

## **Navigating the Real Estate (Regulation and Development) Act 2016: Challenges and the Way Forward**

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### **ABSTRACT**

The Real Estate (Regulation and Development) Act 2016 can be ascertained as the regulatory incumbent for the new age of the real estate markets. Buyers are no longer at the discretion and mercy of the promoters, and the industry has set provisions that aim to benefit all stakeholders. Thus, the sector's health is now proportional to the act's efficacy, any discrepancies or omissions in the act's extent can have dire and profound consequences that will have rippling and functional effects throughout the industry. This paper identifies and suggests policy changes for such inconsistencies. The paper employs an extensive review of the available literature and analysis using secondary data. Some suggestions are mainly based on procedural issues that require structural reform of the act itself and are more nuanced in nature like establishing proper executive powers for RERA authorities whereas some recommendations are a call to confront fresh problems arising from the ever-changing landscape of the real estate segment and the country like the need for provisions for green and sustainable construction in the modern world.

**KEYWORDS:** RERA; Real Estate; Legislation; Stakeholder; Government; Development

### **INTRODUCTION**

The Indian real estate market has undergone significant change in recent years. There has been a substantial uptick in the demand for both residential and commercial real estate. Trends like the mass adoption of premium gated societies have been on the rise (Anand, 2022). The industry is said to be the second-biggest employer in India after agriculture. The influx of growth in the sector can be attributed to multiple reasons. From increased earning potential in big cities to an uptick in foreign investments, the market has seen a flurry of growth (Anand, 2022). For instance, the practice of business outsourcing to India has led to a massive increase in not just the demand for corporate housing but an overall increase in the development of real estate in major cities (Mangla and Srivastava, 2023). Given the country's growth, India has also become a lucrative target for foreign direct investment from which the country could very much benefit (Reddy, 2013).

All these developments no matter how glamorous and welcomed initially did not match the then-current state of the land and property scenario. The sector was unorganised and was not equipped to deliver on the newfound enthusiasm (Sinha, Soni and Prajapati, 2020). Affordable housing was, and still is a contentious issue, with the market being in a surplus for luxury apartments and a deficit for affordable options (Sayeed, 2023). The government in lieu of the stark number of issues, enacted several policy changes and initiatives for the sector's integrity and potential for growth (Das and Anchalia, 2023). Problems range from structural

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issues built into the system like the labyrinthine approval process to legal hurdles like land title issues and possession delays (Anand, 2022). The market suffered from an overall lack of structural competency and hence was not ideal or friendly enough for overseas direct investment that had the potential to turbo boost not only the sector's but the whole economy's growth (Sinha, Soni and Prajapati, 2020).

There was clearly a need for major reforms that would rectify these issues in the land and property markets and standardize the industry once and for all. To answer the need of the hour and bring in much-needed regulation for the already increasingly fragmented market the Real Estate (Regulation and Development) Act 2016 was introduced. A much-needed piece of legislation, the act was supposed to be an answer to all major issues tormenting the real estate sector throughout the country, barring a few exceptions. It was aimed at introducing much-needed organisation and transparency to the sector at all levels and to all stakeholders at once. The act was aimed at inducing confidence and trust in the industry (Godge, Gandal and Kumar, 2023).

The idea of a central regulatory model in the Indian real estate industry started to take root in 2009 in the form of the Model Real Estate (Regulation and Development) Act, 2009. The act though a step in the right direction only proposed central regulations for residential properties and promoters. Commercial properties and other stakeholders like real estate agents were not considered in the equation. Owing to the previous limitations, a new draft was introduced in 2011 that tried to fill many of the gaps in the former bill. The distinction between the regulatory framework of commercial and residential properties was minimised and the term 'immovable properties' was used instead. Real estate agents were recognized, though their registration was still not necessary. New iterations of the bill were again proposed in 2013 and 2015, with the recommendations added to the 2015 bill made by the Rajya Sabha Select Committee, the 2015 bill was finally passed as the Real Estate (Regulation and Development) Act 2016 (Rab, 2017). The act came into force on May 1, 2016, it was further amended and the remaining parts became operative on May 1, 2017 (Shardul Amarchand Mangaldas & Co., 2018). The goal of the legislation can roughly divided into three distinct groups. "First, regulation and promotion of the real estate sector, second, protection of the interest of the consumers in the real estate sector and third, speedy dispute redressal" (Rab, 2017, p.38).

