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**“Critical Analysis of The Rera Act, 2016”**

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**Abstract**

One of the most contentious and typical form of litigation involves Real Estate issues, which serve as the most burdensome form of litigation in the field of Law. In this paper we will analyze the effect of RERA Act 2016 and its effect upon the present legal system in the Court.

This Act was introduced in India so that the longstanding issues and challenges prevailing in the real estate sector may be addressed properly. The Act aimed to bring transparency, accountability, and efficiency in the world of real estate market, safeguarding the interests of homebuyers as well as promoting growth and investment in the particular sector.

Before the enactment of RERA, the Indian real estate sector faced numerous challenges, which were ranging from project delays to fraudulent practices, leading to a lack of trust among homebuyers

**Keywords:** Real Estate, Housing, Financial Mismatch

**Introduction**

It is widely acknowledged that having a place to live is a basic human need. Access to adequate housing often serves as a foundation for enjoying other rights, such as the right to work, health, social security, education, voting, and privacy. Human beings naturally seek a safe, secure, and appropriate place to live. Due to the severity of global housing shortages, both international and regional human rights frameworks now recognize housing as a fundamental human right. Consequently, many countries have incorporated the right to housing into their legal frameworks in accordance with international human rights norms.

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In India, the judiciary has shown commendable dedication to this issue, interpreting the right to housing as an essential component of the right to life under Article 21 of the Constitution. Over recent decades, the real estate sector in India has experienced substantial growth. However, this growth has brought about numerous challenges. In the absence of a dedicated legal framework, various issues hampered the smooth functioning of this sector.

To address these concerns, the Real Estate (Regulation and Development) Act, 2016—commonly referred to as RERA—was enacted. This legislation was designed to resolve the long-standing issues in the real estate industry by promoting transparency, accountability, and efficiency. Its primary aim was to protect the interests of homebuyers while also fostering development and investment in the sector.

Before RERA, the real estate market in India was plagued with problems such as project delays, financial mismanagement, and deceptive practices, which undermined public trust. Developers frequently encountered liquidity problems, causing construction delays or even project abandonment. Meanwhile, homebuyers were left with limited options for redress. Misleading advertisements, broken promises, and misallocation of funds were common, further eroding consumer confidence.

One of the main reasons RERA was necessary was the lack of transparency in real estate transactions. Developers often withheld vital project details, leading to disputes and legal challenges. RERA tackled this by requiring developers to register their projects with a regulatory body and provide comprehensive details such as layout plans, approvals, and projected completion timelines.

Another persistent issue was the lack of accountability among developers. Frequent delays, often due to diversion of funds across projects, left homebuyers stranded. To combat this, RERA mandated that developers place 70% of the project's financial resources in a dedicated escrow account, ensuring that funds are used solely for the specific project.

Deceptive practices were also prevalent, with builders making exaggerated claims to attract buyers. RERA sought to eliminate such misconduct by enforcing strict advertising and disclosure norms. Developers were required to register all projects and furnish truthful, complete information regarding the promoter, project plans, necessary approvals, and deadlines.

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Protecting homebuyers was one of RERA's core objectives. The Act introduced several buyer-centric measures, including the right to timely possession, access to detailed project information, and compensation for delays or defects. Additionally, it established a fast-track dispute resolution mechanism to provide swift justice to aggrieved buyers.

Beyond consumer protection, RERA aimed to stimulate the real estate industry by fostering a transparent and regulated environment. By restoring trust among buyers, the law hoped to boost demand and, in turn, attract greater investment into the sector, paving the way for its overall growth.

This project will undertake a critical analysis of RERA's provisions, examining both its strengths and the gaps that remain in its implementation.

### **History Of Real Estate Act**

The formulation of the RERA Act was the result of a gradual and deliberate process rather than an overnight development. The Real Estate (Regulation and Development) Act, 2016 (RERA) stands as a significant milestone in India's legal framework, introduced to bring regulation, transparency, and accountability to the real estate sector while safeguarding the rights of homebuyers. The path to enacting RERA involved a series of important events that underscored the urgent need for a structured regulatory mechanism in this industry.

The initial move toward developing the RERA Act began in 2009 during a conference of National Housing Development and Municipal Administration Ministers. The discussions focused on ensuring affordable housing for all and addressed issues such as land-use policy reform, enhancing the financial capacity of local government bodies, and strategies for creating slum-free cities. These deliberations also led the Ministry of Housing and Urban Poverty Alleviation to propose the formation of a draft real estate bill. That same year, a Model Real Estate (Regulation and Development) Act, 2009, was circulated for feedback. This model law marked the first central legislative effort aimed at regulating the real estate sector.

