

# Scrutinising the Role of India's Real Estate Regulatory Authority: An Analytical Perspective

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**Abstract:** - The real estate sector plays a crucial role in the Indian market and economy due to its significant involvement in large-scale investments and transactions. However, as of 2016, no existing regulations or norms were in place to effectively manage and standardise the real estate market. The escalating prices in the real estate market might be attributed to the unscrupulous practices of agents or brokers. It is imperative to identify the gaps between buyers and promoters and address them through the implementation of legislative measures. Acquiring residential properties, such as homes, land, flats, or any other type of habitation, is considered a fundamental aspect of individuals' lives. Therefore, the Government of India recognised the serious situation and passed the Real Estate Regulation and Development Act of 2016 to prevent future issues in the property industry. Before the implementation of this Act, the consumer protection law, particularly the Act established in 1986, served as the sole avenue for house purchasers and investors to safeguard their rights. However, this legislation proved inadequate in fully meeting their requirements or addressing pertinent legal concerns. This study aims to identify the current legal issues within the real estate industry and primarily focuses on providing appropriate recommendations for improving the sector. The findings of this research will assist researchers and future policymakers in further examining the responsibilities of promoters, real estate agents, and the rights of home buyers under the 2016 Act.

**Keywords:** *Government of India, Indian market, home, buyers, estate, promoters.*

## 1. Introduction

The general population often desires to own real estate for personal, business, or investment purposes, including condominiums, apartments, land parcels, or plots, to preserve their earnings and provide for their families. Transactions typically involve negotiations, mutual agreement on a sale, and acquiring legal documents such as sale deeds or conveyance deeds to establish ownership. Land, an immovable asset, has played an integral role in human history and is categorised in literature to facilitate its comprehension and utilisation for diverse purposes. Property originated during settled agriculture in human civilisation, characterised by limited surplus and modest division of labour. As agriculture progressed, ownership emerged, resulting in exclusive rights over surplus resources. Cattle were transformed from draught power to possessions, leading to conflicts over cow and land ownership. Traditionally, property was a private entitlement without connotations of freedom or inherent rights, fulfilling individual desires as a fundamental aspect of human existence and well-being.

Different legislative frameworks and their significance have shaped the concept of property rights can vary. Property ownership is a complex issue rooted in acquiring resources necessary for survival. Legal property classification can be ambiguous, and the focus on property rights emerged as a critical aspect of legal development in the 18th century.

The concept of ownership has evolved throughout history, shifting from tangible possessions to increasingly abstract ones. The term "property" encompasses assets owned by individuals, institutions, or the state, which can

be categorised as corporeal or incorporeal. Corporeal property refers to movable and immovable goods, while incorporeal property includes intangible assets like patents, copyrights, and leaseholds.

The real estate industry lacks comprehensive regulation despite being subject to various regulations imposed by Central and State Governments. The Indian government implemented the Real Estate (Regulation and Development) Act, which came into force on May 1, 2017, across the entire nation, except Jammu and Kashmir at the time of its implementation, to establish a comprehensive regulatory body to oversee and facilitate the systematic expansion of the real estate development industry.

## 2. Background of the Study

The RERA Act aims to increase transparency in real estate by registering and regulating all development projects, including those for commercial, residential, or industrial use. According to the Act, promoters are individuals or entities who engage in the construction or facilitation of real estate development projects intending to sell some or all the properties. The concept encompasses a range of individuals involved in building and development, such as developers, landowners, financiers, contractors, investors, and cooperative housing societies or trusts.

In Maharashtra, Real Estate Projects must register if the promoter intends to market, sell, or rent apartments, plots, or structures. Section 5 of the Act outlines the registration procedure, giving authorities 30 days to approve or deny requests. Once the time limit has elapsed, the project is deemed registered, and the statutory body must complete the necessary procedures within a set timeframe.

Upon approval or registration, the user will receive login credentials to access the project portal. The portal will enable comprehensive project information uploading and public viewing. Additionally, quarterly updates on the project status will be provided. The Act emphasises sectoral development to improve society. Section 9 stipulates the registration procedure for real estate agents involved in property transactions related to plots, apartments, or buildings within real estate projects. Section 10 pertains solely to transactions of plots, apartments, and buildings within real estate developments registered with a governmental entity. Promoters must disclose the authorised agent's identity on their website, and it is crucial to ensure that real estate brokers are duly registered agents under the provisions of the Act or if there are any statutory regulation violations.

