

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016: A CRITICAL ANALYSIS

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Real estate is a highly recognized and regulated sector globally. In the past few decades, this sector has proliferated largely in India, making it the second-largest player in the world economy. Until 2016, apart from the general consumer and property laws in the country, there was no specific statute to regulate and govern this sector. Therefore, this year the Parliament passed The Real Estate (Regulation and Development) Act, 2016. This Act intends to bring transparency, safety and a regulatory mechanism in this field. It pursues to prevent 'distortion' and 'structural abuse of powers' in this sector. In this article, an attempt has been made to analyse the inception, the needs, the objectives and the provisions of this Act. Lastly, the various details that the legislature failed to address along with different loopholes in this legislation will be discussed.

Introduction

Geographically, India is the seventh largest country in the world with around 3,287,240 km² area. But surprisingly until the year 2016, there was no specific central legislation to govern the real estate sector. Therefore, the Parliament in order to regulate this one of the fastest-growing sectors passed The Real Estate (Regulation and Development) Act, 2016¹ which came into effect on 1st May 2016. The journey of the Act commenced in the year 2009 when the National Conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs made a proposition of making a law on real estate sector. This was endorsed on further consultations by the central government and on approvals by the Competition Commission of India, Tariff Commission, and Ministry of Consumer Affairs². Subsequently, in July 2011, the Ministry of Law & Justice also suggested a central legislation in the real estate relying on the power of the Parliament given in the Concurrent List³. On getting the Union Cabinet approval, the Real Estate Bill was introduced in Rajya Sabha on 4th August 2013. Finally, it came into force in the year 2016, when both Rajya Sabha and Lok Sabha passed it on 10th and 15th March respectively.

¹ Henceforth referred to as 'the Act'.

² *Real estate act comes into force tomorrow after 8- year long efforts.*, PRESS INFORMATION BUREAU, Apr. 30, 2016, available at <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=142595>>.

³ The Parliament has enacted this statute on the basis of Entry No. 6 (Transfer of property other than agricultural land; registration of deeds and documents.) and Entry No.7 (Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land) of Seventh Schedule of Indian Constitution.

Further, the President gave his assent to the Bill ten days later, thus making it an enforceable law.

What is real estate?

Black's Law Dictionary (2nd Ed.) defines real estate as – “*Real estate includes the land and anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, trees, shrubs, fences, roads, sewers, structures, and utility systems.*”

In simple words real estate can be depicted as anything related to lands, improvements, and buildings thereon, which are commercial, residential or industrial in nature. It also encompasses sale, purchase, development and construction of such improvements and buildings on these lands. Example are housing unit, commercial office space, schools, health centres, shopping complex, etc. Real estate is always associated with *immovable properties*. On perusal to the General Clauses Act, 1897⁴ and the Transfer of Property Act, 1882⁵ - *immovable property is something which is not movable and shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth except standing timber, growing crops or grass*. This widens the horizon of real estate and thus invites the application of multiple statutes in this sector.

What was the need to bring this statute?

As per the report of Standing Committee on Urban Development (2013-14), despite multiple schemes, the government was unable to cope with the increasing demands of housing and infrastructure in the country. This raised multiple concerns like, *firstly*, the private players in the market profited immensely through their arbitrary practices and consumer exploitation, therefore, became the undisputed kings of this sector. *Secondly*, notwithstanding the easy loans from public and private banks, the high-interest rates and high EMI's caused an additional affliction on people in this unregulated sector. And *lastly*, in the absence of an effective mechanism, neither any accountability could be enforced against the builders and developers⁶ nor any information could be procured from them by the consumers⁷.

What are the objectives of the Act?

This Act is passed to curb the above-mentioned malpractices, abuses, and impediment. It intends to a.) regulate and promote real estate sector; b.) protect the interest of consumers; c.) bring a smooth flow of even information between both the promoter and the purchaser; d.) bring accountability of the promoters towards the purchasers; e.) ensure a transparent and efficient sale in this sector f.) bring a balance of responsibility between both the parties;

⁴ Section 3 of the General Clause Act, 1897.