Given the significance of the act and its ideal set of objectives especially in terms of introducing a central regulator to a fragmented and unregulated real estate market. It is essentially quintessential to the functioning of the sector.

## **OBJECTIVES**

From an extensive literature review and a systematic qualitative analysis of the act, this paper aims to

1. Critically analyse the Real Estate (Regulation and Development) Act 2016.
2. Highlight current problems and give suggestions for the act's improvement.

## **LITERATURE REVIEW**

In order to estimate the efficacy of the heralded Real Estate (Regulation and Development) Act 2016. It is imperative that a multifaceted and multidimensional approach is taken for the study. This literature review aims to capture the contrasting approaches taken so far and examine the act's evolution along with the real property market in a chronological manner. Further, an analysis of buyer trends and macroeconomic factors that might influence the sector are also represented. The culmination of the various directions taken here provides for an apt analysis and a context for the problem.

Anand, (2022) concluded that the increase in demand for housing especially in metropolitan cities was a result of several circumstances ranging from increased earning potential in particular big cities to a rise in foreign investments in real estate. This unprecedented level of growth caused saturation in the market and a rediscovery of certain issues plaguing the sector. The paper highlighted real estate problems such as possession delays, inadequate infrastructure and unsustainable development practices etc. Considering the importance of the real property markets for the economy the paper suggested proper institutionalisation and management measures to be undertaken by the government to help the sector function properly.

Sinha, Soni and Prajapati, (2020) emphasis that the real property sector has a unique place in the economy and affects a wide variety of axillary fields. Despite this revelation the sector's organisation to say the least is in a dismal state. The paper points out the sector's lack of transparency and organisational management and further recommends multiple changes like relaxation in foreign direct investment norms, streamlining of the housing project approval process, better incentives for researchers engaged in the development of real estate and finally reduction in borrowing interest rates for developers.

Mangla and Srivastava, (2023) observe the contribution of business outsourcing to the real estate industry in India. Their study concluded that the practice of business outsourcing not only caused an uptick in the demand for corporate offices but also led to better quality and development of public and private infrastructure in these cities. Overall the paper declared business outsourcing as a boon for the India and an unique factor in the development of demand for commercial real estate.

Reddy, (2013) shows that the property industry is undergoing major growth and development. Global attention towards the Indian property market is expanding with a major increase in overseas direct investment. The paper favors the rise in foreign direct investment as it brings better technology and management processes to India along with more openness in the real property markets itself. Problems such as lack of financing and storage infrastructure can also be solved through foreign direct investment. All in all the paper favors the government's liberal attitude in enacting liberal policies for overseas direct investment in the industry.

Sayeed, (2023) identifies the existence of a severe mismatch in the demand and supply of housing. The majority of demand is for affordable housing (1BHK flats) but the industry is overburdened with housing that mainly serves the upper middle class. This unsold inventory, strict regulations and a labyrinthine approval process for housing projects have made many developers disinterested in affordable housing altogether. The government is well aware of this problem and has worked extensively to enact many policies that protect developers'

margins and incentivize them to take up these projects. Affordable housing is a crucial component of the real estate industry being the society's need of the hour and has also proven to be a demand driver in terms of volume.

Anand, (2022) shows that people in urban areas who are better financially positioned and have better access to finance schemes have started to adopt gated societies for their housing needs. The study reveals that gated societies provide satisfaction and place attachment to residents. This uptick in interest towards gated societies can be interpreted as an incentive for developers to focus their resources towards developing these establishments. However, the paper also pointed out problems voiced by many residents of these societies such as a lack of adequate urban infrastructure outside the society and dissatisfaction with certain facilities like power backups and sewage disposal to name a few. Still in the grand scheme of things gated societies are seen as a step up for the buyer and are high in demand.

Godge, Gandal and Kumar, (2023) emphasise that RERA (Real Estate Regulatory Act) 2016 serves an important function in the property market. The act aims to consolidate and standardise the whole real property industry in its entirety. The act aims to achieve this by issuing guidelines and procedures for the entire industry, further, the act aims to protect and serve all stakeholders in the industry and not just buyers. The paper considers the act to be a major milestone as it increases transparency and trust in the industry.