In 2011, the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) presented a draft Real Estate (Regulation and Development) Bill. The purpose of this bill was to oversee real estate activities and to establish regulatory bodies at both central and state levels. Unlike earlier efforts, this bill expanded its scope to cover commercial properties in addition to residential projects. However, the bill lapsed in 2014 due to the dissolution of the 15th Lok Sabha.

Later, a revised version of the bill was introduced in 2013 by the Ministry of Housing and Urban Affairs (MoHUA) and tabled in the Rajya Sabha. After undergoing multiple amendments, the bill was reviewed by a Select Committee. Taking into account the committee's recommendations, both houses of Parliament passed the bill in 2016. It received the President's assent on March 25, 2016, officially becoming the Real Estate (Regulation and Development) Act, 2016.

### **Key Features of The Act**

The primary objective of the RERA Act is to rebuild trust among homebuyers and bring greater transparency to real estate transactions. It aims to protect consumer rights through the establishment of the Real Estate Regulatory Authority (RERA), which functions as a specialized grievance redressal platform for the real estate sector. The Act also seeks to enhance the credibility of developers, brokers, and agents, thereby reducing delays in project completion and handover.

RERA introduces an appellate mechanism for grievance resolution and imposes penalties on violators. Before the Act came into force, the absence of standardized rules led to frequent disputes between developers and buyers, and there was no efficient system in place to resolve such conflicts.

To address this, RERA has established a dedicated authority in each state to supervise and resolve disputes related to real estate projects within their jurisdiction. Developers are now required to register their projects with RERA before initiating any sale, advertisement, marketing, booking, or offering for sale—whether for commercial or residential developments.

Certain types of projects are exempt from registration under RERA:

- Projects where the land area does not exceed 500 square meters or where fewer than nine units are being constructed. However, state governments have the discretion to reduce these thresholds.
- Projects that have already obtained completion certificates before the Act's implementation.
- Renovation, repair, or redevelopment projects that do not involve selling or allotting new units or advertising.

Project registration is valid only for the duration specified by the developer, up to the declared completion date. However, Section 6 of RERA allows for extensions under certain circumstances:

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- **Force Majeure:** Delays caused by natural disasters such as earthquakes or floods.
  - **Other Valid Reasons:** The authority may grant an extension of up to one year if sufficient justification is provided. Extensions for any other reason are not permitted.

Before RERA, buyers often suffered financial stress due to delays in receiving property possession. The Act addresses this issue by placing clear obligations on developers. Under Section 18, if the developer fails to deliver possession by the agreed date, the buyer has two options:

- Withdraw from the project and receive a refund with interest.
- Remain in the project and receive monthly interest until possession is handed over.

The Act also seeks to eliminate the common practice of developers running multiple projects simultaneously and misusing funds from one project for another. Section 4(2)(I)(D) addresses this by requiring developers to deposit 70% of the money collected from buyers into a separate escrow account, which can only be used for that specific project.

RERA also mandates that real estate agents involved in the sale or purchase of units in registered projects must themselves be registered with the regulatory authority. This ensures that agents are also held accountable under the law.

In cases where defects in structure, construction quality, or services are reported by the buyer within five years of possession, the developer is legally obligated to correct these at no extra cost within 30 days. Failure to do so entitles the buyer to claim compensation.

Moreover, any changes to the approved layout, building plans, or common areas require the prior written consent of two-thirds of the allottees (excluding the developer). Minor alterations are allowed only if needed by the allottee or required for architectural or structural reasons, provided buyers are notified in advance.

The Act also enhances transparency by clearly defining buyer rights and builder obligations. Key rights of homebuyers include: The right to request and receive information about the project. The right to inspect the construction site to track progress. The right to obtain all property-related documents upon possession. The right to a full refund if the project is delayed beyond the promised timeline. The right to take possession and make decisions regarding the property after completing payment.

### **Challenges With the Rera Act**

In 2016, India's legislature finally enacted a long-anticipated law aimed at protecting the interests of real estate buyers. For years, buyers had struggled with delayed possession of promised properties, and the introduction of the Real Estate Regulatory Authority Act

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(RERA) was seen as a welcome relief. Although the Act has significantly benefited buyers, certain shortcomings in its legal framework have created considerable challenges for developers.

RERA's scope is somewhat limited, as it only applies to residential projects that exceed 500 square meters. This leaves smaller developments—many of which also face issues like delays and unethical practices—outside its regulatory reach.