⁵ Section 3 (Interpretation Clause: '*immovable property*') of the Transfer of Property Act, 1882.

⁶ Henceforth referred to as 'the promoters'.

⁷ Henceforth referred to as 'the purchasers' or 'the allottees'.

g.) bring uniformity, professionalism, and standardization in different business transactions and practices in this sector; and h.) lastly, to establish a mechanism for fast-track dispute resolution.

What were the other existing laws that used to govern the Real Estate Sector?

As mentioned earlier, the ambit of real estate is too broad so it attracts the provisions of manifold statutes. Hence, before the Act, the real estate regime was regulated by numerous legislations like the Indian Contract Act, 1872, the Transfer of Property Act, 1882, Urban Land (Ceiling and Regulation) Act, 1976, and the Registration Act, 1908. Some of the significant ones are:

The Consumer Protection Act, 1986: It was after the amendment⁸ that 'housing construction' was brought under the purview of service⁹ under this act. Therefore, if a buyer is dissatisfied with the housing services and facilities provided by a promoter, he can approach the redressal mechanism established under this Act. The Consumer Protection Act, 1986 was inadequate in three ways while dealing with real estate. *Firstly*, the route laid here is remedial and not punitive or detrimental. *Secondly*, it lacked standardisation which avoids a uniform and a healthy growth in the real estate sector. *Thirdly*, since, the consumer forums handle all kinds of consumer disputes so they are clogged, and their disposition takes a very long time. It is noteworthy that the Act doesn't bar the jurisdiction of Consumer Forums. Also, any person whose complaint is pending before any forum established under the Consumer Protection Act, 1986, on or before the commencement of this Act, may, with the permission of such Forum, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act¹⁰.

Land Acquisition Act, 1894: Here, (a.) the appropriate government or; (b.) a society registered under Societies Registration Act, 1860¹¹ or; (c.) a cooperative society registered under the Co-operative Societies Act, 1912¹² can acquire any immovable property for the public purpose¹³ by issuing a notification in the Official Gazette¹⁴.

The Specific Relief Act, 1963: Under this Act, any person who is lawfully entitled to possession of a specific immovable property may recover it¹⁵ within the limitation period of 6 months¹⁶. Where decree for specific performance of a contract for the sale has been passed and the purchaser, within the period determined by the decree, does not pay the

⁸ Consumer Protection (Amendment) Act, (1993).

⁹ Section 2 (1) (o) of the Consumer Protection Act, 1986.

¹⁰ Section 71 of the Act.

¹¹ Section 3 of Societies Registration Act, 1860.

¹² Section 4 of the Co-operative Societies Act, 1912.

¹³ Section 3 (f) (iv) of the Land Acquisition Act, 1894.

¹⁴ Section 4 of the Land Acquisition Act, 1894.

¹⁵ Section 5 of the Specific Relief Act, 1963.

¹⁶ Section 6 (2) (a) of the Specific Relief Act, 1963.

purchase money or any other sum which the court has ordered him to pay, the vendor may apply to rescind the contract and on such application the court may rescind the contract¹⁷.

Prior to the Act, the real estate sector was *specifically* controlled by the state governments. Different states had different laws which may be categorized as: (a.) Town and Country Planning Acts to govern the development and use of lands and; (b.) Apartment ownership Acts to administer individual ownership of apartments in buildings. Various approvals and permissions were required at local and state level¹⁸.

Some States already enacted a particular legislation to govern their real estate sector. Examples are - Maharashtra Housing Regulation and Development Act, 2012, Draft Haryana Real Estate (Regulation and Development) Bill, 2013, The Kerala Real Estate (Regulation and Development) Act, 2015 and West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

Now, nonetheless, anything provided in any statute, the provisions of the Real Estate (Regulation and Development) Act, 2016 from the day of enactment will have an overriding effect on any inconsistency contained in any other law for the time being in force¹⁹.