The Act established governing bodies with distinct powers to adjudicate legal disputes. Chapter V establishes a regulatory authority for the real estate sector, while Chapter VII establishes a real estate appeal tribunal. These bodies aim to resolve parties' conflicts, particularly between developers and unit purchasers. In India, "Real Estate" refers to land and buildings held under absolute ownership, including subterranean resources like petroleum, natural gas, coal, and minerals. Real property encompasses tangible assets like land, associated structures, natural objects that grow on the land, apartments, buildings, shopping centres, and single-family homes.

The real estate industry significantly contributes to the economy, generating numerous jobs and stimulating demand in around 250 related industries. The liberalisation process in the early 1990s led to remarkable improvements in development indicators. Before 1991, the real estate industry experienced a lack of incremental advancements. However, after the Indian government increased investment opportunities in the sector, there was a significant expansion in the industry. Investors use various tactics to acquire land, sometimes deceiving farmers and enticing urban and suburban property owners.

After the period of liberalisation, privatisation, and globalisation, the real estate sector in India has grown significantly. Previously known for their suburban and agricultural landscapes, rural villages have transformed into larger metropolitan centres. The Old Mahabalipuram Road (OMR) was once used as a wide pasture tract and a site for waste disposal, but currently, Chennai is recognised as a prominent hub for Information Technology (IT) companies. However, customers still face the negative consequences of unfair trade practices and discriminatory attitudes within the private sector, which holds significant control over this industry. Real estate agents, brokers, and dealers play a crucial role in the industry. However, real estate brokers often prioritise sellers over buyers and lack ethical orientation. Additionally, the commission and remuneration for mediators are not standardised.

The real estate sector in India has seen a significant increase in transactions for commercial, residential, and investment purposes over the last 20 years. However, corruption and bribery remain a concern for the average

purchaser. In summary, the real estate sector is vital in boosting economic development, specifically focusing on urban infrastructure and centres. The increasing value of this industry is a strong indicator of the rising demand for city infrastructure and cities.

The Indian real estate industry faces project delays, poor construction quality, and a lack of trust between buyers and sellers. Rising property acquisition costs have hindered the entire sector. The decrease in foreign investment is due to inadequate capital flow regulation, illicit cash injection, and investor fund misappropriation. The real estate market lacks regulations, causing distrust between buyers and sellers, outdated reforms, unclear practices and complex regulatory structures.

### **3. Legislative Developments of the Act**

The Department of Industrial Policy and Promotion, under the Ministry of Commerce and Industry, allowed Foreign Direct Investment in Construction and Development projects in 2015. It was done to achieve the objective of "Housing for all by 2022." The initiative is expected to positively impact about 996,300,069 individuals residing in metropolitan areas, with a total investment of Rs. 203,172 crores. Public sector banks have encountered significant challenges related to non-performing assets, categorised as Substandard, Doubtful, and Loss assets.

The demand for housing has increased in recent years due to the perspectives and interests of various players, such as homebuyers, property developers, and real estate agents. The real estate industry is experiencing significant growth with substantial unmet demands, escalating prices, and increased domestic and international investments. However, the real estate industry remains fragmented, with numerous regional entities operating nationwide. The real estate sector is expected to become more organised as only promoters who prioritise quality in their projects will prosper, leading to the elimination of others.

Consumer Protection legislation is inadequate in safeguarding real estate buyers from deceitful promoters or developers. To address these challenges, the government implemented regulatory measures to combat fraud and minimise delays in the real estate sector, which were approved in 2016. The real estate industry plays a crucial role in the era of Liberalisation, Privatisation, and Globalization (LPG), necessitating the examination of the rights, liabilities, and obligations of purchasers, investors, promoters, and agents. Contemporary research is necessary due to the increasing urban population, industrialisation, and rising prices in the real estate sector.

