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INDIAN REAL ESTATE SECTOR- A JOURNEY FROM NON-REGULATION TO REGULATION

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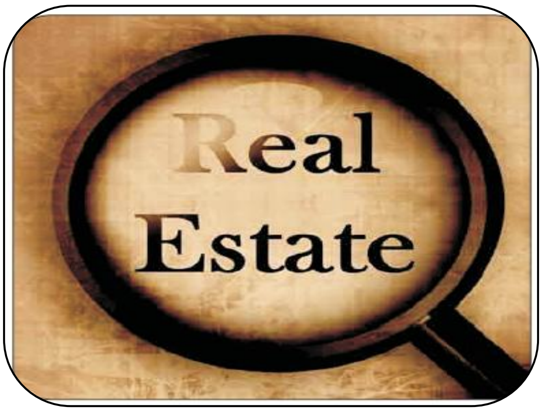

ABSTRACT

The Indian real estate sector is an integral component of the economy, exhibiting a significant degree of association with the country's overall growth. In 2013-14, the sector accounted for approximately 7-8% of the country's GDP. It is projected to grow to a market size of US$ 180 billion by 2020, and foreign direct investment is predicted to climb from US$ 4 billion to US$ 25 billion over the following decade. According to data from the Department of Industrial Policy and Promotion (DIPP), the construction sector received foreign direct investment (FDI) totalling around US $24.1 billion between April 2000 and September 2015. The sector is seeing rapid growth and is the second largest in the country, following agriculture. It provides significant employment prospects on a broad scale. The sector is subdivided into four distinct sub-sectors: Housing, Retail, Hospitality, and Commercial. The period following the implementation of reforms saw a significant increase in activity in the industry. This resulted in a higher demand for industrial and infrastructural space, as well as an increased need for commercial and housing space due to population growth and urbanisation. The processes of privatisation and globalisation have not only expanded economic prospects and local competition, but also facilitated greater foreign involvement in the real estate industry.

KEY WORDS: *Indian Real Estate , Department of Industrial Policy and Promotion (DIPP), business opportunities and domestic competition .*

INTRODUCTION

The expansion of the industry is propelled by the strong growth of the Indian economy, urbanisation, tourism, favourable government policies, liberalised finance, and rising demand for commercial and residential properties. The significant disparity between demand and supply has positioned the Real Estate sector as one of the most auspicious industries in India. The migration of population from second and third-tier cities to metropolitan areas in search of better prospects has significantly increased the demand dynamics. Consequently, numerous developers have entered the real estate market with the aim of meeting the increasing demand for homes. This phenomenon was prevalent in all the prominent developed cities in India. Mumbai is the top choice for investment, with Bengaluru and Delhi-National Capital Region following closely behind. The significant increase in the sector necessitated improved regulation and transparency.

Previously, the real estate industry was mostly governed by State Governments and Development bodies within the scope of State Town & Country Planning. The Central Government failed to implement any measures to establish a regulatory framework for the industry with the purpose of protecting the interests of property buyers. The worldwide economic recession of 2007-08 had a negative impact on the Indian economy, including its real estate market. The industry experienced a dramatic decline in demand, leading to the suspension of numerous projects due to a lack of cash. As a result, developers had significant challenges in obtaining liquid assets. A significant number of realtors failed to meet the delivery deadlines for their projects, while many others had to reduce their investment plans. The S&P BSE Realty index experienced a significant decline from its peak levels in January 2008, with stocks of major developers such as Unitech and DLF plummeting by about 85-90% over the period of October-December 2008. During the period of 2004-2008, many real estate companies became excessively leveraged due to the influx of capital from overseas and the growing demand for homes and commercial properties. However, the abrupt worldwide economic downturn caused by the subprime crisis shattered their hopes, and their circumstances deteriorated as realtors defaulted on their loans from banks and other financial institutions. As a consequence, the property industry saw a decline, discouraging consumers and resulting in a surplus of unsold properties for developers. Consequently, numerous developers began failing to meet their delivery targets, resulting in project delays. Complaints from customers started to emerge, calling for a regulatory system to handle their concerns and provide standards for developers who deceived investors and buyers with misleading claims.

