



A REGULATOR FOR REGULATORS: NEED FOR CENTRAL REAL ESTATE REGULATION AUTHORITY

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Abstract

Real estate is a very crucial sector for economic growth and employment generation as evidenced by data contributing 11% to Gross Value Added (GVA) growth since 2011-12. The responsibility of regulating the sector is given to respective state real estate regulation authorities which include administrative, quasi-judicial, penal, regulatory, compliance, advocacy, awareness programs, and making necessary recommendations to the government. As the real estate regulation authority regulates such an important sector and exercises a wide range of functions its working must be analyzed critically. The enactment of legislation and establishment of real estate regulation authority has resolved various problems existing in the real estate sector and has strengthened the position of buyers but there are a few problems like slow disposal of disputes, delay in the approval of the project, etc. which requires in-depth analysis and immediate action. Also, there exists a lack of uniformity in law and interpretation across the country as each state has its own regulating body. Many a time appointment of officials becomes the subject of criticism. The paper will try to find whether the establishment of a central authority for regulating state real estate regulation authority can help in solving these problems. It will also discuss the cost-benefit and challenges in establishing the central authority. The research will also try to suggest the structure, power, and functions of the central regulator. This research may help while considering reform in the existing structure and future course of action in the real estate sector.

Keywords

Regulation, Central Authority, Uniformity, Challenges, Cost-Benefit

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Introduction

Despite its exponential growth, the real estate industry in India has been unregulated for many years. This industry has been troubled by a variety of issues at the transactional or operational level like legal regimes that differ between states and ambiguous enforcement methods used by different State Governments. Even though it has a substantial share in the National Income, the real estate sector nevertheless faces challenges because of widespread irregularities that have undermined investor and buyer confidence. The need to regulate and promote transparency in the real estate sector is more crucial than ever as India continues growing and becoming increasingly urbanized.

The enactment of the statute in 2016 was a major step toward regulating the sector and easing the business of both builders and consumers. The Ministry of Housing and Urban Poverty Alleviation, Government of India 'MHUPA' in its press release dated June 5, 2013, clarified that RERA has been prepared in pursuance of the powers of the Central Government under entries 6, 7, and 46 of the Concurrent List of Seventh Schedule in the Constitution of India, as RERA governs the contractual understanding between developers and buyers of units.² The legislation came into force on May 1 but only 52 sections were notified out of a total of 92 sections. The rest of the provisions were made effective on and from May 1, 2017. Since implementation, 30 states/UTs have established a Real Estate Regulatory Authority with at least 5 of them being interim.

The legislation provides for the establishment of regulating authority for every state which would regulate the sector and make policies. The legislation was aimed at making a uniform legal regime for the country but different interpretations of laws by various states have created many issues also the absence of a watchdog over the regulator has affected the efficiency of state regulators. This paper will discuss the need for a central regulating authority as a watchdog over state regulators and their functions.

Background

The real estate industry in India is one of the significant sectors that has a crucial role in the development of the economy of the country. In India, the real estate sector's growth started late but is now growing rapidly. Housing, retail, hospitality, and commercial are its four sub-sectors. The expansion of the business environment and the demand for office space, as well

² Admin (2020) Rera: A uniform regime, Shardul Amarchand Mangaldas & Co. Available at: <https://www.amsshardul.com/insight/rera-a-uniform-regime/> (last visited on 10 May 2023).

as for housing in urban and semi-urban areas, are excellent complements to the growth of this sector.

