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## DECIPHERING LEGAL PATHS: THE HOMEBUYERS PREDICAMENT BETWEEN RERA AND CONSUMER COURTS

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### **Abstract**

The Real Estate (Regulation and Development) Act, 2016 (RERA) and the Consumer Protection Act have both established mechanisms intended to safeguard the interests of homebuyers in India. However, the overlapping jurisdictions and procedural nuances between these regulatory frameworks have created a complex legal maze for consumers navigating their rights and remedies in real estate transactions. This paper aims to critically analyze the predicament of homebuyers in deciding between RERA and consumer courts as their preferred legal recourse. It delves into the operational dynamics, procedural efficiencies, and legal provisions under both frameworks, providing a comparative analysis to ascertain their effectiveness in resolving disputes related to real estate. The study employs a doctrinal research methodology, analyzing statutory provisions, case law, and secondary data to understand the practical implications of these legal paths. The findings highlight the distinctive advantages and limitations of each route, noting RERA's focused approach on real estate regulation versus the broader consumer rights protection offered by consumer courts. Furthermore, the paper discusses the impact of these legal avenues on the confidence of homebuyers and their influence on the real estate market's transparency and accountability. By mapping out the legal intricacies and practical outcomes, the study offers valuable insights for homebuyers, legal practitioners, and policymakers. It suggests ways to enhance the synergy between RERA and consumer courts, aiming to streamline legal processes and improve the overall efficacy of consumer protection in the real estate sector.

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## **I. INTRODUCTION**

The Indian real estate sector has historically been fraught with challenges such as project delays, lack of transparency, and unfulfilled promises by developers. To address these issues and bring about a more organized and transparent process in the real estate sector, the Indian government enacted the Real Estate (Regulation and Development) Act in 2016 (RERA). This act provides a specific mechanism for the redressal of grievances related to real estate projects and aims to protect homebuyers while ensuring fair play in real estate transactions. RERA's introduction was seen as a pivotal moment in Indian real estate, providing a clear framework for both builders and buyers to operate within.

Parallel to RERA, consumer courts under the Consumer Protection Act have long been a recourse for aggrieved homebuyers. These courts handle a wide range of consumer complaints, including those against builders for unfair trade practices, deficiencies in services, and defects in goods. The Consumer Protection Act, 1986, and its revisions, notably in 2019, aim to protect consumers' interests by providing a simpler and more accessible means of redressal compared to the traditional civil courts.

Both RERA and the consumer courts offer avenues for grievance redressal, but they differ in scope, powers, and procedures. RERA is specifically tailored to address real estate issues, including ensuring project completion times and providing a transparent system for buyers. In contrast, consumer courts deal with broader consumer rights issues and can award compensation for damages suffered by consumers. Choosing between these pathways depends on the specific circumstances of the case and the primary concerns of the homebuyer.

This dichotomy presents homebuyers with options, each with its unique advantages and limitations. Understanding when and how to utilize these legal paths is essential for homebuyers to effectively safeguard their interests and seek appropriate redressal. The following sections will explore these options in detail, outlining the scenarios in which one might be preferred over the other and the implications of choosing a specific legal route.

## **II. PRE-RERA PHASE:**

Real estate sector plays a crucial role in Indian economy. This sector also pioneers in attracting Foreign Direct Investment. Though real estate sector has exhibited an upward trend over the recent period, it remained largely unregulated having inadequate consumer protection regime coupled with lack of standardisation and accountability on the part of builders/ developers.

The pace with which the real estate sector has been growing, scams and frauds associated with it are too growing with the same pace. The range of real estate scams varies from legal frauds and fly-by-night operators to false promises, aborting of projects after extracting huge amounts, delusive subvention schemes, untenable assured rental returns and deceptive buy-one-get-something-free offers<sup>1</sup>.

Such scams work as double edged weapon against the gullible real estate investors as after losing major chunk of their investment, justice is a far cry from reality and uncertain owing to complexities of the sector. The issue gets complicated in the absence of an industry watchdog. Unlike other sectors such as telecom, banking, insurance, stock markets etc., there is no regulating agency to administer the real estate sector. Regulatory agencies like SEBI, TRAI, RBI, IRDAI etc. have secured robust legal system in their respective sphere. The topical instances of EMAAR properties scam of 2003, Rangmahal cooperative group housing scheme (CGHS) scam of ₹4000 crore, Karnataka Wakf Board Land Scam, Noida land scam and the most highlighted Adarsh Housing Society Scam revealed how effortlessly persons at influenced posts could subvert rules and regulations for personal benefits.