### **4. Statement Of Problem**

The Real Estate Regulatory Act 2016 in India poses challenges that must be addressed to improve the public's welfare. While the Act has led to some progress, authorities must adapt to meet stakeholders' needs and concerns. The essential steps in land acquisition include identifying suitable land, verifying ownership, acquiring planning authority, and assessing site suitability for construction. Other factors include land identification, seller rights, and planning authority delineation.

### **5. Legal Framework of the Act in India**

The Act of 2016 aimed to bring organisation, openness, accountability, and uniformity to the real estate industry in India. Its enforcement has primarily addressed purchasers' concerns due to high consumer lawsuits. Some developers have been found to circumvent restrictions, delay possession, manipulate payment schedules, or install unsafe elevators.

India faces obstacles in implementing beneficial legislation due to decentralised land governance. States can regulate under the Act of 2016, but parent legislation should not be compromised. Maharashtra and Karnataka have taken steps to implement the Act, but the impact on homebuyers remains to be seen. Developers may exploit loopholes by obtaining completion certificates without finishing projects. The primary objective of the Act of 2016 is to ensure that developers fulfil their responsibilities and prevent the dissemination of false or misleading information. However, certified projects may be exempt from these requirements.

Developers must register properties and gain explicit approval from allottees before collecting funds. A formal title report prepared by a qualified attorney is mandated to prevent false justifications. Developers must provide credentials verifying the completion of promised amenities and construction work. To prevent developers from

providing consumers with false information about project specifics, they must obtain agreement from allottees before making any changes to the design. If the developer cannot complete the project in the allotted time, registration will be revoked unless they can provide a compelling justification. These procedures ensure that developers' obligations are realistic and prevent them from being circumvented. The Act's provisions for regularisation, transparency, and fraud prevention have the potential to improve trust, attract capital from international institutional investors, and promote stability in the real estate market.

Arunachal Pradesh, Sikkim, Nagaland, Manipur, Meghalaya, West Bengal, Mizoram, and Tripura have failed to implement real estate regulations within the given timeframe properly. West Bengal has not enforced the Housing Industry Regulation Act despite the COSL Report and ruling of the Bombay High Court. Many states, except for Maharashtra, have not amended their regulations to match their needs and circumstances.

Tamil Nadu's flat topography and expansive coastline make it an ideal location for industrial enterprises and manufacturing facilities. However, the real estate industry in Tamil Nadu is mostly controlled by the government, resulting in limited attention given to private developers. Builders often construct buildings without proper approval or certificates, causing delays in acquiring the necessary certifications. The 2016 Act is suitable for examining the legal framework governing real estate in Tamil Nadu and India. It is justified by the ongoing growth of the real estate sector in India, specifically in the Greater Chennai Metropolitan area, suburban regions, and urban areas proximate to Chennai. This growth can be attributed to the rise of industries and foreign direct investment.

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has officially informed the state of Maharashtra of the implementation of the 2017 General Regulations. These regulations enforce compliance requirements in the real estate sector, including certification of construction progress by architects (Form 1), online registration for estate agents (Form 2), confirmation of expenses by engineers (Form 2), and certification of land and building value by Chartered Accountants (Form 3). These certifications are appended as an annexure.

The real estate legislation in Maharashtra requires developers to register before engaging in any activities related to ongoing or new projects. Projects acquired before May 1st, 2017, may still be promoted even after July 31st, 2017. In case of a complaint, MahaRERA will issue a show cause notice and may instruct the promoter to register within a specified timeframe and impose a penalty. There is a common misconception among promoters and consultants that if there is no remaining stock to be sold, there is no need to register a project, even if it is already in progress. It is because promoters have already incurred expenses and seen decreased sales while the project is still incomplete. However, regardless of any potential sales transactions, they must complete the registration process with MahaRERA.

The deadline for relaxation or registration is July 31st, 2017. Projects without an Occupation or Completion Certificate must register. The MahaRERA application is now online. Promoters must create unique login credentials and provide entity information to access the portal and upload information. All project details must be presented, including design endorsement and completion date. Promoters must provide comprehensive information on the project but only register phase "B". The central government enacts laws, but states may modify them based on local circumstances.