By 2040, the real estate market will grow to Rs. 65,000 crore (US\$ 9.30 billion) from Rs. 12,000 crore (US\$ 1.72 billion) in 2019. The real estate sector in India is expected to reach US\$ 1 trillion in market size by 2030, up from US\$ 200 billion in 2021, and contribute 13% to the country's GDP by 2025.³

Development of the sector can be ensured when there occur smooth transactions between the buyers and promoters of the project. As mentioned earlier, in India the growth of real estate started late, this was due to multiple reasons but a major contributor was the lack of specific legislation that could regulate this sector. Before specific legislation, the problems that existed in this sector were:

- No recourse available to the homebuyers and the developers for the speedy redressal of the dispute between them. They had to seek remedy under laws such as the Indian Contract Act, of 1872 and the Consumer Protection Act, of 1986 which involved a lengthy process.
- Even after the full payment of the cost of the project by the homebuyers, the developers did not complete the project and deliver the homes within the time stipulated in the agreement. Many times cases of diversification of funds by the developers were reported. They used to invest the money collected from the homebuyers in other projects.
- The agreement formed between the buyer and the developer used to be generally inclined in favour of the developers. The buyer had to pay more interest than the developers in cases where they failed to perform their obligations.
- The developers used terms like “*Super build-up area, carpet area, covered parking area*” etc. arbitrarily. This gave scope for cheating by the developers in the actual usable area available to the buyers. The actual usable area given to the buyers by the developers was much less.
- Agents in this sector were not regulated under any law and because of this they committed fraud against innocent homebuyers.

³ Indian real estate industry: Overview, market size, growth, investments...IBEF India Brand Equity Foundation. Available at: <https://www.ibef.org/industry/real-estate-india> ((last visited on 10 May 2023).

- For the initiation of the construction of the project the developer had to seek a large number of sanctions and approvals through a very complex process and this resulted in delaying the completion of the project.⁴

To regulate the sector and to provide solutions to the problems faced by buyers and promoters, the central government enacted legislation named The Real Estate (Regulation and Development) Act, 2016 (RERA). This act came in 2016 but the process for enacting this law started in 2008 when a concept paper was prepared. Due to some reasons, the law did not come in that year and the work for this legislation was again started in 2014. In March 2016, this law finally came in 2016 after passing this legislation through both houses of parliament in March 2016. Certain sections of this statute were notified with effect from 1 May 2016 and the remaining sections from 1 May 2017.

The RERA was enacted under Entry 6 and Entry 7 of the concurrent list by the Parliament of India.⁵ The main purpose was to improve the condition of buyers and promote investment in the sector. The act requires, every state government to form a State Real Estate Regulating authority and this authority would start the regulation of real estate projects before their commencement. RERA's primary goals are to advance the real estate industry, effectively ensure transparency in real estate project transactions, protect consumers' interests, create a consumer-friendly environment, and expedite the resolution of disputes that may arise from transactions⁶.

The main features of the RERA are:

- Prior Mandatory registration of real estate projects with the Regulatory Authority. The promoter will have to register his project with the real estate regulating authority. In cases of ongoing projects at the time of the commencement of this act, if the completion certificate is not issued, then the project needs to be registered. Such ongoing projects should be registered within 3 months from the commencement of the act. In cases of projects where the area to be developed is less than 500 square meters or no more than 8 apartments are to be developed, encompassing all phases, registration is not necessary. Also, in case of projects involving repair, renovation, and re-development registration is not required.⁷

4 Reforms in real estate sector MOHUA Available at: [https://www.mohua.gov.in/upload/uploadfiles/files/RERA_eng\(1\).pdf](https://www.mohua.gov.in/upload/uploadfiles/files/RERA_eng(1).pdf) (last visited on 10 May 2023).

⁵ The Constitution of India, 1950, List III, Entries 6, 7.

⁶ The Real Estate (Regulation And Development) Act, 2016, Preamble (In an efficient and transparent manner).

⁷ S. 3 The Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016).