The problem gets aggravated when the legal framework governing real estate sector seems to be below satisfactory level. Though the Consumer Protection Act, 1986 was in place as a redressal forum for the buyers, the recourse was only curative and inadequate to deal with the buyers' distress. Considerable time involved in availing legal remedy under the Consumer Protection Act, 1986 coupled with the limited scope of the "consumer" definition and the complexities involved with the sector had shaken the confidence of the investors globally.

The absence of standardization in the real estate sector has long been a barrier to its healthy and orderly growth. Recognizing this challenge, the need for regulation was consistently highlighted in various forums, providing compelling reasons for legislative action. This advocacy played a crucial role in the enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA), which aimed to bring transparency and accountability to the industry.

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<sup>1</sup>Sanjeev Sinha, "Top 6 real estate scams and how home buyers can avoid them" The Economics Times, April 15, 2015. Available at: [//economictimes.indiatimes.com/articleshow/46930255.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/46930255.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

In parallel, recognizing the shifts brought about by technological advancements and new-age challenges, the decades-old Consumer Protection Act of 1986 was deemed inadequate. In response, it was replaced with the Consumer Protection Act, 2019. This new act was designed to better align with a technology-driven society, enhancing consumer protections and adapting to the contemporary challenges consumers face, including those in the real estate sector.

### **III. RERA: BIRD EYE VIEW**

To harmonize the interest of home buyers and real estate industry, the Central Government passed The Real Estate (Regulation and Development) Bill in 2016. RERA has been designed in such way that it aims to set up certain rights and liabilities of the promoters, agents and buyers, establishing minimum standards of responsibility and accountability of the stakeholders, insisting for transparency of contractual conditions, controlling marketing gimmicks of the promoters and agents and provides for dedicated mechanism for fast-track dispute resolution. The gist of the relevant provisions of RERA are as under:

**III.1 Curbing the risk of pre launching and soft launching of projects by promoters:** Prior to RERA, the builders very often resorted to pre-launching and soft launching mechanisms to induce the buyers and to win over their competitors. Pre-launches have no legal sanctity and even soft launches also fall into a grey area. This poses a great risk for a buyer as there are number of instances where the builder, after obtaining substantial booking amount and other payments from the buyer, abort the project and disappears with the money. The enactment of RERA makes it imperative for the promoters and the real estate agents to register their upcoming projects under Chapter II.

On the other hand the promoter of the projects, for which Completion Certificate has been not issued, on the date of commencement of this Act shall apply for registration of its project within a period of three months from the date of commencement of this Act<sup>2</sup>. Certainly the provisions of chapter II have the potential to boost the confidence of the buyers while investing their hard earned money in real estate industry.

**III.2 Regulation of real estate agents:** Real estate agents have hitherto been un-regulated and have proved to be a great instrument in various scams. While appreciating the momentous need of the buyers, the RERA has established a mechanism in place to regulate the key player i.e.

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<sup>2</sup> The Real Estate (Regulation and Development) Act, 2016, proviso to s 3

real estate agents with clear responsibilities and functions, thereby leading to money trail and curbing money laundering<sup>3</sup>.

Section 9 and Section 10 cast certain duties and responsibilities upon the real estate agent and to comply with such other functions as specified by Rules made in that regard.

**III.3 Functions and duties of promoters:** The Act seeks to promote transparency and fair and ethical business practices, relating to transactions, through disclosure of project details and contractual obligations vis-à-vis the project and thereby promoting informed choice for the buyers. On registration, promoters have to mandatorily disclose all details on the regulator's website, such as layout, design, approvals from various authorities, details about brokers, etc<sup>4</sup>. This will bring transparency, as only registered properties can be marketed or sold.

The biggest hurdle in completion of the projects is diversion of funds by the promoters. The problem has been answered by Section 4 of the Act which provides for compulsory maintenance of separate account in a scheduled bank by the promoter in which the promoter shall deposit seventy per cent of the amounts realised for the real estate project from the allottees, from time to time to cover the cost of construction and the land cost and shall be used only for that purpose<sup>5</sup>. The section places certain restrictions on the usage of funds from the said separate account and ensures that the funds of the allottees are utilised for the completion of their respective flats/ apartment/ plot only.