Developers typically need around 40 to 50 approvals to move forward with a project. However, the absence of a streamlined, single-window clearance system means they must seek permissions from multiple agencies, a process that is often slow and complex. Without securing these approvals, even advertising a project is prohibited. Navigating different regulatory bodies and municipal departments makes the approval process tedious and time-consuming, often preventing developers from registering their projects for extended periods. While RERA emphasizes penalizing developers for delayed project completion, it overlooks a major cause of such delays—the prolonged process of obtaining approvals and clearances. On average, securing all necessary permissions can take one to two years. Yet, the Act places the entire burden of delay on the developers and fails to hold government agencies accountable. It lacks provisions that mandate authorities to follow strict timelines or accelerate the approval process, creating an imbalance in responsibility.

### **Impact Of the Act**

With the enactment of RERA, dedicated bodies such as the State Real Estate Regulatory Authorities and the Real Estate Appellate Tribunals have been established to handle disputes related to property purchases. As a result, aggrieved parties can no longer approach traditional consumer forums or civil courts for redress in these matters. Although RERA is designed to ensure quicker dispute resolution, its real effectiveness will depend on how swiftly these specialized bodies are set up and how efficiently they operate to resolve disputes with finality.

The real estate sector plays a vital role in India's economy, contributing significantly to national development. While RERA was introduced to streamline operations in the industry, it has also had broader economic effects. One of the main challenges post-RERA has been the restriction on fund utilization—money paid for one project can no longer be diverted elsewhere. Due to RERA's stringent guidelines, many unorganized developers have struggled to comply, leading to a consolidation of the sector. In the long term, only developers who are credible and transparent are likely to thrive. This enhances buyer

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confidence, as consumers are more assured of receiving quality products within the committed timelines.

With RERA in place, homebuyers can expect a safer and more transparent experience. Developers are now required to provide a written affidavit confirming clear legal ownership of the land on which a project is to be developed. Title insurance, which protects against ownership disputes, adds an additional layer of security for buyers by covering past issues that might affect the property's title.

RERA offers long-term solutions to longstanding problems in the real estate industry. Although some challenges persist—especially as the Act is relatively new—these issues are expected to improve over time. The law aims to unify and regulate builders, which is likely to lead to more competition and better-quality construction. As a result, consumer trust in developers is expected to grow, creating a more robust and reliable market.

It is natural for new legislation to encounter initial hurdles, and RERA is no exception. Its implementation has impacted the economy and placed new demands on the real estate sector. Compliance with RERA has been difficult for many developers due to certain provisions that do not directly support their operational needs. Nonetheless, with time and proper adjustments, RERA is poised to benefit both the sector and the economy. While it poses challenges for builders, the Act has been primarily designed with consumer protection in mind, making it a significant step forward for homebuyers.

### **Conclusion**

The RERA statute marks significant progress in improving transparency within the real estate sector, increasing accountability for developers and promoters, and creating effective mechanisms for resolving disputes. In a field long plagued by corruption and irregularities, RERA's stringent regulations are expected to reduce litigation. As India continues to urbanize to meet its developmental goals, recent decades have seen a growing emphasis on managing this transformation positively. For a country undergoing such rapid change, a unified regulatory framework like RERA is essential to establish uniform standards and promote transparency in real estate transactions.

Enacting RERA is a meaningful step toward enhancing awareness among stakeholders—consumers, developers, promoters, and agents alike. Future reforms, such as the modernization of land records, streamlined land acquisition processes, and integration with GST, may follow the RERA model to support the real estate sector's growth. All

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stakeholders, including builders, promoters, agents, and buyers, are now required to strictly adhere to project specifications, legal agreements, and compliance norms. Furthermore, property owners are now more accountable for ensuring that homebuyers are satisfied with the condition and upkeep of their properties.

RERA remains committed to ensuring effective and consistent implementation of real estate regulations and has initiated structured efforts to support the sector's steady growth. The policies introduced under RERA are expected to bring about substantial improvements that contribute to both economic and social progress, promoting sustainable development and creating a more buyer-friendly environment.

The Act also plays a crucial role in fostering greater clarity and understanding in the industry. In the past, the absence of proper regulation often led to disputes between developers and buyers. RERA has provided a legal framework to address and resolve these issues, thereby improving the relationship between buyers and sellers. Most importantly, it ensures that buyers—who have historically borne the brunt of unfair practices—now have stronger protections and a greater sense of security in their investments.

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