- It transfers the risk from the customers to the developers by including the liability of the developer, promoter, builder, agents, etc.
- The real estate agent also needs to be registered under section 9⁸ of this act and without registering themselves they cannot sell or buy on behalf of the promoter in this sector.
- Compliance with a separate bank account and the same 70% of the amount deposited by the customer should be maintained and only 30% of the amount may be appropriated for other projects.⁹ This clause is intended to prevent the promoter's issue with finance diversification, which will guarantee the completion and delivery of the projects in a bound manner
- The promoter should disclose every piece of information related to the project like its registration details, area to be developed, etc. and the same should be available on the website of the specific projects.
- The rights and the obligations of the promoter, and allottee are mentioned and in case of default on their obligation they would have to pay compensation. The interest that would be paid in case of compensation is equal for both the promoters and allottees.
- The definition of carpet area is provided in the act and this would prevent the case of cheating by promoters against the customers about the exact usable area.
- The regulatory authority is empowered to create a single window clearance system which would prevent the excessive delay caused in getting the approval and will ensure speedy completion of projects and timely delivery of the same to the customers¹⁰.
- For the speedy resolution of disputes, there is the provision for the formation of adjudicating authority and the establishment of a '*Real Estate Appellate Tribunal*'. If a party is aggrieved by the decision of the authority, he can appeal to this tribunal. If he is not satisfied with the decision of the Appellate tribunal, he can go to the high court.

In the case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India and Ors*¹¹, the constitutional validity of the provisions of RERA was challenged by the various Developers and Promoters on the ground that, its provisions are discriminatory against them. The Division Bench of this Court was pleased to consider all the provisions of the RERA in their entirety and after having regard to its 'Objects and Reasons', held that "*The RERA law is not to be considered as an anti-promoter. It is a law for the regulation and development of the real estate*

8 S.9, The Real Estate (Regulation and Development) Act, 2016(Act 16 of 2016).

9 S. 4(2) (1)(D) The Real Estate (Regulation and Development) Act, 2016(Act 16 of 2016).

10 S.32 The Real Estate (Regulation and Development) Act, 2016(Act 16 of 2016).

11 2017 SCC OnLine Bom. 9302.

sector. Under the scheme of the RERA, the promoter's interests are also safeguarded and there is a reason for the same. Unless a professional promoter making genuine efforts is not protected, then the very purpose of development of the real estate sector would be defeated".¹²

The enactment of the RERA played a significant role in solving the problems existing in the sector but there are some problems that the RERA is still not able to solve. Problems that persist in the sector even after the enactment of the legislation are:

- No rule for the delay in the project approval. When an agreement is made between the promoter and the allottee for the real estate project and in the agreement the time is mentioned within which the promoter should complete the project and deliver the same to the allottee. The promoter has to pay compensation to the allottee till the time he delivers the house if he fails to execute the problem on time. However, this delay may be the result of the promoter's error or a delay in receiving the authority's approval for the project's start date. No system was able to determine who was at fault, which caused the delay.

- Lack of single-window approval mechanism

Real estate developers need to get permission from various authorities to commence their projects. Timely granting of permission is required for the timely completion of the project. Taking permission from various authorities takes a lot of time and makes the approval process complex. For instance, the national government must approve environmental clearance while the state government must issue encumbrance certifications. This causes a lot of issues for developers.

- Ambiguity over state-specific content

Some sections in various State RERA drafts are not entirely clear. States like Haryana, Delhi, Karnataka, and others haven't specified the format or content of audit certifications issued by engineers, architects, and other professionals. There will be a great deal of uncertainty regarding the appropriate format for the audit certificate. The re-execution of agreements in cases where the deed has already been signed is likewise unclear. While some states demand re-execution others do not.

- Lack of technical know-how

Even though real estate project registration is now done online, many buyers and developers are still unaware of the technology. The lack of understanding of the provisions of the RERA among developers is another factor for the delay in registering

¹² *Id.*

the project with the regulatory body.

- Lack of strict deadlines

After the enactment of RERA in 2016, the central government notified all the states and the union territories to make state-specific RERA rules and guidelines keeping in mind the modal rules of RERA which was enacted in 2016. As of now, All States/UTs have notified rules under RERA except Nagaland, which is in the process of notifying the rules. 30 States/UTs have set up Real Estate Regulatory Authority (Regular - 25, Interim - 05). Jammu & Kashmir, Ladakh, Meghalaya, Sikkim, and West Bengal have notified the rules while yet to establish Authority. 28 States/UTs have set up the Real Estate Appellate Tribunal (Regular -24, Interim – 04). (Arunachal Pradesh, Jammu & Kashmir, Ladakh, Meghalaya, Mizoram, Sikkim, and West Bengal are in the process of establishing). Regulatory Authorities of 27 States/UTs have operationalized their websites under the provisions of RERA. (Arunachal Pradesh, Assam, and Manipur are in the process of operationalizing¹³).