Salient Features of the Act

The Act has created a benchmark in the field of real estate for now and many more years to come. The ambit of the Act is broad and covers the maximum factors of real estate. The following grounds are brought under the domain of the Act -

Applicability

The Act is applicable to all the real estate projects²⁰ where the area of the land proposed to be developed exceeds 500 sq. meters or where the number of apartments proposed to be developed exceeds 8, inclusive all the phases²¹. Such real estate developments could be either *residential* or *commercial* purpose²². A power is conferred upon the Appropriate

¹⁷ Section 28 of the Specific Relief Act, 1963.

¹⁸ LEGISLATIVE BRIEF THE REAL ESTATE (REGULATION AND DEVELOPMENT) BILL, 2013 (PRS Legislative Research) (2014), *available at* <<http://www.prsindia.org/administrator/uploads/media/Real%20Estate/Real%20Estate%20-20Legislative%20Brief.pdf>>

¹⁹ Section 89 of the Act.

²⁰ Henceforth referred to as 'the project'

²¹ Section 3 (2) (a) of the Act.

²² Section 2 (e) and Section 2 (j) defines '*apartment*' and '*building*' respectively. As per the definition, the apartments and buildings used for both residential and commercial purpose are covered under the ambit of the Act.

Government²³ to reduce this limit as per the requirement. It's noteworthy that this power doesn't extend to increase this threshold²⁴.

Bodies to be established

The Act proposes to establish three agencies. They are:

Real Estate Regulatory Authority²⁵: The Appropriate Government has to establish one or more RERA in each State or Union territory or one or more RERA for one State or Union Territory within one year²⁶. It shall consist of a Chairperson and at least two whole-time members²⁷.

RERA will act as a nodal agency for enforcing the provisions of the Act, regulating and promoting the real estate sector, protecting the interest of consumers in the real estate sector and advising the Appropriate Government for the enhancement of this sector. The Act also provides for a comprehensive list of the function of RERA²⁸.

For the purpose of adjudging: a.) complaints of violation of the provisions of the Act; b.) compensation and; c.) holding an inquiry under the Act, the Authority shall appoint one or more judicial officer, who is or has been a District Judge²⁹. The aggrieved person may either approach the Authority or the adjudicating officer in grievance as the case may be.

Real Estate Appellant Tribunal³⁰: The benches of the Real Estate Appellant Tribunal³¹ have to be established like RERA with the similar composition. The bench shall have at least one judicial and one administrative member.

Both the Tribunal as well as the Authority shall have all the powers of a civil court mentioned in the code of Civil Procedure, 1908.

REAT shall hear appeals from the decisions, directions or orders of the Authority. No appeal shall lie after the expiry of 60 days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received. Also, when an appeal is filed by a promoter, he has to first deposit an amount to the REAT which is to be decided by the tribunal itself.

Central Advisory Council³²: The Act provides a discretionary power to Central Government to establish a *council*. The major work of this council would revolve around

²³ Section 2 (f) of the Act: Appropriate Government include State Government, Union Territory Government and Central Government.

²⁴ Provisio to Section 3 (2) (a) of the Act.

²⁵ Henceforth referred to as 'RERA' or 'the Authority'.

²⁶ Section 20 (1) of the Act.

²⁷ Section 21 of 'the Act'.

²⁸ Section 34 of the Act.

²⁹ Section 71 of the Act.

³⁰ Section 43 of the Act.

³¹ Henceforth referred to as 'the Tribunal' or the 'REAT'.

³² Section 41 of the Act.

advising and recommending the Central Government on the growth and development of this sector and implementation of the provisions of the Act. Home Minister would be the *ex officio* chairperson of this Council.

