Report.pdf
- www.livemint.com

Disclaimer

The content of this presentation is intended to provide a general information on the subject matter and shall not be treated as any legal advisory.



SAMIS 
L E G A L

Office No. T 202, Technopolis, 1-10-74/B, Above Ratnadeep Super Market, Chikoti Gardens, Begumpet,
Hyderabad 500016 , Telangana, India.

Email: info@samistilegal.in; Phone: 040 4003 2244

Website: www.samistilegal.in

Linkedin: <https://www.linkedin.com/company-beta/10100251/>