Chapter III offers solutions to various problems faced by the buyers, such as obligations of promoter regarding veracity of the advertisement or prospectus<sup>6</sup>, putting restrictions on taking deposit or advance without first entering into agreement for sale<sup>7</sup>, making it obligatory for the promoters to adhere to sanctioned plans and project specifications<sup>8</sup>, liabilities of promoter in case of transfer of a real estate project to a third party<sup>9</sup>, imperative duty of the promoters to obtain insurance of real estate project<sup>10</sup> and for smooth transmission of title deeds<sup>11</sup>.

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<sup>3</sup> Press Information Bureau, Government of India, Real Estate (Regulation and Development) Bill, 2013 Introduced in Rajya Sabha, August 14, 2013. Available at <https://pib.gov.in/newsite/PrintRelease.aspx?relid=98224>. Last Visited on 21.05.2024.

<sup>4</sup> *Supra* note 2, s.11.

<sup>5</sup> *Supra* note 2, s 4(2) (l) (D).

<sup>6</sup> *Supra* note 2, s 12.

<sup>7</sup> *Supra* note 2, s 13.

<sup>8</sup> *Supra* note 2, s 14.

<sup>9</sup> *Supra* note 2, s 15.

<sup>10</sup> *Supra* note 2, s 16.

<sup>11</sup> *Supra* note 2, s 17.

Section 18 of the Act empowers the buyers to seek refund and compensation from the promoter if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or due to discontinuance of his business or any other allied reason. Chapter III, in totality, has wide scope in decentralizing the power vested in promoters and the instances of misuse of dominant powers exercised by the promoters would come down.

**III.4 Functions and duties of allottees/ buyers:** Though the Act has been enacted to safeguard the interest of buyers, yet it seeks to strike a balance by specifying the duties of the buyers. The Act aims to sensitize the buyers that promotion of real estate industry is not possible if the buyers are not conscious of their rights and duties.

Section 20 provides certain rights to the buyers, such as, right to seek information pertaining to the project, its sanctioned plan, layout plan, approvals from authorities, right to know stage-wise development of the project, right to claim the possession of the apartment and right to claim refund along with interest and compensation in case of defaults by the promoters.

Besides these rights, the section also puts certain duties and responsibilities upon the allottees, such as, obligation of allottees to make timely payments and maintenance to the promoters, formation of association of allottees and taking over possession of the flat within a period of 2 months of obtaining occupancy certificate along with extending cooperation at the time of registration of conveyance deed.

**III.5 Establishment of dedicated dispute resolution mechanism:** The Act provides for establishment of fast track dispute resolution mechanism under Chapter V. Section 20 of the Act provides for establishment and incorporation of Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under sections 31, 32, 34 of the Act. Similarly, various powers under sections 36 - 40 have been conferred for its smooth function. The Act also provides for setting up of Appellate Tribunal under Chapter VII of the Act.

**III.6 Establishment of Central Advisory Council:** The need was felt for establishment of Central Advisory Council to advise the Central Government on matters relating to implementation of the Act, questions of policy, protection of consumer interest, foster growth

and development of the real estate sector, and other matters as may be assigned to it by the Central Government<sup>12</sup>.

**III. 7 Offences, penalties and adjudication:** It is obligatory for the key players of real estate industry to comply with the provisions of the Act. Non - compliance of the provisions by promoters, real estate agent and allottees may attract punitive provisions as specified in sections 59 – 68 of the Act.

Thus, the Act seeks to provide a common platform for all disputes arising between the promoters, real estate agents and allottees before or after delivery of possession.

#### **IV. SITUATIONAL ANALYSIS OF POST -RERA ERA: HOPE OR ILLUSION FOR HOME BUYERS?**

The Real Estate (Regulation and Development) Act, 2016 (RERA) came into effect across all the states from 1 May 2017 and every state was mandated to establish a Regulatory Authority by that date. The Regulatory Authority were provided another three months time to frame the rules and regulations in the lines of the Central Act and accordingly administer their own State Rules.

RERA was welcomed with high hopes by devastated buyers. The dynamics of real estate sector changed with the enactment of RERA. After the enactment of RERA, trepidation among the builders could be felt the way they rushed to obtain Occupancy Certificate of their on-going projects to fall outside the purview of RERA<sup>13</sup>. To escape from the scope of penal and affirmative provisions of the Act, the builders are compelled to focus more on project delivery across the countries.