Registration

To bring uniformity, professionalism, and standardization in the real estate sector, the Act has made the registration of the following mandatory with the RERA -

Real estate project: All the promoters before advertising, marketing, booking, selling or offering for sale whole or any part of their real estate project have to get it registered with the Authority³³. This registration is mandatory when the project exceeds the limit³⁴. This provisions will curb the practice of *pre-launch sale*.

Real estate agent: All the real estate agents have to get themselves registered with the Authority before facilitating or acting on behalf of any person to facilitate the sale or purchase of any real estate³⁵. This registration is not permanent and requires a periodical renewal³⁶. A registration number shall be granted to the agent at the time of registration which has to be quoted by him in every sale he facilitates as per the provisions of the Act³⁷.

Carpet Area

To end the confusion and the manipulation of the area available for use and area sold in a real estate project, the Act imposed a peculiar limitation on the promoters. They can now only sell the projects on the criterion i.e. '*the carpet area*'. In simple words carpet area is the net usable space in an apartment. This area excludes the area covered by the external walls and services shafts. The area covered by the internal partition walls of the apartment is included but the balcony or verandah area along with the open terrace area is excluded³⁸. While applying for registration of the project, the carpet area has to be also disclosed to the RERA³⁹.

Limitations and Obligations on the Promoters

As already discussed, one of the major reasons for enacting the Act was to curb the unprecedented power of the builders and promoters. Consequently, the following *mandatory* provisions of the Act are brought into force to bring accountability, confidence, and transparency against the sellers.

Public disclosure of project details

³³ Section 3 of the Act.

³⁴ Henceforth referred to as 'REAT'.

³⁵ Section 9 (1) of the Act.

³⁶ Section 9 (6) of the Act.

³⁷ Section 9 (5) of the Act.

³⁸ Section 2 (k) of the Act.

³⁹ Section 4 (2) (h) of the Act.

Since the registration of all the real estate projects whose size exceeds the limit has been made compulsory with the Authority. The promoters after making an application to the Authority receives a *registration number* within thirty days of applying. Further, the applicant is provided a Login Id and password to access the website of the Authority and to create his web page and to fill the details of the proposed project⁴⁰. These details include details of the promoters, layout plan, plan of development work, land status, the status of statutory approvals, the disclosure of proforma agreement and details of real estate agent, architect, structural, engineer, etc. *Therefore, all the details of a proposed real estate project which is approved by the Authority are made available for on public portal for public access.*

70 percent. deposit in an escrow account

The promoter has to timely deposit around seventy percent of the money realized for the project from the purchasers in a separate account of a scheduled bank. This money could only be used for the cost of construction or cost of land. Such withdrawal from the *separate account* has to be in proportion to the percentage of completion of the project. Also, a prior certification by an engineer, an architect, and a chartered accountant is required, stating that the withdrawal is in proportion to the percentage of completion of the project.

These accounts have to be audited every financial year by a practicing chartered accountant. Lastly, the promoter is obliged to produce such statement of accounts duly certified and signed, during the audit to verify that the amount realized from the allottees has been proportionately used for the completion that particular project.

Compensation and Refund

Generally, the purchasers are inexperienced about the market conditions and the technicalities of the real estate. This places them in a vulnerable position and makes them more prone to the manipulation and exploitation by the builders. Therefore, to empower the purchasers the Act provides the provisions which mandate the compensation and refund along with the interest on such capital invested in the cases when the purchaser is dissatisfied with the services and the property transferred. They are:

a. To sell the real estate projects, the promoters usually advertise through the prospectus. Such prospectus contains the models of the proposed projects. Subsequently, the buyers make an advance or a deposit after relying on such information. If the buyer sustains any loss or damage by reason of any improper and deceitful statement included therein, he shall be compensated by the promoter as per the provisions this Act⁴¹.

When the affected buyer intends to withdraw his advance or deposit from such project, the principle amount invested along with interest at such rate as may be prescribed shall be returned to him. He is also entitled to the compensation as per the provisions of the Act.

⁴⁰ Section 5 (1) (a) of the Act.