Gowda et al., (2021) highlight the enthusiasm and desire for legislation that centrally and formally regulates the Indian property scenario. The research revealed that the respondents readily accepted the Real Estate (Regulation and Development) Act 2016. But there were worries regarding the act's impact on project performance and the effect it would have on future project timelines due to previous delays. Still, the overall response was positive and welcoming towards the act.

Rab, (2017) paper gave a brief history of central real estate regulations in India and analysed the three main objectives of the Real Estate (Regulation and Development) Act 2016. The paper considered the act to be an absolute necessity as it gave statutory recognition to consumer rights in the field of real property. However, the paper did illustrate certain problems and gave criticisms concerning the act. The main concern is the failure of the act's objectives due to excessive restraint and dilution of the act's scope and power respectively. The paper greatly emphasises the need for the legislation to function and meet its objectives as the Indian real property market is often associated with illicit activities which are detrimental to its reputation.

Sharma, (2018) points out that the introduction of the Real Estate (Regulation and Development) Act 2016 along with demonetization and the goods and service tax policy around the same time caused liquidity issues among buyers and a sharp increase in the price of many properties overnight. This considerable number of policy changes at the same time in India caused a cascading impact on the property market which ultimately brought about stagnation.

Bhagat and Thakur, (2019) demonstrate that the property developers became more risk-averse post the Real Estate (Regulation and Development) Act 2016's implementation. This trend of de-risking by the developers can be interpreted to occupy a positive change as a lower-risk appetite of developers can reduce project delays and induce an overall higher

completion rate for projects altogether. On the contrary, a reduction in the risk appetite of developers can also be obstructive for the industry. Since a smaller number of projects might be initiated leading to stagnation or a downtrend in the industry's growth.

Patel et al., (2020) shed light on the Real Estate (Regulation and Development) Act 2016's current performance, its shortcomings and key areas that need work. Essentially the paper recommended changes around three major domains in the act. First, to be more flexible towards developers. Since projects are cash-intensive, the act should include provisions that are more accommodating towards the developer's functional needs. Second, the act's extent needs to be clearly defined and gaps in its interpretation should be filled. There should usually be no dilution of the central act's extent and powers by the state legislation. Finally, the scope of the act needs to be broadened, all legal barriers should be eliminated by this act.

Shardul Amarchand Mangaldas & Co., (2018) report deeply analysed the Real Estate (Regulation and Development) Act 2016 from a legal point of view. The report illustrated multiple operational hurdles that have proven to be a deterrent in the realization of the act's objectives. It deliberated multiple reforms and pointed out key difficulties in the act. The recommendations of the report for the changes are uniformity of rules, filling gaps in the interpretation of certain provisions of the act, hiring experts as regulators, regulation for the said regulators, removal of compliance issues and finally flexibility in funding of projects. All recommendations in the report are aimed at smoothening and clearly defining the operation of the property markets falling within the ambit of the act. The report observed despite the poor implementation of the act if all of the stakeholders in the sector follow and fulfil all of their obligations under the said act, then the real property market is bound to thrive.

Suresh and Bagul, (2019) paper presents key issues faced by both home buyers and promoters. The paper considered the implementation of the Real Estate (Regulation and Development) Act 2016 to be a necessity and recognized the authority arising from the statute as the industry's first complete central regulator. Though the introduction of the act was imperative it did bring its own share of problems for buyers and promoters. For instance, the act aimed to safeguard home buyer needs but its powers and extent were many times diluted by the passing of state legislation that effected the central provisions of the act. There are issues relating to the interpretation of certain terms in the act like "ongoing projects" that allot special relaxations to the builders. Denial of including under-construction projects in the preview of the act. Promoters also had multiple grievances like difficulties in approval and procedures, lack of finance, high input cost and much more that the act failed to consider. The research paper concluded the act to be productive given that the central provisions and the spirit of the act are held and not violated.

Boston Consulting Group, (2021) report studied and measured the effectiveness and implementation of the Real Estate (Regulation and Development) Act 2016. It associated the act's introduction with the increase in consumer confidence in the real property markets. The report found substantial progress in the Indian property vertical since the act's deployment. However, the legislation is not flawless nor is the industry the Garden of Eden. The act's deployment across state lines is extremely mismatched. The report has illustrated multiple areas to focus upon and an array of action items that need to be acted upon, from initiatives to



increase consumer awareness about the Real Estate (Regulation and Development) Act 2016 through targeted advertising to end-to-end digitalization of the approval process. The report deliberated multiple policy reforms and initiatives to realize the targets of the legislation and make the real property section prosper.