## **6. Powers and Functions of Authorities Under the Act**

The Maharashtra Real Estate Authority (RERA) was established under Sections 31, 32, 34, 37, and 38 of the RERA Act. The Government of Maharashtra launched [www.maharera.mahaonline.gov.in](http://www.maharera.mahaonline.gov.in) to provide comprehensive information about the latest regulations formulated under the Act. Visitors can access registered real estate projects and request circulars and judgements for public consultation. The Act aims to regulate and advance the real estate sector through checks, safeguards, and promotion of transparency. The initiative reduces disputes and establishes efficient methods for prompt resolution. The promoter must provide detailed information regarding construction projects to ensure informed decision-making and clear expectations between the promoter and the allottee. It ensures certainty in the deliverables promised by the promoter and the expectations held by the allottee, subject to specific requirements.

The 2016 Act Chapter VIII outlines significant penalties and provisions for prosecution. Section 70 has a non-obstante clause allowing the compounding of offences, before or after prosecution, through payment of a sum not exceeding the allowed amount for the offence. The severity of punitive measures concerns the transgression. The adjudicating authority under Section 72 considers principles outlined in Section 71 for determining compensation or interest, which may apply to all adjudications under the Act.

The term "mens rea," meaning the intention to commit a crime, is a prerequisite for punishment in criminal law. Quasi-criminal liabilities allow for presuming mens rea, but the defendants must prove their innocence. Penalties depend on negligence, carelessness, purposeful actions, or willful knowledge. The legislators aim to establish a systematic framework for real estate transactions and strictly adhere to protocols. Exemplars will discourage rule-breaking, and trust between buyers and sellers is crucial for the industry's advancement. The regulatory body seeks to restore eroded confidence.

Officially registered projects guarantee disclosure quality, streamline rules, and establish standardised information for informed decisions. Promoters with successful track records and minimal complaints enjoy privileged positions, garnering favourable market responses. Financial institutions can offer better terms to those who comply with the Act, potentially establishing a new real estate pattern.

## **7. Role of the Act in India's Developments**

The Act aims to regulate and enhance professionalism and transparency in real estate transactions. Chapter IV outlines allottees' rights and responsibilities while protecting them from potential defaults and manipulations. RERA aims to improve transparency and discipline among builders and developers, standardise the regulatory framework, and enhance the perception of the real estate sector among diverse stakeholders. Auditing project accounts is mandatory for all construction projects. Projects must be officially registered with the RERA authority and provide comprehensive information, including approved plans, layout, and completion details. Promoters must regularly update the RERA website regarding project progress and sales.

Complying with the RERA Act is imperative for builders, developers, and real estate agents/brokers to avoid severe repercussions such as strict penalties, reimbursement of buyer's funds with accrued interest, or freezing of the project's bank account. Regulatory authorities have been imposing penalties for non-compliance during the 50-day implementation period. The 2016 Act requires property market developers to maintain an Escrow account, adhere to audit requirements, and understand the roles of professionals such as architects, engineers, chartered accountants, advocates, and certification requirements at different stages. Professionals can assist developers and agents in adhering to regulatory requirements and collaborate to facilitate favourable outcomes.

Promoters are responsible for the timely execution of documents under the Real Estate (Regulation and Development) Act (RERA), including acquiring the Completion Certificate (CC) and Occupation Certificate (OC), as well as executing the registered conveyance deed within three months of the date of OC. Promoters must also adhere to the sanctioned blueprints, with professionals playing a crucial role in ensuring compliance with regulations.

The Real Estate Regulatory Authority (RERA) requires all registered promoters to possess certified accountant certifications. Conflicts between RERA and state laws have been a subject of discussion. Certain experts argue that the MOFA (Maharashtra Ownership of Flats Act) is still applicable due to variations in agreements made by developers and investors/landowners. Rajasthan has a rich historical legacy and a plethora of antique artefacts dating back several millennia to the Indus Valley civilisation. Alwar, located within the Delhi National Capital Region (NCR) economic development zone, is a prime example of this prosperity. The urban area is witnessing many residential and commercial initiatives, including the Delhi-Mumbai Industrial Corridor, which the federal government is implementing. This initiative has the potential to transform Alwar into an attractive investment location for commercial organisations, thereby facilitating the expansion of warehousing and logistics industries.