⁴¹ Section 12 of the Act.

b. There might be the instances where the promoter fails to complete or to give possession of the real estate as per the terms of the agreement for sale or on the promised date; or due to revocation of the registration of the project or for any other reason. Then there will be either of two repercussions: *Firstly*, if the allottee wishes to withdraw his money from the project, the promoter is liable to return the principle amount received by him in respect of that project, along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act⁴². *Secondly*, if allottee does not intend to withdraw from the project, the promoter shall pay him, interest for every month of delay, until the possession is handed over⁴³.

The promoter is also liable to compensate the allottees when any loss is caused to the allottee due to the *defective title* of the land, on which the project is being developed or has been developed⁴⁴.

Restraint on deposit or advance payment

The promoters cannot accept any deposit or advance from the purchasers. However, when the parties have entered into a written agreement for sale and have registered such agreement, the promoter is allowed to accept the deposit but the sum shall not exceed ten percent of the cost⁴⁵. The said agreement for sale along with other particulars shall mainly specify⁴⁶:

- a. The particulars of the development of the project, along with specifications and internal development works and external development works;
- b. the dates and the mode of payments by the allottees and the date on which the possession is to be handed over and;
- c. the rates of interest payable by the promoter to the allottee and the allottee to the promoter in the case of default.

Adherence to the sanctioned plans⁴⁷

The promoter shall develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. Any additions or alterations in the sanctioned plans and the project specifications (after they are disclosed and furnished to the allottee) are allowed only in these three circumstances:

⁴² Section 18 (1) of the Act.

⁴³ Provisio to Section 18 (1) of the Act.

⁴⁴ Section 18 (2) of the Act.

⁴⁵ Section 13 (1) of the Act.

⁴⁶ Section 13 (2) of the Act.

⁴⁷ Section 14 of the Act.

- i. When any changes are to be made in some specific part of the project, the prior consent of the purchaser of that part is required.
- ii. When any changes are to be made in the building or common area of a real estate project, the previous written consent of at least two-third allottees is required.
- iii. When some *minor additions or alterations* are to be made which may be necessary due to architectural and structural reasons. They may be duly recommended and verified by an authorized architect or engineer after proper declaration and intimation to the allottees. Here no consent of the allottees is needed.

When the project is transferred to an another promoter

No rights and liabilities in respect of a real estate project shall be transferred or assigned to a third party by the promoter without obtaining prior and written consent from two-third allottees excluding the promoter.

To protect the interest of the consumer, the Act provides that: (i) nothing shall affect the allotment or sale of the project made by the erstwhile promoter even after the completion of said transfer and assignments of rights and liability as per the Act and; (ii) Irrespective of the number of apartments or plots an allottee has booked or purchased, for the purpose of said consent it/he/she shall be considered as only one allottee.

There are two new obligations imposed upon the transferee or assignee. *Firstly*, he/she has to independently comply with all the pending obligations under the provisions and the rules and regulations of the Act, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees. *Secondly*, no extra time period will be given to complete the project to the transferee or assignee.

Liability in case of defects

To enhance the quality of service and the provisions provided by the promoter, the Act creates another obligation. As per Section 14 (3) of the Act, the promoter has to rectify any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development occurring within five years from the date of handing over possession to the allottee. Such rectification has to be made within thirty days without any further charge else the aggrieved allottees shall be entitled to receive an appropriate compensation as per the Act.

Penal provisions

In order to cure one of the major loopholes in the Consumer Protection Act, 1986, the Act introduced several penal provisions. Hence, the major statute which governs real estate is both remedial and penal in nature.

Under Chapter VIII of the Act, *anyone* who contravenes the provisions of the Act will be punished. Such punishment is compoundable by the court⁴⁸. Section 59 to 66 of the Act provided punishment for both the promoter as well as the real estate agent for either contravention/violation of different provisions of the Act or for noncompliance with the orders and directions of the Authority and the Tribunal. This punishment also extends to the individual allottees when they contravene the orders and directions of the Authority and the Tribunal⁴⁹.