Das and Anchalia, (2023) studied the rise of land and property in the past years by analysing the relevant past trends and found consistent growth and stability despite unprecedented events like COVID-19. The policy review acknowledged the industry's journey towards standardisation and transparency. The sector now receiving global attention is changing rapidly and for the better, new exciting ideas such as mortgage REITs (Real Estate Investment Trusts) and listed residential mortgage-backed securities are being toyed with. There is an air of optimism for the potential of the sector. Much-needed regulations like RERA (Real Estate Regulatory Act) 2016 and Model Tenancy Act 2021 have also been introduced. Even with these encouraging advancements, there are still a lot of pressing issues which need to be dealt with properly like the lack of practical policies around sustainable development, the deteriorating fundamentals of REITs and the local jurisdiction enacting legislation that dilutes the Real Estate (Regulation and Development) Act 2016 power which causes difficulties. These are few of the issues discussed in the policy overview that are currently plaguing the sector.

To summarize all agree that the Real Estate (Regulation and Development) Act 2016 was an imperative decision. Issues discussed involving the act mainly have revolved around its implementation. The prevailing market conditions propound a phenomenon of a general move towards a modern organised market. For instance, the expected increase in foreign direct investment, the move towards planned housing and the improvement in corporate real estate due to a substantial uptick in business outsourcing to India. Finally, it established that the property sector is a core pillar of the economy and activities and development in the country or the sector affect and shape each other. Hence, the Real Estate (Regulation and Development) Act 2016 which centrally governs the land and property sector is of utmost importance.

This paper employs a stakeholder approach for the assessment of the Real Estate (Regulation and Development) Act 2016. Each stakeholder in the value chain is isolated for analysis and their individual problems are discussed. Solutions or suggestions are also deliberated upon for each stakeholder's problem. This involves evaluating the act's challenges in reference to developers, the government (states), the environment and finally the buyers. By engaging in the aforementioned analysis this paper aims to bring forward a new level of nuance to this subject by categorically evaluating the act's problems.

## **RESEARCH METHODOLOGY**

This paper utilises secondary and qualitative data for analysis. For the analysis, a versatile array of different sources is employed in to draw context and recommendations. Secondary data is the information that has already been gathered and published by existing sources. Qualitative data is usually non-quantifiable in nature and is used for providing in-depth reasoning and contextualization of the subject.

## **RESULTS AND DISCUSSION**

The Real Estate (Regulation and Development) Act 2016 is a key milestone in the growth of the real property scenario in India. It is the sole central regulator for the markets and is responsible for bringing a sense of uniformity and fairness to the sector. The industry in previous decades unfortunately has not occurred as very consumer-friendly in fact it has garnered an egregious reputation for being a hub for illegal activities and the exploitation of buyers by promoters (Rab, 2017). Furthermore, the real property market is seen as critical to the growth of the economy as many other sectors directly or indirectly are dependent on it. Keeping all certain elements in mind the introduction of the act was seen as a necessity and was in fact long overdue.

In reality, the act had a two-fold objective one was to introduce uniformity and organization to the sector other was to increase trust in the industry and the confidence of the stakeholders. It is quite evident that no policymaker can create perfect legislation and foresee all difficulties that could result from a given statute. In the same way, this act is no exception but unlike other legislation, the very functioning and performance of the real property market is dependent on the statute. Hence, it is imperative that challenges arising from the act are quickly identified and solved with a sense of urgency, to protect consumer's confidence inside the market that has previously been fading in the past decades. Major challenges the sector is facing are as follows.

### **Challenges in implementation of the Real Estate (Regulation and Development) Act 2016**

The implementation of the statute has been grossly uneven between states. Certain states have yet to implement the act whereas Uttar Pradesh, Haryana and Maharashtra alone have ninety per cent share of the complaints falling under the act (Boston Consulting Group, 2021). To curb this matter, states that have found success in the implementation of the act should share their best practices and all states should regularly share their key data metrics pertaining to the real estate sector so as to aid in the analysis and policymaking efforts.

