

Real Estate (Regulation & Development) Bill, 2013: Controversial Issues, and Suggestions



Of late, the real estate industry has come across many key problems in our country and, consequently, it has lost many of its well-wishers. Customers have little faith in builders and developers who are not delivering output within the promised deadline. Unfortunate politicised incidences like that in Greater Noida in NCR of the nation and slashing of penalty on the builder by the Competition Commission of India have further raised concerns among the customers and consolidated their viewpoint that builders and developers community could manipulate the system. To address these concerns of the real estate customers, the Ministry of Housing & Urban Poverty Alleviation of the Government of India introduced the *Real Estate (Regulation and Development) Bill 2013*, to set up real estate regulators to protect the interests of homebuyers, ensure fair practices and accountability, besides fast-track dispute resolution. The Bill was cleared in June 2013 by the Union Cabinet. The legislation, at present in a draft form, seeks to establish the *Real Estate Regulatory Authority* for regulation and planned development in the real estate sector, among other key actions. Read on to understand the issues and concerns with regard to the Bill...



CA. Raghav Bajaj

(The author is a member of the Institute who can be contacted at raghav@chiramritlaw.com.)

1. **Introduction:** Real estate market in India has faced a lot of problems in the recent past and, consequently, this sector has lost a major portion of its well-wishers. Customers and buyers have started losing faith in builders and developers who have gradually developed an impression of not delivering the promised output. The unfortunate incidences of Greater Noida in the National Capital Region (which also turned into a political issue) and the slashing of penalty by the Competition Commission of India (CCI) on a builder have instilled a feeling among stakeholders that builders and developers are taking unfair advantage of the system. To put an end to this one-sided control vested in realty builders/developers, the Government of India (Ministry of Housing & Urban Poverty Alleviation) has come with the *Real Estate (Regulation and Development) Bill 2013*,

which seeks to set up real estate regulators in states to protect the interests of homebuyers, ensure fair practices and accountability, besides fast-track dispute resolutions. Recently, on 4th June, 2013, the Union Cabinet cleared this Bill. Presently, this legislation is in the draft form, whose objectives are:

- 1.1. to establish the *Real Estate Regulatory Authority* (RERA) for regulation and planned development in the real estate sector;
- 1.2. to ensure sale of immovable properties in an efficient and transparent manner;
- 1.3. to protect the interest of consumers in the real estate sector;
- 1.4. to establish an *Appellate Tribunal* to adjudicate disputes and hear appeals from the decisions or orders of the RERA; and
- 1.5. for matters connected therewith or incidental thereto.

2. Main Provisions in the Bill:

- 2.1. The Bill proposes to regulate transactions in the real estate sector and bring about standardisation in the sector leading to healthy and orderly growth of the industry

through introduction of definitions such as 'apartment', 'common areas', 'carpet area', 'advertisement', 'real estate project', 'prospectus', etc.

- 2.2. The RERA has powers to give directions for specific performance powers to impose penalty for non-registration of projects including imprisonment for continuous violation up to three years and impose penalty in case of other contraventions.
 - 2.3. The Bill seeks to establish a regulatory oversight mechanism, through RERA and Appellate Tribunal in the States, to enforce accountability norms for promoters, buyers and real estate agents.
3. **Controversial Issues in the Bill:** At the outset, it must be mentioned that the draft law does contain some very important points in the context of present situation in the Indian real estate sector. However, there are many grey areas which require further consideration before this Bill becomes an Act. Further, there are certain points which require amendments so that they can be implemented in the desired manner. Following is a list of such issues:

S.No.	Particulars	Section No. in the Bill (if applicable)	Controversial/Grey Areas and Suggestions
1.	Exemption from registration	Section 3	<ol style="list-style-type: none"> 1. As per the Section, registration is not required in case the area of land proposed to be developed is 4000 sq meters or below, or an area as notified by the CG in consultation with the States and UT's from time to time, which may be different for different States or UTs. 2. Following suggestions can be made: <ol style="list-style-type: none"> 2.1. The minimum limit for the requirement of registration should be raised from 4,000 sq meters, otherwise a large number of small builders will be forced to register themselves with the RERA without even having the necessary resources. 2.2. The limit of 4,000 sq meters should be based on the construction area/carpet area of the project instead of the land area. 2.3. The said limit can instead be based on any of the following criteria: <ol style="list-style-type: none"> 2.3.1. type of cities (like Tier A, B, C cities) because a same State/UT may have cities with absolutely different trends in land appreciation. Thus, having the same limit throughout the entire State/UT would not be a feasible option, or 2.3.2. township-wise, or 2.3.3. link this limit with environmental laws prevalent in the area.