Section 69 lays down the punishment when any offense under the Act is committed by *a company*. Such offense will render the company as well as the person who, at that time was responsible for the conduct and business of the company liable. But to make such person liable his *mala fide* intention, as well as knowledge, has to be proved beyond the doubts.

Bar on Jurisdiction

The Authority and the REAT shall have the sole jurisdiction to entertain any suit or proceeding in respect of any matter which they are empowered by or under the provisions of the Act. Also, no civil court shall grant any injunction in respect of any action taken or to be taken by Authority or the REAT in pursuance of any power conferred by or under this Act.⁵⁰

Critical Appraisal

The Real Estate (Regulation and Development) Act, 2016 has excellently dealt with a large number of issues in the real estate sector. Still, some aspects are inadequately addressed and some provisions are incompletely framed to deal with the problems efficiently. Further amendments are required in future to rectify the existing loopholes. Some of the suggested improvements in the Act are:

Definition Clause

- **Chairman:** Section 2 (l) of the Act defines '*chairman*' as Chairperson of the RERA. It fails to include the Chairperson of the Tribunal. Therefore, it is necessary to include the Chairperson of the Tribunal under Section 2 (l) else the use of the same nomenclature in both the clauses would create confusion and scope of manipulation of the law.
- **Net usable area:** The carpet area is defined under Section 2 (k) of the Act. But, for better understanding and clarity, the *net usable area* should also have been defined. Such definition of the net usable area shall include the area sold to the allottee for his individual use, which includes living room, bedroom, kitchen area, lavatory(s),

⁴⁸ Section 70 of the Act.

⁴⁹ Section 67 and 68 of the Act.

⁵⁰ Section 79 of the Act.

bathroom(s), any area of the residence allotted to the domestic help and the covered parking area.

- **Parking area:** Generally, in any residential complex or building, there is always a controversy regarding the parking area. Residents are uncertain about the parking space allotted to them in the parking area. Hence, parking space should be properly defined and earmarked to the allottee.

Real estate agent

A real estate agent is defined as ‘any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, *in a real estate project*, by way of sale, with another person or transfer of plot, apartment or building, as the case may be...’⁵¹. Therefore, as per the definition the scope of real estate agent doesn’t extend to *secondary market properties*. Hence the phrase ‘in a real estate project’ shall be deleted so as to regulate the sale of secondary market properties by any registered real estate agent.

Registration of the real estate agent only focuses on the *new property sale*, therefore leaves out other areas of business like resale of property out of the purview. The real estate agents all across the country should be registered irrespective of the type of the property, they are selling. This includes property from agriculture and industrial sector.

The Act provides neither any minimum eligibility criteria which a person has to fulfill for registration under the Act nor any model code of training of these agents. Such eligibility criteria and model code would bring a uniformity in the conduct and the qualification of these agents throughout the country.

Safety approvals

The promoter is obliged to furnish the sanctioned plans, layout plans, provisions of civic infrastructure, time schedule of completion of the project and various specifications approved by the competent authority⁵². Similarly, the promoter is also obliged to adhere to these project specifications and sanctions⁵³. Unfortunately, Parliament didn’t include the various safety approvals (like Fire Safety Certificate, Structural design safety approval etc.) which the promoter should furnish to the allottee as well as adhere while construction.

Anti-Discrimination Clause

Many cases reported every year where the individual purchasers of real estate property have been subjected to discrimination by the promoters. There is a widespread distress among many minority groups due to the refusals of builders to sell them the flats or the apartment on the basis of their background and status. Therefore, an anti-discrimination clause should

⁵¹ Section 2 (zm) of the Act.

⁵² Section 11 (3) of the Act.