Being at nascent stage, teething problem of RERA can't be ignored. Various challenges arose at its budding stage, which left the investors in dilemma. Some of the practical hurdles came in the way of buyers are enumerated as under:

**IV.1 Delay in implementation of Rules & Regulation:** After enactment of the RERA on 1st May 2016, the states across the country were required to formulate and notify rules for the functioning of the Regulating Authority in their respective jurisdictions within six months. The

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<sup>12</sup> *Supra* note 2, s. 42.

<sup>13</sup> Sunil Dhawan, "Builders rush for Occupancy Certificates to duck the new Real Estate Act", *The Economics Times*, April 20, 2018. Available at [https://economictimes.indiatimes.com/articleshow/58380574.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/58380574.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst). Last visited on 21.05.2024.

states were mandated to set up Regulating Authority by 1 May 2017<sup>14</sup>. However, chaos arose when many states failed to meet both these deadlines. States like Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim have not yet notified the rules so far. Whereas Goa and West Bengal have drafted rules but not yet notified.

The Act stipulated one of essential function of RERA Authority to maintain a website within a year of Rera's establishment<sup>15</sup>. Maintenance of the website consisting of data base of registered projects, registered real estate agents, possession dates of projects, photographs of promoters as defaulters, revoked registrations etc. provides a basis for other allied functions of the Authority. However, many states have failed to create and maintain website till date which in turn resulted in dilution of provisions of the Act. The facility of online filing of complaints is not yet set into operation by many states due to poor implementation.

Whereas there are many states which have websites but they are so poorly designed that they are of no help to the buyers as they provide inadequate information to the stakeholders.

**IV.2 Lack of consumer-centric approach:** RERA was enacted precisely to promote and regulate the unorganised and unguarded real estate sector while protecting the rights of the buyers. Section 18 of the Act provides that the buyer/ allottee has a right to seek withdrawal from the project if the promoter fails to complete or is unable to grant possession of an apartment, plot or building as per the terms of the agreement for sale or due to discontinuance of his business or for any other reason. However, the practical difficulty was faced by the buyer in exercising the right to withdraw before RERA Authority. In plethora of complaints, Haryana Real Estate Regulatory Authority (HARERA) at Gurugram, Chairman KK Khandelwal had made it clear that refund cannot be granted to the allottee where construction is 40 percent completed to ensure that the completion of projects. The rationale given by the RERA for declining the right provided under section 18 of the Act was given that the purpose of RERA is to balance the interests and protect the rights of the key stakeholders: builders, buyers and agents. Thus, if refunds are given to all buyers who approach RERA, it will have negative impact on the growth of real estate industry. The same approach was followed by RERA in other jurisdiction. Similarly, Madhya Pradesh Real Estate Regulatory Authority (MP RERA) disallowed refund to a group of 40 buyers on grounds of delay<sup>16</sup>.

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<sup>14</sup> *Supra* note 2, s. 20 (1)

<sup>15</sup> *Supra* Note 2, s. 34

<sup>16</sup> Vandana Ramnani, "Can homebuyers be deprived of a refund under RERA", *The Money control*, January 22, 2019. Available at <https://www.moneycontrol.com/news/business/real-estate/can-homebuyers-be-deprived-of-a-refund-under-rera-3417721.html>. Last visited on 21.05.2024.



However, the said approach is contrary to the law established by the Apex Court<sup>17</sup> and National Consumer Disputes Redressal Commission<sup>18</sup> in catena of judgements that a buyer cannot be required to wait indefinitely. Many activists believe that the recent judgement of Apex Court will set at rest arbitrary orders being passed by RERA Authority denying refunds on their own despite provisions RERA specifically provides for it<sup>19</sup>.

Another significant concern of buyers, which is enough to give them sleepless nights, is that the builders have deliberately given a date of delivery of flat much later than that mentioned in Builder Buyer Agreement/ Allotment Letter, by several months and even years, at the time of registration of the projects with RERA. The builders are comfortably allowed to disregard the date of delivery specified in the Agreement and to complete the construction work till the date of delivery specified in the Registration Certificate of RERA. The provisions of the Act related to timely delivery of the project and serious repercussions followed by it have been diluted as the RERA spurns to take action against the builder before the date of delivery as specified in RERA Registration Certificate.