- Tedious process of registration

There will be an issue for the developers in states where there are two RERAs and there are variations in the application form for registering RERA projects under various authorities. In some cases, this may also cause misunderstanding and delays in the project's completion. Haryana is the only state which has 2 Regulatory Authorities i.e. one for Gurugram and the other at Panchkula for the rest of Haryana¹⁴.

- RERA vs Consumer forum

After the enactment of the statute, the allottees, and the promoter have two different forums for the resolution of disputes. They can go for any one of the forums. If one party goes to the consumer forum and the other party goes to RERA and in case both forums give different judgments, then it would be a problem regarding which forum's judgment should be considered relating to the same matter. A single forum would be better for better resolution of the disputes.

Need For Central Real Estate Regulating Authority

It can't be denied that the enactment of the statute in 2016 brought a drastic change in the real estate sector by resolving the problems that existed before the enactment of RERA but it was

¹³ Nagaland Gets SC Notice Over Failure To Establish RERA, available at :<https://nagalandpage.com/nagaland-gets-sc-notice-over-failure-to-establish-rera/>(last visited on May 9, 2023).

¹⁴ Haryana Real Estate Regulatory Authority ,<https://haryanarera.gov.in/> (last visited on May 8, 2023).

not completely successful in solving the existing problems. Apart from the existing problems, there are hurdles in the proper implementation of the statute. Due to these issues, reform is required in the RERA and a central authority needs to be established. The establishment of a Central regulating authority can be justified as it will provide solutions to the existing problems in the real estate sector. Some of the existing challenges in this sector even after the enactment of the statute are:

- No regulation for the delay in Project approvals

As mentioned above there is no such rule which can check why the project is delayed, whether the authority is at fault or the developer. Now if the regulating authority is at fault for the delayed approval of projects which results in the delayed completion of the project and because of which the developer had to pay compensation to the allottee. Now, if the state regulating authority is at fault, then why should the developer pay the compensation? The one who makes the mistake should pay the price for the same. For supervision of the process of approval by the state regulating authority, a superior body at the central level is needed. So, the establishment of the Central authority is justified.

- Lack of Single window clearance system

The developer needs to get permission from different government authorities to commence the project. As the project documents have to pass through different authorities to get permission, it takes a lot of time for the developer who has to deliver the buildings, and houses to the allottee within the time agreed between parties. For the commencement of the project, the developer has to get permission from both the central government and the state government which kills time. Now, if the developer will have to get permission from a single authority that could grant them permission for every document that will save his time and such an authority can only be established at the central level which could cater to the needs of all the states. That's why establishing a centralized real estate regulating authority is required.

- Ambiguity over state-specific content

The case of ambiguity arose because the RERA Act, 2016 allowed the different states to formulate different RERA rules and Regulations for their state. If there would have been a single authority that could have framed rules and regulations for the whole country, no ambiguity would have arisen. This also ensures that there is a need for a central real estate

regulating authority.

- Tedious process of registration

The process of registration becomes complex if the party has to follow two processes for the completion of a single work. This happens in the case where two RERA authorities are established in a single state. In Haryana for Gurugram one RERA authority is established while for the rest of the state, another RERA authority has been established. If a central regulating authority is there, it can supervise the process of registration rectify the shortcomings in the registration process, and provide relief to the developers.

Another major requirement for the establishment of a central regulating authority can be deduced from one of the purposes of the enactment of RERA which is to attract foreign investors to India. A foreign entity will invest in certain projects at some place if it is easy for him to get project approvals and clearances. Due to the different RERA rules of different states, it would be a very complex and time-consuming process for a foreign entity to get timely approvals which will make foreign investors reluctant to invest in the Indian Real estate sector and will restrict the full-fledged development of real estate sector.