Another issue in the implementation of RERA arises from a structural defect in the statute itself. The Real Estate (Regulation and Development) Act 2016 relies solely on the local government for the execution nor does it have the sole prerogative over legislation for real estate. This makes the act partially ineffective in achieving its objectives as the other legislation can dilute its powers (Das and Anchalia, 2023). To attain uniformity in the act's progress, the basic structure and intention of the act should be preserved by the government and the judiciary from local legislation (Shardul Amarchand Mangaldas & Co., 2018).

The problem of execution lies with the local authorities leading to a slow grievance redressal process this can be solved by inviting more executive power to the regulatory bodies. The complete digitalization of the approval process can also speed up the process itself (Boston Consulting Group, 2021).

### **Financing challenges for developers**

The real estate industry is extremely cash-intensive and often involves a long arduous process for developers to acquire the needed funds. Many times the project might get delayed or even derailed with no fault of the developer. The Real Estate (Regulation and Development) Act 2016 fails to give any noticeable leeway to developers in fact, The act requires the developers to lock seventy per cent of the funds in an escrow account. Further, the act imposes heavy

penalties for project delays (Shardul Amarchand Mangaldas & Co.,2018). All these measures do protect the buyers but severely restrict the developers from taking on new projects and force them to unnecessarily expand their project timelines. Which overall affects the industry's growth?

A reduction in fund size to be locked up and the addition of certain provisions that give exceptions in the act to protect the developers from the penalties in case of certain unforeseen and unpreventable delays should be considered and deliberated upon (Patel et al,2020).

### **Sustainable development challenges**

The Real Estate (Regulation and Development) Act 2016 does not per se have any Provision to promote sustainable and green real estate projects (Boston Consulting Group,2021). Nor does it provide any special time extensions to projects in case of delays due to environmental construction bans by the government and the developers have to pay the heavy penalties (Das and Anchalia,2023).

The long-term answer to these concerns is to deliberate and introduce long-term sustainable policies in the existing legal framework and the short-term solution is to add exceptions to the penalties in the case of construction bans.

### **Miscellaneous challenges**

There is an immediate need to raise awareness and educate the general populace about the powers and extent of the Real Estate (Regulation and Development) Act 2016. Most buyers are only aware of the mandated registration under the act and the existence of RERA authorities. They are oblivious to the existence of the provisions made to protect their interests in the act. Awareness initiatives like targeted advertising and professional stakeholders sharing information about the act are the hourly necessities (Boston Consulting Group,2021). The state and awareness of the RERA web portal which aims to deliver information about registered projects continues to be dismal. An establishment of a certain minimum standard for the websites is required (Boston Consulting Group,2021).

Stalled projects continue to be a contentious issue in the sector many of them were initiated before the enforcement of the act. RERA authorities continue to be unclear about the procedure of dealing with these projects. This issue requires guidelines so that the authorities can clearly and properly address these projects (Boston Consulting Group,2021).

Following were some major challenges with suggested solutions that the policymakers can take into account. The real estate sector is ever-evolving and the needs of the industry continue to change with time. It is the onus of the policymaker to keep up with the developments and make policies that are balanced which do not disproportionately restrict the sector's potential nor in the grab of unlimited growth neglect the rights and needs of the commoner. Policies should be inclusive and modernized through reform.

### **CONCLUSION**

The Indian real estate industry hosts a diverse set of challenges each pertaining to different aspects of the stakeholders in the value chain. Whether these challenges come in the form of development disparities between states, Local government inefficiencies in administration or the historically lopsided relationship between the promoter and the buyer. Where the buyer



was the victim of asymmetrical information that promoters often failed to reveal. It is clear the Real Estate (Regulation and Development) Act 2016 was a correct measure. The state of the industry after this act has shown signs of improvement. However, it is important to note the progress is still underwhelming as mentioned above the sector still suffers from major challenges. Further, for the proper implementation and functioning of the act, a major emphasis on consumer education through the establishment of efficient information channels and a complete shift towards digitalization of the authorities is highly recommended. Restructuring of RERA authority powers and their role should also be considered. Economic realities relating to developer finances and non-alignment of RERA authorities with the needs of concerned stakeholders like dealing with stalled projects need to be acknowledged and tackled in an orderly fashion. Solutions and suggestions have been deliberated about these problems in this paper. Finally, emphasis on sustainable green development policies for the real estate industry is the imperative and needs further discussion. Despite these challenges, an expanding economy, such as India's, can expect major developments in its real estate sector given the reforms are continuously instituted and the interested parties receive the attention they deserve in the future.

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