Issues and Concerns in the Real estate sector

Concerns of the consumers	*Concerns of the developers*
Delays in project deliveries- causes lot of inconvenience to consumers, who suffer by making the rental payments plus EMI for home loan	Approvals and procedural difficulties- Developers have to take lot of approvals before starting a project, which in turn, increases the cost and timeline of completion
Lack of transparency and ambiguity in payment procedures-consumers not aware of the hidden charges	Scarcity of developable land and speculation in land prices and Unclear land titles- due to lack of proper records
Misleading advertisements and false promises by the developers for sale of projects and timely execution of projects	Limited access to low-cost long-term finance
Builder-buyer agreements largely in favour of developers- builders could easily make alterations in the sanctioned project layouts, building specifications without the consent of the buyers and increased costs used to get pass on the buyers	High input cost- due to increase in prices of raw materials and cost of labour and High Taxation rates (stamp duty, VAT)- inflating the cost of construction

A Step towards regulation

In order to tackle these difficulties and solve the concerns, as well as safeguard investors from the unethical actions of developers, the Indian government introduced the Real Estate (Regulation and Development) bill for the first time in 2013. The bill received approval from the Union Cabinet on June 4th, 2013 and thereafter underwent introduction and approval in the Rajya Sabha. The law seeks to establish a regulatory framework by creating two entities - the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal at the state level. The main goal was to ensure that all transactions are conducted in a fair and impartial manner and to regain the trust of investors and customers in the sector. The primary purpose of the Appellate Tribunal was to establish a platform for deliberation on issues related to the registration of projects and the resolution of complaints about project delivery delays.

Analysing the 2013 legislation:

1. The bill was universally applicable in India, with the exception of the state of Jammu & Kashmir.
2. It was relevant to residential real estate, specifically housing. Registration was waived for projects with a land area of less than 1,000 square metres and where the number of proposed flats was fewer than 12.
3. The provisions contained in the measure aimed to establish the essential elements required to achieve the desired level of transparency and consistency in real estate transactions.
4. The document included provisions for both project registration and agent registration with the Real Estate Regulatory Authority.
5. Developers/builders who failed to comply with the standards and regulations would have faced penalties.
6. The bill aimed to enhance accountability and safeguard consumers by mitigating instances of fraud and conflicts.

OBJECTIVES

- The government has established a regulatory body called the Real Estate Regulatory Authority.
- Creation of a Real Estate Appellate Tribunal in each state to guarantee an efficient and expedited resolution process for property-related disputes.
- The Central government is establishing an advisory committee to address issues related to consumer protection and the growth of the sector.
- Mandatory need for the promoters to deposit money in a distinct bank account to finance the construction expenses of the project.
- The promoter is required to register the project with the Authority.
- Projects must be registered, unless the land area is over 1,000 square metres or there are more than 12 flats to be created.
- Penalties will be imposed on promoters in order to provide compensation to customers in the event of non-compliance with any of their commitments.

The 2013 bill was presented in the Rajya Sabha in June 2013. In February 2014, the bill was sent to the Standing Committee for their input and suggestions, as well as any required changes. Following the assumption of power by the NDA, they expressed concerns with several aspects of the bill, such as the regulation of residential real estate while excluding commercial developments, the lengthy approval process for projects, and the presence of unaccounted funds in the sector. Therefore, the bill was once again referred to a Selected Committee of Rajya Sabha, which subsequently issued its findings in July 2015. The measure received approval from the Cabinet in December 2015 and was subsequently enacted by both chambers by March 2016. After almost 5 years of resistance, revisions, and adjustments, the government successfully enacted legislation for one of the nation's main sectors, which had previously been uncontrolled. The following facts provide a precise timeline of the sequential actions made by the government in its regard:

Timeline

July 2011	Ministry of Law & Justice, Central law for regulation of real estate sector
June 2013	The Real estate bill, 2013 was approved by the Union Cabinet
August 2013	Bill introduced in Rajya Sabha
September 2013	Bill referred to Standing Committee
February 2014	Standing Committee submitted its report

February 2015	Attorney General upheld validity of Central legislation
April 2015	Union Cabinet approval
May 2015	Referred to Select Committee of Rajya Sabha
July 2015	The Select committee submitted its report
December 2015	Union Cabinet approved the Real Estate Bill, 2015
March 2016	The Real Estate (Regulation & Development) bill 2016 passed by Rajya Sabha and sent to Lok Sabha
March 2016	Parliament passed the Real Estate Regulatory Act, 2016 (RERA)

The 2016 bill, along with various other government initiatives such as promoting foreign direct investment in the sector, developing Smart cities, and providing tax benefits for affordable housing projects, are crucial steps towards achieving the government's vision of "Housing for all by 2022". Each state must develop its own legislation for the real estate industry within one year of the bill's enactment. Each state would establish a proposed regulator and an appeal tribunal to address the concerns of buyers and assure timely delivery of projects. Therefore, the existing uncertainty around real estate transactions will be resolved, leading to increased confidence among home buyers, institutional investors, and other funding organisations.

