



Rajeev Saxena
Director, Mazars

RERA: Implementation Glitches

The enactment of the Real Estate (Regulation and Development) Act (RERA), which was proposed in 2009, but was finally passed by the parliament in May 2016 is a landmark achievement in regulating the real estate sector. The Act is expected to come into force from May 1 2017. It is a major leap forward, in cleaning the sector of the various malpractices that have plagued it for a long time. In essence, the Act seeks to protect home-buyers and help boost investments in the real estate industry.

Yet, progress in the preparation for implementing the law has been very slow, with only a handful of states having notified their version of the relevant Rules, while state level authorities have been set up in only three states till now. What makes the situation dire is the fact that all the states that have notified the rules have diluted them in favour of developers, severely compromising customers' position and rights in the process.

The states have diluted the Rules

Among the Rules that have been changed, the most common ones related to the on-going projects. The Uttar Pradesh (UP) government, for instance, has modified many clauses that will exempt several on-going projects from the purview of the Act. These include projects that have applied for the completion certificate (even if not received), those where conveyance deed (transfer of legal rights of the property) has been executed in 60 per cent of the cases, or where maintenance is transferred to the association of allottees, even if the project is incomplete. Maharashtra, on the other hand, has allowed the builders to sell common areas as plots for parking. Both Maharashtra and Madhya Pradesh (MP) have ruled that only the last sanctioned plan must be registered with the authorities, a move that will result in the exclusion of those customers who have bought the property before the plan was sanctioned. They will not have any redressal if the original plan was changed in the interim period. Other states like Karnataka have also diluted some provisions, while Gujarat has completely absolved the ongoing projects from purview of the Rules. Among the Union Territories, Delhi's notified Rules mandate the developers to disclose only those cases that have been disposed of while exempting the on-going ones. This decision has been taken although land in UTs fall under the jurisdiction of the central government. This move may result in protecting developers and compromising customers' ability to make informed decisions.

The law enacted by the central government provides for significant penalties against the developers on failure to register a property, including imprisonment of up to three years and monetary penalty of up to 10 per cent of the total project cost





While a few developers have introduced RER Acompliant agreements, others are advising their customers to buy only those properties where construction has been completed



Excluding on-going projects from the legal ambit will reduce the redressal options for the buyers who have already bought properties but have been deceived by the developers. These diluted Rules will nullify the good intentions with which the central government had passed the law and notified the rules.

Why developers' resistance

The law enacted by the central government provides for significant penalties against the developers on failure to register a property, including imprisonment of up to three years and monetary penalty of up to 10 per cent of the total project cost. The developers are also liable to pay interest of about 10 per cent per annum on the amount paid by the buyer if the possession is delayed. Furthermore, the developer is required to deposit home buyers' cash in an escrow account which is to be used only for that project; this is intended to ensure that builders refrain from mismanagement of funds and limit the number of concurrent projects. These rules, however, have led to tremendous resistance on their part, which has subsequently led to the dilution of several provisions in the Rules. In contrast to clearing the

Despite the launch of Real Estate Investment Trusts (REITs) and easing of the FDI norms, the expectations of increased inflow of foreign capital in the real estate sector may not be met if the sector lacks dependability, transparency and foreseeability



sector, these dilutions may increase the risk of increased corruption in the sector.

Developers' Adaption

Many developers, however, have already changed their functioning to comply with the law. While a few developers have introduced RERA compliant agreements, others are advising their customers to buy only those properties where construction has been completed. Several developers have also started marketing their new projects based on carpet area, while the financially stable builders are considering the "Build and Sell" model. These examples amply demonstrate that the provisions of the law can be adhered to and be brought into practice without compromising the interests of the customers. The dilution of the law at the state level therefore needs to be addressed with urgency.

A case for adaption "in spirit"

Despite the launch of Real Estate Investment Trusts (REITs) and easing of the FDI norms, the expectations of increased inflow of foreign capital in the real estate sector may not be met if the sector lacks dependability, transparency and foreseeability. This will reduce the inflow of finances much needed by this sector and limit its growth. To attract real estate FDI, increased professionalism in this sector is of paramount importance; for which the implementation of the law "in spirit" is imperative.

Going forward: What next?

These changes have led to public outcry, demanding that the states comply with the central law. Concerned with these changes and the adverse effect it may have on the buyers, formation of consumer interest groups has been initiated with the view to sensitise the relevant state governments about the detrimental impact these changes might have on the buyers and the industry. Political assertions such as that of the Housing Minister, Venkaiah Naidu's statement stating that "States do not have any power to dilute any notifications", will be helpful to nudge the states to minimise harmful clauses to the customers.

The legal aspects of the discrepancies between the central and state level regulations, need to be resolved to maximise the intended benefits of the law. Thus, while "Land" falls under the "States List" of the Constitution (and hence the Parliament may not have jurisdiction to regulate it), the primary aim of the law is to safeguard the buyers by regulating transfer of property and contracts, both of which fall under the "Concurrent List," which imply that the laws made by the Parliament shall prevail over state laws.

Despite the multitude of laws in the country today, the lack of proper implementation has always hampered their effectiveness, resulting in increased corruption, a sluggish judicial system and lengthy redressal mechanism. It is crucial, therefore, to ensure that RERA, publicised as being one of the most consumer friendly laws in the country gets implemented in spirit. ■