Proposed Central Regulating Authority: Power & Function

Every consumer forum has a state and a national forum for complaints, as well as councils that reach the Supreme Court. However, we do not observe such cascading forums in the authority for real estate regulation. The establishment of a regulatory authority at the central level seems to be a way to make real estate regulation authority a more effective and efficient regime. We have witnessed that whenever a regulator is appointed for a sector, like SEBI, IRDAI, TRAI, etc., it widens the sectors.¹⁵

Section 41¹⁶ provides the central government may, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the central advisory council which is already set up by the union government from the notification on 20 Nov 2017. However, the powers of the advisory body are limited to advising the central government on matters relating to the implementation of the act, questions of policy, protection of consumer interest, fostering growth and development of the real estate sector, and other matters as may

15 Real estate (regulation and development) act,2016(RERA)(July 2017) <https://www.icsi.edu/media/webmodules/REAL_ESTATE_REGULATION_AND_DEVELOPMENT_ACT.pdf>accessed (last visited on 9 May 2023.

16 S.41 The Real Estate(Regulation and Development) Act, 2016(Act 16 of 2016).

be assigned to it by the central government.¹⁷

Power

The Union should give the Central Advisory Council additional power to regulate the state regulators and declare it as the watchdog over the state real estate regulation authority. It should have the power as an appeal authority for the aggrieved party from the state regulator for any dispute before going to the real estate regulation tribunal and high court. It should have quasi-judicial power similar to state real estate regulation authority together with appellate jurisdiction. It shall also be vested with the power to issue direction which should be binding for state real estate regulation authority in any matter. It should be entrusted to have the power to make policies to have growth of the sector.

Functions

It can be entrusted with functions like fixing uniform specified fees to be levied on promoters, agents, or allottees, ensuring the enforcement of the duties cast upon the promoters, real estate agents, and allottees. Ensure compliance with the rules and regulations made in exercising its powers. It should aim towards providing greater clarity and clarifying the functions of the regulator. It should also be entrusted with the function of formulating policies for the growth of the sector.

A thorough database of projects, developers, and agents that have registered with RERA may be kept up to date. Since this data is open to the public, prospective buyers may confirm the legitimacy of the developers and the projects they are interested in. Additionally, quality criteria for construction may be established and enforced, encouraging the use of premium supplies and building methods.

Benefit Of Establishing A Central Real Estate Authority

In the current scenario, many states have different interpretations of the law which confuses the stakeholders. The biggest achievement of establishing a central regulatory authority is the uniformity of the law in the sector which will facilitate the growth of the sector. Uniformity and clarity in law due to a single regulating authority will set the expectation of the investor. Certainty in law will directly affect foreign investment in this sector as we know real estate is an international sector and foreign capital inflows into the Indian real estate market has a big

¹⁷ S.42 The Real Estate(Regulation and Development) Act, 2016(Act 16 of 2016).

share. it jumped three-fold to \$ 23.9 billion during the 2017-21 period when compared with the previous five years¹⁸ and can be expected to rise in upcoming years. As noted above, the real estate sector has huge foreign investment hence there is a need for policies according to the international economic condition, and a central authority at the national level can help in formulating policies accordingly.

The statute does not fix a time for the disposal of the dispute by the state real estate regulation authority which many a time led to delays in solving the dispute one example is the Karnataka real estate regulation authority which in the first week of April 2023, of 54 orders passed by it, at least 32 cases took a year or more to be disposed of. About eight cases took two years or more and 12 took three years or more.¹⁹ Only two cases took less than a year. Also till July 2022, the Karnataka Revenue Department had recovered only about Rs. 26 crore from builders in the state as compensation or refunds to homebuyers for delayed delivery of apartments and an amount of more than Rs 245 crore is still pending. of 683 recovery orders passed by the money has been collected from builders in only 84 cases. ²⁰A watchdog over regulating authorities can help in speedy and efficient work as they will be liable to answer.