Notable features of the 2016 legislation:

The legislation will be known as the Real Estate Regulation and Development Act, 2016 (RERA) and will apply to the whole country of India, with the exception of the State of Jammu & Kashmir.

The Real Estate Regulatory Authority (RERA) and its Appellate Tribunals

The Real Estate Regulatory Authority (RERA) and Real Estate Appellate Tribunal would be established in each state and union territory within one year of the bill being enacted. States and Union territories have the authority to establish multiple Real Estate Regulatory Authorities (RERAs) and Appellate Tribunals if necessary. The objective is to guarantee that all real estate transactions are conducted with equity and transparency, thereby safeguarding the interests of consumers.

Each RERA and Appellate Tribunal will be composed of a chairperson and a minimum of two full-time members who possess extensive knowledge and extensive experience in real estate, urban development, law, commerce, public affairs, administration, accountancy, industry management, and infrastructure.

An establishment of a Central Advisory Council is planned, with representatives from several union ministries, state governments, RERAs, and the real estate industry. The Council's role is to provide guidance to the central government on policy formulation, consumer protection, and the growth and development of the industry.

Roles and responsibilities of the regulatory authority

- Enforcement and oversight of all real estate developments and agents' registration and compliance
- Provide recommendations to the government about the expansion and advancement of the sector.
- The requirement to keep accurate financial records and documentation of promoters, agents, and relevant paperwork is important to prevent any form of unfair activities within the industry.
- Establishing a publicly accessible website that has a comprehensive database of promoters who fail to fulfil their obligations in executing projects, including detailed information about the projects that have been rejected or revoked.
- Ensure that promoters and consumers adhere to the regulations and protocols outlined in the act.

The bill will apply to both residential and commercial projects.

Project registration

Promoters will be required to register their whole schemes with the regulator. Promoters will only be permitted to advertise, book, or sell their projects once they have obtained clearance from the governing agency. Additionally, promoters of projects that are currently in the planning and implementation phase, and are awaiting a certificate of completion, must apply for registration within three months of the new RERA act, 2016 coming into effect.

Projects that do not require registration

- If the land area intended for development is less than or equal to 500 square metres, or if the number of flats being created is less than eight,
- Projects for which the promoters have previously secured a certificate of completion prior to the enactment of this legislation.
- Projects necessitating repair or redevelopment, excluding any marketing, selling, or fresh allocation of plots or buildings.

Mandatory disclosures required for registration

- Complete information regarding the promoters, their names, addresses, and type of organisation.
- Information on the project details that have been initiated within the past five years. Include the current status of each project, indicating whether it has been finished or is still in the development stage. Additionally, please specify the payment status for the land associated with each project.
- Official copies of approval and commencement certificates acquired from a competent authority
- The project encompasses the requirements such as the layout plan, sanctioned plan, and other relevant data. It also includes the proposed facilities and precise geographical information.
- The purchasers/allotees are required to sign the agreement deal, allotment letter, and conveyance deed in accordance with the prescribed format.
- The requested information pertains to the quantity of apartments available for sale, as well as the carpet area of each apartment. Additionally, the areas of the balcony, verandah, and garage are also included in the project.
- Information including the names and contact details of agents, contractors, architects, engineers, and other individuals involved in the project.
- A declaration by the promoters, supported by an affidavit, affirming that they are the lawful owners of the land where the proposed development will take place, and that the land is clear of any burdens or restrictions. In the event that there are any encumbrances on the site, all relevant information regarding them must be provided.
- Time period for completion of the project.
- Mandatory requirement to deposit 70% of the funds obtained from the project into a designated bank account called an "Escrow account." This sum of money would be allocated to cover the expenses associated with the construction of the project and must be utilised only for that purpose. There is a contention that this provision could result in an escalation of the overall project expenses. This is because if the cost of land, which is a component of the total project cost alongside construction expenses, surpasses 30% while the construction cost falls below 70%, the developer will be obligated, according to this clause, to seek financial assistance from banks or other financial institutions to cover the land expenses. Consequently, the overall project cost will rise, and this additional expense will ultimately be transferred to the consumers. Moreover, the necessary deposit of 70% will not be fully utilised.
- Developers are required to provide price quotations for their units or sell them exclusively based on the carpet area, which refers to the net useable floor area excluding the space occupied by walls, shafts, balcony, verandah, etc.
- Developers are prohibited from accepting a down payment or advance over 10% of the total cost of the flat, plot or building without first entering into a sale agreement with the customer.

- Developers must comply with the previously established specifications or structural design and obtain authorization from at least two-thirds of the allottees in order to transfer their majority rights and obligations to a third party or make any revisions or changes to the plan layout.