**IV.3 Uncertainty and ambiguity:** Different stakeholders of real estate industry have their own perception vis-a-vis RERA and its rules and regulations. During initial months of establishment of Authority under RERA, lot of perplexity was faced by the buyers as to the procedure of filing complaints, its format, payment of fees etc. The buyers expected simple procedures which could assist them to attain justice against delinquent builders. However, uncertain, complex and rigid procedure adopted by RERA could not yield any result except adding miseries to the buyers. For instance, the procedure followed by HARERA, Gurugram is: first apply online for Proforma B, pay fees online, prepare detailed complaint comprising of brief facts, jurisdiction, issues to be framed, relief sought, etc. along with dates and events, supply an advance copy of the same to the builder via courier, also provide an advance copy to the builder via e-mail, file the complaint in 2 sets at RERA within 30 days of applying proforma B alongwith one hard copy for the builder again and a soft copy of the entire complaint and annexures to RERA. After filing of the complaint, the buyer has to wait for atleast 2-3 months

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<sup>17</sup> Kolkata West International City Pvt Ltd Vs. Devasis Rudra (CIVIL APPEAL NO. 3182 OF 2019) Decided on 25.03.2019

<sup>18</sup> Shalabh Nigam Vs. Orris Infrastructure Pvt. Ltd. (Consumer Case No. 1702 of 2016) Decided on 06.05.2019.

<sup>19</sup> Dipak D Dash, "Buyer can't wait indefinitely for flat, says Supreme Court", Times of India, April 1, 2019, Available at <https://timesofindia.indiatimes.com/business/india-business/buyer-cant-wait-indefinitely-for-flat-says-supreme-court-on-7-year-delay/articleshow/68662461.cms>. Last visited on 21.05.2024.

to get intimation of date of hearing. Whereas the UPRERA has less complicated procedure of filing online complaint in a self explanatory format.

Apart from uncertainty and ambiguity in filing procedure, uncertainty also exists while deciding the complaint and applying the rules. Though RERA has been always reluctant to pass refund orders, however, in circumstances like where the project was aborted by the builder and other such cases, RERA granted refund orders too. Interestingly, a recent judgement passed by Haryana Real Estate Appellate Tribunal (HREAT)<sup>20</sup>, Chandigarh, has held that RERA has no jurisdiction to order refund in disputes with real estate builders and the power to grant refund and compensation vest with Adjudicating Officer only in view of section 71 of RERA. While interpreting Section 11 (4), 34 (f) and 38 of the Real Estate (Regulation and Development) Act, the HREAT firmly held that RERA “has powers only to impose a penalty or interest”.

Similar haziness, such as to the usage of reserves of the escrow account to pay refund to the buyers, appointment of Adjudicating Officer, transfer of complaints from RERA to Adjudicating Officer and the procedure to be adopted, etc. come as a bolt from the blue for the stakeholders of the industry on every stage and date of hearings.

**IV.4 Legal Fragmentation:** One of the vital causes of concern among the stakeholders of the industry is the existence of legal fragmentation. As stated in the foregoing paras, the primary purpose of enacting RERA was to regulate and organise the real estate sector. However, it is knotty to achieve the said purpose when RERA of different states work in different spheres. Though the parent Act connects them but the biggest difficulty comes when RERA of one state blatantly disregards the judgement passed by RERA of another state in similar circumstances.

Due to the absence of central authority over all RERAs, like NCDRC over state and district consumer forums, there is no uniformity in the procedure, rules and regulations adopted by RERAs of different states.

**IV.5 Inadequacy of execution agency:** Once the order is passed by the RERA, it can be executed after 90 days by the Adjudicating Officer. RERA certainly provides for summary and time-bound procedure. Within few months of enactment, RERAs, across the country, are speeding up with passing orders in favour of aggrieved home-buyers. However, the hitch arises when the buyer, even after holding order in his favour, is clueless what to do with the

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<sup>20</sup> M/s Ansal Housing Limited Vs. Sushil Kumar Batra, Appeal No. 60/ 2019, HREAT, Chandigarh. Available at <https://haryanarera.gov.in/login/viewOrderPdf/MTU=>. Last visited on 21.05.2024.

favourable order as many states have not yet appointed Adjudicating Officer to enforce or execute the orders. Very recently the Apex Court in Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors<sup>21</sup>, in a direct admonition to recalcitrant States and Union Territory across the country for not implementing the provisions prescribed under the RERA, has ordered States to appoint permanent adjudicating officers and establish RERA and Appellate Tribunal within three months. Though late, some states have appointed the Adjudicating Officers and the process of execution or enforcement of orders have been initiated giving some relief to the anguished buyers.