⁵³ Section 14 of the Act.

have been added in 'Functions and duties of promoter'⁵⁴ i.e. *the promoter shall not discriminate on the basis of caste, creed, ethnicity, food, language, marital status, nationality, preferences, age, religion, sexual preferences, and region of origin, when transacting with a potential buyer.*

Confusion

As per Section 32 (e), the Authority has the function to recommend the Appropriate Government or the competent authority on '*measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations*'. The phrase *dispute settlement forums* will be confused with the Forums established by the Consumer Protection Act, 1986. Hence a clarification is required on this provision.

Development, Standard, and Quality of real estate projects

The Real Estate (Regulation and Development) Act, 2016 is constructed narrowly and restricted to disclosure and transparency in real estate transactions/sale. Nevertheless, the scope of this Act should have been extended to regulate the development of real estate projects. Although there are multiple compensatory provisions to handle situations like delay in completion of the project or any structural defects, there is no provision to compensate the allottee if the quality of the construction is below the promised standards. A provision to mandatorily follow the National Disaster Management Authority standards in construction could have been enshrined in the Act. The Act provides for three certificates: (a) Commencement Certificate⁵⁵ (b) Completion Certificate⁵⁶ (c) Occupancy Certificate⁵⁷. The promoters have to get them issued from the competent local authorities in different stages of a real estate project. Standing Committee on Urban Development (2013-14) suggested that if the project management has been taken by a project management consultancy company or in-house project managers of the promoter then the Project Manager shall issue a *Construction Execution Certificate*. This certificate shall state that all construction has been executed fully complaint to the good for construction drawing issued by various design consultants and the construction practices followed are given in the relevant Indian Standards issued by the Indian Bureau of Standards.

Others

Apart from the above-mentioned lacunae, there are some intricacies which the legislature didn't mention. They are:

- **Black money:** Real estate is a sector of Indian economy which is prone to black money. Since a large number of transactions relating to the transfer of real estate property are unreported, investment in this sector becomes the most convenient way of

⁵⁴ Section 11 of the Act.

⁵⁵ Section 2 (m) of the Act.

⁵⁶ Section 2 (q) of the Act.

⁵⁷ Section 2 (zf) of the Act.

camouflaging the black money. However, to curb this practice, an amendment in Section 269SS of Income Tax Act was made in 2015⁵⁸. Now, while transacting Immovable Property, 100 percent. penalty will be levied if the seller has accepted an amount of Rs. 20,000 or more in cash from the buyer. Therefore a similar and a parallel provision to eliminate underground economy should have been made in this Act too.

- **Withdrawal permission:** As mentioned above, the promoter requires prior a certification by an engineer, an architect, and a chartered accountant before withdrawing any amount from the escrow account. However, any permission from them will be futile since they all are paid by the promoter himself. Thus, it is very unlikely that they will make any report or decision against the promoter.
- **Delay by the Government Authority:** The Act provides for no timeframe for the approvals from the local authorities. There is no accountability on the part of various local authorities/agencies when the work gets delayed/ stopped due to their fault. In many cases, the builders face difficulties from getting clearances from the competent authority on their projects. They run from pillar to post to get different approvals from such authorities. Still, this Act penalizes only the promoter even though when he is also a victim.

Conclusion

The Act intends to increase transparency and accountability in the real estate sector. It provides various machineries to facilitate and regulate the transactions in commercial as well as residential projects and ensures timely project completion by the promoters. However, this would happen only if there is an efficient implementation by the State Government. Therefore, the most important challenge is to successfully establish the Real Estate Regulatory Authority in all the states within the time span of one year. Apart from the above-mentioned loopholes still there is a huge scope for the amendment. Eg: the interest of other stakeholders (apart from the allottees) in the real estate sector are not addressed.

In the end, the enactment of this Act is a landmark development in the real estate sector. It will promote well-planned urban real estate development and simultaneously protect the interest of innocent consumers who invest their hard earned money.

⁵⁸ The Finance Act (2015), available at <<http://www.cbec.gov.in/resources/htdocs-cbec/finact2015.pdf>>