Penalties

Penalties will be enforced if there is failure to comply with or violation of any of the terms of the act, or if the promoters receive orders from the Appellate Tribunal.

The promoter's failure to comply with the registration process: Up to 10% of the projected expense of the undertaking

Failure to comply with the directives of the Appellate Tribunal: Maximum prison sentence of three years, a fine equivalent to 10% of the project's cost, or both.

Unfounded assertions made by the promoters: Up to 5% of the projected cost of the project

Intentional noncompliance with the registration requirements of the Regulatory Authority: For the promoter fee of Rs.10,000 per day for each day of default, with a maximum cumulative amount of up to 5% of the project cost. Agent/Broker-By default, on a cumulative basis, up to 5% of the total project cost. Allotee- a maximum of 5% of the total project cost

Deliberate noncompliance with the directives of the Appellate Tribunal: The promoter may face a prison sentence of 3 years, a fine amounting to 10% of the project's cost, or both. An agent or broker who commits an offence may face imprisonment for a maximum of one year or a fine equal to 10% of the project's cost. The allotee may face imprisonment for a maximum of 1 year or a fine equal to 10% of the project's cost.

Points of Differences between the 2016 bill and 2013 bill

Basis	**2013**	**2016**
Applicability of the bill	Residential real estate	Residential and commercial
Registration norms exempted	Where project was less than 1,000 square metres or the number of apartments were less than 12	Where project is less than 500 square metres or the number of apartments are less than 8
Deposit in Escrow Account	50%	70%
Liability of developers for structural defects	2 years	5 years
Imprisonment for non-compliance with the regulator and Appellate tribunal	Promoter-3 years Real estate agent and consumers- Not applicable	Promoter- 3 years Real estate agent and consumers- 1 year
Insurance of land title	Not applicable	Applicable
Interest Liability	Liability of paying interest was majorly on the promoter/ developer	Both promoters and consumers will be charged the same rate of interest if either of them delays/defaults on their part.
Appeal Settlement period	90 days	45 days

How the bill is beneficial for consumers?

Enhanced visibility and responsibility

The measure aims to enhance openness in real estate operations by prohibiting developers from advertising, booking, or selling any plot, flat, flat, or building without acquiring prior permissions from the real estate regulatory authorities. This implies that consumers would be safeguarded from deceptive assurances made by developers regarding the authorization and commencement of their initiatives. Builders and developers often resort to making fraudulent claims about project approvals in order to boost their sales. This will significantly decrease since the bill seeks to establish openness and equitable practices in all real estate transactions. Promoters and real estate agents who fail to comply with the registration requirements will face penalties, including imprisonment or a fine of up to 10% of the anticipated project cost.

Concise Payment Process

Consumers will now be charged based solely on the carpet area of their property, which refers to the useable floor surface excluding the space covered by walls. Previously, builders would use terms like super area or super built-up area to impose additional charges on consumers for shared areas, leading to confusion.

Public disclosure of relevant material

Developers are required to publicly disclose all project documentation, including information about the promoters, land status, carpet area, number of flats reserved, and the names and addresses of the agent, contractors, and architects. In addition, it is imperative for them to uphold a comprehensive database containing essential project information, including the obtained sanctions and permissions, as well as instances where registration has been rejected or cancelled, on the website of the Real Estate Regulatory Authority (RERA). This is designed to establish the essential equity in the industry that was previously absent.

Timely completion of projects

The measure mandates that promoters must deposit 70% of monies received from customers into a separate bank account, called an Escrow account, which will be exclusively utilised for the building of the specific project. Consequently, the projects must be finished within the specified timeline, as the bank account will undergo an audit each fiscal year. Moreover, each withdrawal from the account must be verified by a Chartered Accountant, Engineers, and an architect.

Refund of Amount

Consumers have the right to request a refund of the money they paid to the promoter if the project is not completed within the agreed-upon timeframe or if the developer's business is discontinued owing to the suspension or revocation of their registration. In addition to this, consumers have the right to collect interest from the date they initiated the payment to the promoter.

Existing buyers are also covered

The bill will also include existing buyers who are awaiting possession of their residences, and all the terms, rules, and regulations of the act will be applicable to both the buyers and the promoters.

Government measures to expedite investment in the sector

The Indian real estate business experienced significant achievements in the year 2015. The government has implemented several major steps to rehabilitate the financially struggling and non-transparent sector.

The Prime Minister's objective of achieving universal housing by 2022 and the Smart City initiative, which seeks to construct 100 intelligent cities, present a significant prospect for real estate developers throughout India. The project was authorised by the government in August 2015.

