RERA, 2016 – A Roller Coaster Ride

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Introduction

The land-population disparity, industrialization and urbanization triggered great demand in Real Estate Sector in India over the past few decades. Result - the sector witnessed tremendous growth over the years but absence of an effective regulatory authority and lack of proper vigilance mechanism failed to address major issues such as delays in projects, overcharging, poor quality of construction, diversion of funds, leaving the buyers and banks at the mercy of the developers. Conscious of growing need to regulate the real estate sector along with focus on the fulfilment of Government's agenda '**Housing for all by 2022**', the Government of India came up with few significant reforms to reshape stagnating Real Estate Sector. One such initiative was the enactment of The Real Estate (Regulation & Development) Act, 2016 ("the Act" or "RERA") in March 2016 with an objective of ensuring the functioning of Real Estate Sector in an efficient and transparent manner and protecting the interest of buyers by establishing a robust & transparent grievance redressal mechanism. This Act came into effect from 1st May, 2017. Under RERA, each State & Union Territory is required to establish a Real Estate Regulatory Authority to frame & implement rules under this Act. Centre has drafted the rules for Union Territories including the national capital. Many states have notified the rules and the authority has started functioning, but few states are still behind schedule and are yet to notify and implement rules.

Salient features of the Act

- Mandatory registration of ongoing projects pending completion by 31st of July,2017 and each new project having land area 500 square meters or more, or having 8 or more apartments.
- Significant disclosures are required such as promoter's details, details and status of previous projects, pending cases, approved plans & commencement certificate, names and addresses of concerned contractors, architect, engineers and real estate agents, encumbrances on land, proposed period of completion.
- Promoter is required to deposit minimum 70% of amount received in a separate bank account for each phase/project which shall be utilized for covering construction cost or land cost of that particular project. Withdrawal for utilization shall be in proportion to the percentage of completion of the project after certification by an Engineer, an Architect and a Chartered Accountant in practice along with yearly audit.
- Post registration, promoter is required to create his web page on website of Authority disclosing details of registration and must update the list of number & types of apartments/plots/garages booked, approvals taken & status of project for public viewing on a quarterly basis.
- Requirement to mention in the website of authority, registration number and other similar details in the advertisement or prospectus issued or published by the promoter and compensation to buyer for any loss due to false representation.
- Promoters cannot request for advanced payment or booking amount more than 10% of the cost of plot/apartment without entering into a registered sale agreement.

- The promoter cannot make any additions/alterations in sanctioned plans/layout plans without the consent of the buyer. Moreover, promoter is responsible for rectification of any structural/workmanship defects noticed by buyer upto 5 years from date of possession, within 30 days & buyer should not be charged for same, failing which buyer is entitled to receive compensation as per the provisions of the Act.
- The promoter cannot transfer his majority rights & liabilities in real estate project to third party without obtaining the written consent from two-third of buyers and the authority.
- The promoter is liable to get his real estate project insured and pay premium and other charges until transfer of insurance to association of buyers.
- Promoter will be held liable to return the entire amount received from buyers along with the interest, if he is unable to complete or deliver project within specified time. In case buyer refuses to withdraw from project, he shall be paid interest for every month of delay till handing over of possession by the promoter.
- The buyer is also liable to pay interest if he fails to make any payment/charges within pre-determined time to the promoter. Same rate of interest will be applicable to both promoter & buyer in event of their respective defaults.
- The Regulatory Authority will have the power to fine and imprison errant builders depending upon the facts of the case. The imprisonment can go up to a period of three years for a project.
- In addition to the Regulatory Authority, each State & Union Territory is required to establish a Real Estate Appellate Tribunal, where any person aggrieved by any direction/decision of Regulatory Authority can make an appeal within 60 days of receipt of order and Tribunal shall try to dispose off the appeal within 60 days from date of receipt of appeal.

Buyer – a sufferer or ultimate beneficiary?

The implementation of RERA has been described by the Government as consumer-centric and marks the beginning of a new era where consumer is the king. Though, the Act has very well incorporated the features to safeguard the buyer’s interest completely by ensuring accountability, transparency, timely possession, adherence to quality standards, stricter penal provisions & prosecutions, such stringent rules, are likely to impose some financial implications on the developer which eventually might burden the buyer. For instance, pre-launch activity was an ideal route for raising much needed capital for initiating the project but with pre-registration requirement and capping advance from buyer at 10% of cost, though the buyer’s capital will be safeguarded, the developer would now need to borrow capital in order to commence the project which eventually be recovered from the buyer and additionally, the pre-launch discount schemes announced to the buyer may not be available. Moreover, maintenance of 70% of money received in a separate account will ensure that errant developers do not divert funds and finish the projects on time, but withdrawal on the basis of percentage of completion will take away opportunity to utilize or invest idle funds, it may add to the liquidity problem and increase liquidity burden on the developer which will ultimately be loaded on cost to be paid by buyer.

Protection from exploitation by the developer comes with a Cost. The buyers should bear the hit on their pockets and be convinced about the benefits of the strict regulations.

Brokers and Developers – Compliance with Control

There is a large chunk of unsold inventory lying with the developers and with the deadline for registering ongoing projects approaching soon, they need to gear up to meet the compliance challenges. Banks have started demanding more collaterals including pledge of personal properties of promoters in order to adequately secure them against the loans. In case of few projects, it was observed that developers sold their idle land to State Authorities to generate cash required to complete the project within time. The Real Estate Sector is expected to witness large scale consolidation as smaller developers will find it difficult to meet their cash flow requirements. Transitional difficulties would exist but in the long run, RERA will definitely be beneficial as it will infuse confidence among the buyers and make the sector healthier for investors. It is expected that Indian Real Estate will witness an increase in global capital inflow through large private equity investors who are showing interest due to introduction of Real Estate Investment Trusts and regularization of Real Estate Sector.

The Act certainly aims at bringing professionalism in real estate broking. Exercise of diligence about project will make agents more competent & registration of Real Estate Agents under RERA will make them accountable for their commitments. The inclusion of Real Estate Agents in Central Advisory Council will help them organise & build a better reputation among builders & homebuyers.

Key issues to be addressed

- It may be noted that major proportion of small buyers will fall under exempted category where land to be developed is less than 500 square meters or number of apartments is less than 8, thereby providing no relief to small buyers under this Act.
- Delay in sanctions and plan approvals by regulatory authorities play a major role in project delay and thus need to be brought under its ambit if government genuinely wishes to achieve its objective.
- With all the powers with State Governments w.r.t. notifying & implementing rules, undue advantage rests in the hands of the States. There must be a central body to ensure non-dilution of rules and to ensure appropriate implementation by each state
- With consolidation in market, only a few sellers may exist. This is not good for market as prices of properties might increase due to reduced competition.
- Due to potential delays in cash flow realisations from the project, there will be an increased reliance on external capital to achieve operational effectiveness & growth.

Conclusion

Developers will now need to work on their project delivery capabilities by upgrading their project development skills, especially in the area of project planning, design development, project management, risk management, engineering, in order to ensure timely delivery of the project with quality standards. Tough market conditions & absence of regulatory mechanism had badly affected buyer's sentiments and this Act is a much-needed legislation to bring back buyer's confidence. Though the Act presents a very promising future, the onus is now on State Governments for its effective implementation in order to achieve desired objectives. Even though it would be a rollercoaster ride ahead for Real Estate sector, we must agree that RERA is a welcome move and accept it whole-heartedly!

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