Nevertheless, the above shortcomings are associated to its infancy stage. RERA has the potential to become a strong regulator and to boost the growth of the industry. Certain salient features of RERA are peculiar in nature and are specially designed to handle the complexities of the industry and has sufficiently taken all key players in its scope.

#### **V. RERA VS. CONSUMER PROTECTION ACT, 2019**

Prior to RERA, the home buyers had only one forum i.e. Consumer Forums/ Commissions to seek remedy against the delinquent builders. To attract the provisions of the Consumer Protection Act, 2019, the buyers just have to prove only two things:

First, they fall within the definition of "consumer" under Section 2(7) of the Act; and

Second, that the services rendered by the builder are deficient.

The buyers got a new hope with the enactment of Insolvency and Bankruptcy Code, 2016. However, the revolution came when the Parliament passed the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 whereby allottees/ buyers were given status of financial creditors. Thus, an aggrieved buyer can initiate proceedings under the Code against the builder company.

In the meanwhile, RERA also came into picture to promote and regulate the real estate industry and to protect the interest of the buyers. The position of buyers has been fortified with the enactment of RERA. RERA and Consumer Protection Act both seek to protect the distressed buyers from the errant builders. However, they work in different sphere with given set of

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<sup>21</sup> AIR 2019 Supreme Court 4055

powers and jurisdiction. The disparity between the RERA and Consumer Protection Act can be pointed out as under:

**V.1. Sector-Specific Legislation:** The Consumer Protection Act of 2019 is designed to safeguard consumer rights across all sectors, provided the consumer fits the definition outlined in section 2(7) of the Act. For example, both a fan purchaser and a restaurant patron can lodge complaints against sellers or service providers for deficient services. In contrast, the Real Estate (Regulation and Development) Act (RERA) specifically addresses disputes within the real estate sector, involving buyers, real estate agents, and promoters. RERA is tailored to reflect the unique complexities of the real estate industry.

**V.2. Eligibility to File a Complaint:** Under the Consumer Protection Act, 2019, only individuals who meet the criteria of 'Consumer' as defined in section 2(7) are eligible to file complaints. Meanwhile, RERA allows complaints to be filed by and against the buyer, broadening the scope of who can initiate disputes under this act.

**V.3. Nature of Relief:** Under the Consumer Protection Act, buyers can demand refunds or possession of property if they can demonstrate a service deficiency by the builder. Conversely, RERA primarily aims to promote the real estate sector and thus focuses on ensuring project completion rather than allowing buyers to withdraw. The MahaRERA Chairman emphasized in a recent interview that RERA is intended to ensure delivery of homes, not to facilitate withdrawal from projects.

**V.4. Maturity of Legal Framework:** Consumer Commissions or Forums have been established for nearly four decades, leading to a well-defined and settled legal procedure. On the other hand, RERA is still developing its jurisprudence. The Supreme Court has criticized some states for their delays in appointing Adjudication Officers as mandated by section 71 of RERA, highlighting its evolving nature.

**V.5. Nature of Relief:** The Consumer Protection Act provides remedial measures after damage has occurred, making it primarily curative. RERA, however, serves both a preventive and curative function. It includes measures such as mandatory project registration, maintenance of escrow accounts, and the registration of real estate agents, which help maintain discipline among builders and regulate the industry.

A recent judgement of the Apex Court<sup>22</sup> gave a new wing to the home- buyers when, while hearing the constitutional validity of Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, it was held that the remedies under RERA, Insolvency and Bankruptcy Code, 2016 and Consumer Protection Act are concurrent. Relying upon the judgment of the Apex Court, the said proposition was reiterated by the Delhi High Court in *M/s M3M India Pvt. Ltd. & Anr. v. Dr. Dinesh Sharma & Anr.*<sup>23</sup>.