The government has earmarked a sum of US $ 3.72 billion in its Union Budget 2015-16 for the development of housing and urban projects. Furthermore, regulations on foreign direct investment in the building sector were relaxed in order to stimulate the development of affordable housing projects and townships. The government has issued guidelines in the non-residential sector to provide clear instructions on the taxation of Real Estate Investment Trusts (REITs).

The creation of the National Investment and Infrastructure Fund with a yearly allocation of Rs. 20,000 crores.

Authorised the building of 100,000 km of roads in the fiscal year 2015-16.

Proposed increase in infrastructure investments by Rs. 70,000 crore.

Revitalization of the public-private partnership (PPP) model for infrastructure development.

First-time house purchasers will benefit from an extra interest deduction of Rs. 50,000 per year on home loans up to Rs. 35 lakhs.

The long-awaited Real Estate Regulation and Development Act 2016 has been enacted.

These actions are all constructive measures aimed at advancing the growth of the industry, with the goal of creating a favourable environment for property purchasers and facilitating business operations for investors. The effectiveness of these measures was plainly apparent in the private equity sector, which experienced significant growth last year as private equity firms boosted their investments, particularly in residential developments. In the first nine months of 2015, PE funds made an average investment of approximately $2.4 billion, spread across 53 deals. This amount was much more than the $2.1 billion invested in 80 projects throughout the whole year of 2014. In 2015, there were significant investments in both high-end and reasonably priced housing developments. The Government of Singapore Investment Corp Pte Ltd engaged in the largest private equity deal of 2015, which amounted to approximately $300 million. GIC and DLF Home Developers Ltd.

Here are some notable trades that took place in 2015:

Deal profile	Investor	Developer	Deal value ($ mn)
September- investment in residential projects	GIC Pte. Ltd.	DLF Home Developers	$299.53 mn
August- Affordable housing	Asian Development Bank, International Finance Corporation, SCM Real estate Singapore Pvt. Ltd.	Shapoorji Pallonji Group	$ 200 mn
August- Entity level investment	Goldman Sachs Group Inc.	Piramal Realty LTd.	$136.8 mn
July- Entity level investment	Warburg Pincus	Piramal Realty Ltd.	$284.34 mn
June-Investment in IT park Chennai	SPREP Pte. Ltd., alliance between Canada Pension Plan Investment Board (CPPIB) and Shapoorji Pallonji Group	Faery Estates Pvt. Ltd,	$220 mn

CONCLUSION

The measure has generated significant expectations within the buying community, who are hopeful for equitable and transparent transactions in the industry. The bill can only be successfully enacted if the government establishes it as a robust legislation. The measure aims to stimulate the sector by increasing sales and instilling confidence in both first-time purchasers and those considering real estate as a secure investment. Promoters will be held accountable under the bill if they do not conduct business ethically, as specific guidelines have been established about the penalties that will be levied on them. Consequently, developers will be unable to impose superfluous concealed fees, and the uncertainty in the payment system will be resolved. Furthermore, consumers' investment will be protected by the developer through the allocation of 70% of their funds in a separate bank account known as an escrow account. This implies that there would be no opportunity for delays in the implementation of projects by the developers, as the allocated funds will be exclusively utilised for construction purposes. Additionally, the developers will be unable to allocate the buyers' funds towards alternative projects. However, there is a contention that this provision could result in a rise in the overall project expenses. This is because if the cost of land, which is a component of the total project cost along with construction expenses, surpasses 30%, and the construction cost is less than 70%, then according to this provision, the developer will be required to secure funds from banks or other financial institutions to cover the land expenses. Consequently, the overall project cost will rise, and this increase will be transferred to the consumers. Additionally, the whole amount of the obligatory 70% deposit will not be utilised. In contrast to previous times, home purchasers today have complete access to information regarding the projects in which they engage. Additionally, there is a regulatory authority overseeing the transactions of both parties. If any of them fails to comply, there will be severe consequences in the shape of sanctions.

The process of acquiring multiple approvals at each step of project completion used to cause significant delays in project approval. Consequently, the increased charges were passed on to the buyers. Currently, the government must focus on optimising the approval process by creating a system that consolidates all clearances onto a single platform. This would be advantageous for both developers and consumers. The measure seeks to streamline the process of purchasing a property, making it easier and more convenient for individuals. Ultimately, this will enhance efficiency in the sector since the regulator would guarantee the cessation of any unethical acts and the establishment of transparent and equitable pricing. The bill's effectiveness will mostly hinge on its implementation throughout all states and the government's ability to establish equitable conditions for developers and buyers/investors in the industry.

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