S.No.	Particulars	Section No. in the Bill (if applicable)	Controversial/Grey Areas and Suggestions
2.	The 70% amt to be transferred to a separate account	Section 4(3) (b)(v)	<ol style="list-style-type: none"> 1. As per the Section, 70% or such lesser percent as notified by the Appropriate Government, of the amounts realised for a real estate project from the allottees, from time to time, shall be deposited in a separate scheduled bank account within 15 days of its realisation to be utilised only for meeting the costs of the project. 2. This provision seems to be unfair and pretty harsh on the builders/developers for the following reasons: <ol style="list-style-type: none"> 2.1. The prescribed limit of 70% amount to be transferred should be reduced because if the builders/developers are required to block such a heavy portion of their realisations, then it would render their survival almost next to impossible. 2.2. Another aspect which needs to be corrected is that instead of linking the fixed percentage of 70% to the amount realised from the allottees, such percentage should be applied only on the construction cost of the project.
3.	Renewal of registration for maximum two years	Section 5(1)	<ol style="list-style-type: none"> 1. As per the Section, no registration to a promoter shall be renewed for a period of more than two years. 2. Keeping a cap on maximum extensions allowed for registration doesn't consider: <ol style="list-style-type: none"> 2.1. What will happen if the project is complete and ready for sale but units remain unsold even at the time of expiration of the said period of maximum extension allowed for registration? 2.2. Also, who will receive the sales consideration in respect of the units sold after the expiration of the registration period granted to the promoter for a real estate project? 3. Instead of keeping a fixed limit of two years, the limit of maximum extension allowed for registration should be based on the facts & circumstances of each case.
4.	Effect of lapse of or cancellation of registration	Section 6	<ol style="list-style-type: none"> 1. As per the Section, in case of lapse/cancellation of registration, the RERA may take appropriate actions including carrying out of the remaining development works by the association of allottees. 2. This provision seems impractical because in the present real estate scenario in India, more often than not, the associations of allottees are not even able to maintain their housing project/society.
5.	Penalty for contravention of other provisions of Act	Section 51	<ol style="list-style-type: none"> 1. As per the Section, penalty for contravention of any provisions (other than penalty under Section 50) may extend to 10% of the project cost with repeat offenders possibly facing prison time of up to three years. 2. Instead of having a penalty for such a wide array of offences, the Act should bifurcate the offences into the following categories: <ol style="list-style-type: none"> 2.1. Wilful default 2.2. Technical default 2.3. Substantial default 2.4. Minor default 3. Separate penalties should be provided for all type of defaults keeping into consideration the materiality of the default committed.

S.No.	Particulars	Section No. in the Bill (if applicable)	Controversial/Grey Areas and Suggestions
6.	Application to Authority	Section 4(7)(a)	<ol style="list-style-type: none"> As per the Section, the RERA shall grant the registration to the promoter, if it is satisfied that the promoter has entered into an agreement with the competent authority for completion of development works. The meaning of the phrase <i>completion of the development works</i> is not clear and, hence, is open to subjective views. It should be clarified to avoid disputes.
7.	Meaning of unfair practice or irregularities	Section 7(1)(c)	<ol style="list-style-type: none"> The Explanation to the said section defines the term “unfair practice” but does not define “irregularities”. This term should be defined or at least some guidance should be provided for the meaning of this term to avoid any disputes.
8.	Major structural structure defect or deficiency	Section 13(2)	<ol style="list-style-type: none"> As per the said section, the promoter has to rectify any ‘major structural defect or deficiency’ without any charge if such defect/deficiency is brought to its notice by the allottee within one year of handling possession. This term needs to be defined in the Bill because otherwise it will leave a very wide scope for its interpretation by every promoter.
9.	Obligations of promoter towards allottees	Section 12(2) (f)	<ol style="list-style-type: none"> This section provides that if the promoter cancels the ATS, he shall refund the amount collected along with interest at the prescribed rates. On reading this clause, it appears that the promoter shall be liable to refund the entire amount collected from the allottee in case of cancellation of ATS, irrespective of the stage and reason for cancellation of the ATS.
10	Obligations of allottee	Section 16	<ol style="list-style-type: none"> The obligations of the allottee have been kept very minimal. In case of the violation of any of his obligations, there should be stringent penal provisions on the allottee which shall not be restricted only to the payment of interest for delay in payment.
11.	Refund of amount by promoter	Section 15(2)	<ol style="list-style-type: none"> As per this section, in case of default on the part of promoter to refund the amount received from the allottee, he shall be liable to pay interest chargeable from the date the promoter received the amount or any part thereof, till the date the amount or part thereof and interest thereon is returned. Instead of charging the interest from the date of receipt of amount by the promoter, the interest payable should be calculated from the date the promoter becomes liable to refund the said amount.

...the draft law does contain some very important points in the context of the present situation in the Indian real estate sector. However, there are many grey areas which require further consideration before this bill becomes an Act. Further, there are certain points which require amendments so that they can be implemented in the desired manner.

- Conclusion:** All in all, the new law on the regulation and the development of real estate market is a step in the right direction, but the flaws or grey areas in this vital law should be corrected at the draft stage only to avoid any vexatious disputes in the future. ■