It is evident from the data provided above that real estate is very crucial for the economy but it is natural for every sector to suffer from the business cycle. That means phases of growth and recession need to be dealt with carefully and in the case of such an important sector this job becomes more delicate as any change in the sector may affect the whole economy. a central authority can analyze the ups and downs in the sector at the national level and formulate policies to tackle any such changes in the sector.

Implementation of The Real Estate (Regulation and Development) Act 2016, was done by different states at different points in time also right now real estate regulation authority regime is not developing equally some states have done a wonderful job in regulating the sector while few are still lagging. a central authority with the power to enforce will lead to quick implementation of adoption of any policy formulated by them which are necessary for the growth of sector all over nation.

18 The rise of foreign investment in Indian Real Estate (no date) Legal Developments. Available at: <https://www.legal500.com/developments/thought-leadership/the-rise-of-foreign-investment-in-indian-real-estate/#:~:text=According%20to%20a%20Colliers%20E2%80%93%20FCCI,with%20the%20previous%20five%20years.> last visited on (May 8, 2023).

19 Moneycontrol. Available at: <https://www.moneycontrol.com/news/business/mc-exclusive-real-estate-regulation-authority-for-homebuyers-but-who-watches-over-real-estate-regulation-authority-10484361.html> (last visited on May 8, 2023).

20 Id.

A sensible and careful regulation results in positive outcomes one such example is the telecommunication industry the telecom boom of the 1990s was only possible due to a powerful partnership between the telecom regulator Trai, operators, and associated industry stakeholders²¹ demanded central regulatory authority just after the success of TRAI.

Challenges

The biggest backdrop in the centralization of the sector is the unequal growth and the diversity of the country. The real estate sector is not equally developed in every state it is in different phases in different states. for instance, real estate in Bihar contributed around 8 percent of GVA in 2019-20²² but Maharashtra contributed nearly 25% of Maharashtra's GVA²³ hence different states needed different policies. Also looking at diversity in climatic regions across the country it is difficult for every state to have similar policies same level of attention toward this sector.

Conclusion & Suggestion

This research paper deals with the need for a regulator that could regulate each state's regulating authority. After analyzing the problems in the real estate sector and problems that create hurdles in the proper implementation of the RERA Act, the author suggested the reform of the existing RERA Act by entrusting powers to a Central Advisory council that could supervise the actions of a state Regulating authority and in cases where the state RERA is at fault, it can rectify the mistake of state regulators.

Mostly all the problems dealt with the delayed approval of the project due to getting clearance for the project from various authorities and this problem can be easily solved by setting up a central real estate regulating authority. The establishment of a Central authority will widen the scope of the real estate sector and can become an authority that can provide a safeguard mechanism to the developers from the wrongful act of the state regulating authority.

The central authority should have supervisory quasi-judicial and policy-making powers together with functions of ensuring compliance with policies and laws. The establishment of a central Authority will bring uniformity in law, and processes efficient and speedy. It will help

21 Ramachandran, T. (2020) Financialexpress, The Financial Express. Available at: <https://www.financialexpress.com/opinion/why-deny-broadcasting-telecom-like-success-trai-must-shed-intensive-regulation/1824490/> (last visited on 10 May 2023).

22 Economy of Bihar (no date) Economy of Bihar - StatisticsTimes.com. Available at: <https://statisticstimes.com/economy/india/bihar-economy.php> (Accessed: 10 May 2023).

23 FICCI: Industry's voice for policy change. Available at: <https://ficci.in/spdocument/23044/FICCI-ANAROCK-Real-Estate-Report-2018-ficci.pdf> (last visited on 10 May 2023).

in policy framing, easy regulation, and quick implementation of policies at made at the central level. The most important challenge while establishing a central real estate regulating authority is that not all states can get benefit from this reform as the development level of all states is not the same.