The Consumer Protection Act, 2019 stipulates the provision to establish Central Consumer Protection Authority, imposition of strict penalties for misleading advertisements, enhancement of pecuniary jurisdictions of Consumer Commission, liberty to file complaint where the complainant resides or personally gain for work and mediation is given statutory status.

This will certainly lay a foundation stone towards achieving a symmetry in the industry where buyers are not bullied by the builders and builders concentrate in completion of the project.

## **VI. CONCLUSION & SUGGESTIONS**

Despite patchy implementation, the eight year old Real Estate (Regulation and Development) Act, 2016 has accomplished commendable work on various fronts and delivered visible results.

A survey conducted by KPMG in collaboration with Naredco and APREA reveals that the real estate sector is estimated to reach USD 650 billion by 2025 and surpass USD 850 billion by 2028 and to touch a new height of USD 1 trillion by 2030<sup>24</sup>. According to a study of Department of Industrial Policy and Promotion (DIPP), the construction development sector in India ranks 4th in Foreign Direct Investment (FDI) with unprecedented equity inflows to the tune of US\$ 25.04 billion in the period April 2000-March 2019<sup>25</sup>. Economists attribute significant credit to the enactment and establishment of RERA which has bolstered the confidence of investors worldwide by regulating real estate industry and mitigating dominant position of builders.

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<sup>22</sup> *Ibid*

<sup>23</sup> AIR 2020 Delhi 23

<sup>24</sup> PTI, "Indian realty market to touch \$1 trillion by 2030: Survey", The Economic Times, September 17, 2018, Available at

[//economictimes.indiatimes.com/articleshow/65978364.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/65978364.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst). Last visited on 21.05.2024.

<sup>25</sup> Authors' estimates using data on FDI at the Regional office of the RBI. [https://dipp.gov.in/sites/default/files/FDI\\_Factsheet\\_4September2019.Pdf](https://dipp.gov.in/sites/default/files/FDI_Factsheet_4September2019.Pdf). Last visited on 21.05.2024.

Despite certain shortcomings of RERA, this data demonstrates that RERA is paving the way for a more organised and regulated sector.

RERA has, to some extent, managed to overpower galloping builders. Recently, in a landmark judgement HARERA held that developers are barred from utilising money from the escrow account as provided under section 4(2)(1)(D) of RERA. HARERA, while taking a serious note on withdrawing money from the escrow account of the Supertech Builder by Indiabulls Housing Finance Ltd, Industrial Finance Corp of India Ltd and PNB Housing Finance Ltd., directed Gurugram police to register F.I.R. against them for unauthorised utilization of money from escrow account of the builder. While protecting buyers' money from the clutches of unscrupulous builders, HARERA held that the developer cannot divert the money of the buyer for any other purpose except completing the respective project of the buyer<sup>26</sup>.

The UP Real Estate Regulatory Authority (UP Rera) also followed the same path while protecting buyers' money from a delinquent builder Unnati Fortune Holdings Private Limited. The UPRERA issued directions to freeze the bank accounts of the builder and deregistered it, after finding gross misconduct on the part of the builder and serious contravention of the provisions of RERA<sup>27</sup>.

Adding new feather to buyers' hat, the Apex Court<sup>28</sup>, while upholding Rajasthan HC<sup>29</sup> judgement, in a recent case held that buyers have a right to move RERA if the bank took possession of a real estate project as a secured creditor under SARFAESI and in such scenario RERA prevails over the SARFAESI. The SC reiterates the principle held in the Bikram Chatterji case that the RERA, being special legislation affirming special rights in favour of the buyers, would take precedence in the event of a conflict between RERA and SARFAESI. However, the SC pointed out this rule would have no application to transactions between the borrower and the financial institutions in cases where security interest has been established by mortgaging the property prior to the introduction of RERA unless it is determined that such mortgage or transaction is fraudulent or collusive. It was clarified that RERA will only have

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<sup>26</sup> "Builders must spend 70% of buyers' money on construction: RERA", The Business Today, April 25, 2019. Available at

<https://www.businesstoday.in/top-story/builders--buyers--construction-rera-housing-sector-houses-real-estate/story/340316.html>. Last visited on 21.05.2024.

<sup>27</sup> *Ibid*

<sup>28</sup> Petition for Special Leave to Appeal (C) Nos. 1861-1871/2022, passed on 14th February 2022.