Ajmer, located in Rajasthan, is a prominent educational hub with a central university and administrative offices for CBSE and BSER. The central university attracts out-of-state students, leading to real estate development. ADA has implemented infrastructure and housing schemes. The Indian Institute of Technology (IIT) in Jodhpur



attracts investments with its appeal to out-of-state students and government-provided facilities. The real estate market is also impacted. Udaipur, known as the "city of lakes," draws in many tourists annually, benefiting the hospitality sector and generating revenue for the government through established hotels. A survey of 400 respondents from eight districts in Rajasthan was conducted and presented in tabular format.

## 8. Conclusion

The study examines the effectiveness of RERA in standardising the real estate industry and facilitating transactions, assessing its contribution to societal welfare, and identifying areas for improvement. The Real Estate Regulatory Authority (RERA) has implemented changes to simplify the process for property developers, offer cost-effective solutions for buyers, and impose regulations to discourage unprofessional behaviour. Rules restrict advertising from collecting more than 10% of the total project cost. Buyers can strategically organise their financial arrangements with payments structured into distinct tranches corresponding to project development stages. Purchasers have the entitlement to seek recourse through a tribunal if issues arise.

However, the Real Estate Regulatory Authority (RERA) has neglected certain aspects, making it comparable to a mythical being known as a "djinn" that grants only three wishes. For example, RERA imposes penalties on buyers who fail to comply with the terms of the sales agreement or behave unprofessionally. The law has also enabled favourable changes, such as hiring licensed experts, reducing construction costs, modifying corporate construction types, and establishing partnerships with other construction companies. In case of difficulties, promoters can seek redress by approaching an appellate tribunal.

The Real Estate (Regulation and Development) Act (RERA) mandates that builders only hire registered individuals to prevent malpractices and unfair acts. Builders can impose penalties on buyers. The legislation benefits stakeholders and improves procedural aspects. However, RERA's effectiveness is compromised by deficiencies such as inadequate information on permit duration and a lack of government-established timeframe for approvals.

The RERA Act aims to manage and resolve property-related issues efficiently. It is suggested to expand it to include unproductive agricultural land. The Act should also grant authority to address any construction on such land and define agricultural land in Section 2. Chapter V of the 2016 Act grants jurisdiction over real estate regulation. The authority must be given the necessary authorisation to address agricultural land issues. Non-agricultural land use requires an authorised permit which can be obtained by applying the designated authority. The application must include specified details. The authority will investigate each application before granting or denying the permit based on specific terms and conditions. The individual who receives the authorisation must pay the authority.

The Act of 2016 or corresponding regulations should include the application form. A preliminary version of the application (Annexure - I) is provided in this overview. The authority's powers should be enhanced and aligned with civil court procedures. The Act should incorporate provisions for civil procedure, property/buildings, and authorities to seize personal property of developers/builders to enforce compliance, including refunding payments to prospective buyers. Developers should exercise greater caution and vigilance because the strength of attachment is a deterrent and incentive.

The Act of 2016 aims to establish a regulatory authority to oversee property transactions and streamline procedures. States may establish their governing bodies and regulations, but some have been slow. Nagaland has yet to issue the required notifications. Monthly audits should ensure compliance with regulations. Multiple government authorities regulate property-related matters, including revenue and stamp duty departments and registration agencies. However, executing instruments, paying stamp duty, completing registration, and changing names are subject to multiple regulations, resulting in significant time expenditures. Authorities should be granted a centralised administrative platform, providing simultaneous access to multiple services to optimise time and enhance cost-effectiveness. Buyers and developers should be given an efficient mechanism to facilitate the entire process, including project registration and transfer document execution, resulting in significant time and cost savings for all parties involved.

If an idea or rule has proven successful in another country and is relevant to India, the government should consider adopting and implementing it. In countries like the United States, Canada, and Malaysia, estate agents must obtain a license to work in the profession, which is not required in India. In property transactions, a clear and unencumbered title is crucial. The RERA website or state portal should provide comprehensive title papers to aid project understanding. Parties should have access to updated title and due diligence reports, with authenticity verification recommended to protect involved parties.

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