<sup>29</sup> Civil Writ Petition No. 13688/2021 & 69 other connected writ petitions, passed on 14th December 2021.

the jurisdiction to entertain a complaint by an aggrieved person against the bank as secured creditor if the complaint is initiated by the homebuyers to protect their rights<sup>30</sup>.

The Hon'ble Supreme Court in Vishal Chelani and others v. Debashis Nanda<sup>31</sup> held that homebuyers cannot be treated differently from other 'financial creditors' under the Insolvency and Bankruptcy Code, 2016 (IBC) merely on the ground of securing favorable orders from the authority under the Real Estate (Regulation and Development) Act 2016 (RERA).

Despite its few shortcomings, the entire framework of RERA can be deemed successful in curbing the unchecked powers previously enjoyed by builders. The apprehension among builders is evident post the establishment of RERA which has deterred them from initiating projects without approvals, misappropriating buyer's funds and delaying project completions.

RERA, being at a nascent stage, will require additional time to evolve into a mature regulatory authority akin to SEBI, RBI, TRAI, etc. As a keen observer of proceedings before RERA and Consumer Forum, the author proposes the following suggestions for consideration by the enforcement agency:

1. **Strengthening Infrastructure and Resources:** Enhance the administrative and technological infrastructure of RERA to ensure efficient handling of cases and dissemination of information. This includes improving online platforms for filing complaints and tracking case status.
2. **Capacity Building:** Conduct regular training and development programs for RERA officials to deepen their understanding of real estate laws and consumer protection principles. This will help in rendering more informed and fair decisions.
3. **Streamlined Procedures:** Simplify and standardize the procedures for filing complaints and conducting hearings to make the process more user-friendly for consumers and other stakeholders. This could reduce delays and make the system more transparent.

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<sup>30</sup> Avikshit Moral & Vidit Mehra, "The RERA versus SARFAESI Supremacy", May 11, 2023. Available at <https://www.mondaq.com/india/real-estate/1314024/the-rera-versus-sarfaesi-supremacy>. Last visited on 21.05.2024.

<sup>31</sup> 2023 LiveLaw (SC) 894

4. **Enhanced Transparency:** Increase transparency in the workings of RERA by regularly publishing detailed reports on its activities, decisions, and the status of ongoing cases. This will build trust and accountability.
5. **Consumer Education:** Initiate extensive consumer education campaigns to inform homebuyers and real estate investors about their rights and responsibilities under the RERA Act. Knowing when and how to file complaints can empower consumers and deter malpractices by builders.
6. **Collaboration with Other Regulators:** Foster collaborations with other regulatory bodies such as SEBI and RBI to learn from their experiences and adopt best practices. Such inter-regulatory consultations can help RERA in formulating more effective regulatory frameworks and enforcement strategies.
7. **Feedback Mechanism:** Establish a robust feedback system where stakeholders can provide suggestions or express grievances about RERA's functioning. This feedback can be crucial for continuous improvement and responsiveness to stakeholder needs.

These suggestions aim to fortify RERA's role as a proactive and effective regulatory authority in the real estate sector, ultimately leading to a more organized and consumer-friendly real estate market.

RERA stands as a well crafted and promising piece of legislation. The above suggestions could enhance the confidence of home buyers on legal system. While the legislation and executive wings of the Government continue to discuss ways to bolster the legal framework for the industry through RERA, the rights of the consumers have also been adequately safeguarded by the judiciary. With the recent judgement passed by the Apex Court<sup>32</sup>, the position of consumer/buyer is more powerful now as the Apex Court upheld that the remedies under RERA and Consumer Courts are concurrent. The Delhi High Court<sup>33</sup> also reiterated the right of the buyer to approach RERA and consumer concurrently.

Nevertheless, it becomes imperative to realise that legislation alone may not be the only approach to protect the right of the home buyers. Home buyers also need to be conscious of

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<sup>32</sup> *Supra* note 21.

<sup>33</sup> *Supra* note 23.



their rights and liabilities while purchasing the property. The due diligence on the part of the home buyer may save him from falling prey to unscrupulous builders. Before entering into any contract with the builder, the buyer needs to be sure about the builder's reputation and his previous delivered projects, RERA registration certificate, approvals from various authorities and price assurance.

To conclude, real estate sector plays a significant role in the Indian economy and RERA has a potential to uplift the contribution of construction development sector in FDI by regulating the sector and securing the rights of the stakeholders.