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The Real Estate (Regulation and Development) Act Is A Keystone to Protect the Interest of Buyer Against Unethical Trader Practice in Real Estate Sector: A Critical Analysis.

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Abstract

Human beings are fighting with the world to run their life in a society with a valuable standard of living in which shelter is one of the essential among basic standards, to all our lives because of to have a decent life with good accommodation, everyone in the society working hard, over a while the term housing received more value in the world because it has become one of basic element for the life of the human society, today everyone working arduous to have their own houses. Housing obtains international recognition as Human Rights¹ in the universe each and everybody assured they are entitled to an adequate standard of living for themselves and to their families, it encompasses housing right also. This regulation implies that housing is recognized as Human Right and more protected against any kind of exploitation, though it is not recognized as a fundamental right under the Constitution of India.

¹ International Covenants on Economic, Social, and Cultural Rights, 1966. arti. 11

In a landmark case,² the Supreme Court incorporated Housing building activities as part of Consumer Service under Consumer Protection, over while Housing conceived with the new name of Real Estate. The unscrupulous business in the Real Estate exploit the consumer to an unbearable level, thus the Real Estate Regulatory Authority for regulating and promoting the real estate sector incorporates regulatory no³ and to ensure the selling of plot, apartment or building, as it may bet or sale of real estate project, it provides the provisions for efficiently and transparently to safeguard the interest of consumers in the real estate sector, ultimately it establish an adjudicating mechanism for speedy d Redressal housing services disputes.

Key Points

Consumer, Consumer Protect Act, Real Estate (Regulation and Development) Act, Housing, Deficiency of Services.

Introduction

The Real Estate industries in India are an awful requirement for regulation precisely to protect the consumer against builder exploitation. The Real Estate Sector is growing expeditiously, and it is one of the most attractive recognitions at the global level. In India, after the agriculture sectors, Real Estate acquires as the second largest developed sector, and it includes four counterparts such as Housing, Retail, Hospitality, and Commercial, Housing amongst is the major contributor to the growth of real estate. The housing sector contributed around 6 % to the nation's Gross Domestic Product (GDP) development.⁴ In 2015 real estate contribution was astonishing for India's fastest development (7.5%) in terms of GDP and globally it acquired the seventh rank.⁵ In the real estate sector due to the absence of professionalism, standardization, and improper regulation, consumer protection is ignored when he purchases a house from real estate agencies. The government of India and state assistance took initiative to develop the real estate sector. The smart city project was the biggest promotion scheme where they planned to construct 100 smart cities, and it's a prime opportunity for real estate development companies. The Security Exchange Board of India⁶ (SEBI) proposed peaceful regulation in the form of 'Real Estate Investment Trust' it is a rising cap on under-construction projects to attract developers and businessmen who can relocate their foreign funds into India Real Estate Sectors.

The SEBI attract and authorize the Foreign Portfolio Investors (FPI) invest in real estate investment trusts and it also permitted them to acquire a corporate bond by default it has been noticed that one side's real estate sector's growth and the other side's lack of effective regulation leads to illegal transactions and consumer exploitations increase. The objective of the RERA protects the interest of the consumer ensure efficiency in a property transaction, improve the accountability and

²Lucknow Development Authority v. A.K. Gupta , AIR 1994 SC 787.

³ Section 20(1) The Real Estate (Regulation and Development) Act 2016.(Act 16 of 2016).

⁴ Shiva Choudari "Rera for Everyone, The Real Estate (Regulation and Development) Act 2916" 2 (2018).

⁵ Prashanth Das et al., "Strategic Development of REITs in India" T&F 106 (2016).

⁶ The regulatory body to protect the security market came up on April 12, 1992. It monitors and regulates the Indian capital and securities market while ensuring to protect the interests of the investors, formulating regulations and guidelines. The head office of SEBI is at Bandra, Kurla Complex, and Mumbai.

transparency of the developers, and develop the real estate sectors with more investment. The population along with the standard of living boosts the demand for various life standing requirements out of which housing is terrible consequently, the real estate industry developed over a year and attracted more investment. But the home buyer faces many complications in the real estate sector such as delay in completion, fraudulent builders, spurious construction, the illegal transaction, failure to provide amenities much more; all these incidents demanded a legal body to regulate the real estate to protect the interest of the consumer or allottee.

I.I Governance of RERA Laws on Real Estate Industry

The RERA is extraordinarily intended to bring greater glassiness to the real estate industry and hold developers' builders, housing construction societies accountable, keeping into consideration The Ministry of Housing and Urban Poverty Alleviation published a draft of the Real Estate (Regulation and Development) Bill in 2011. The Maharashtra Housing Regulation and Development Bill, to regulate Real Estate Industry was placed before the state legislature in April 2012, and it was passed by the Assembly in June 2013.⁷ It was awaited and approved by the Central Government to go well with an Act. The Central Government considering various issues and complication facing by the purchaser of the house it introduced the Real Estate (Regulation and Development) Act 2016 to protect the society and regulate, promote Real Estate Industry. The parliament received the assent from the president on 25th March 2016 and it became effective.

Government of India has its some of the Central and State legislations to regulates the real Estate sectors, Central Legislations are Indian Contract Act, 1872, the Transferable Properties Act 1882, the Indian Easement Act, Act 1882, the Power of Attorney Act, the Land Acquisition Act 1894, the Foreign Exchange Management Act, 1999, the Security Exchange Board of India, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. (SERASI), the Land Acquisition laws, the Rehabilitation, and Resettlement Act 2013, the Consumer Protection Act 2019, and many more. Apart from the above central laws, each state government enacted its own set of laws to govern the real estate. The Consumer Protection Act incorporated the 'housing construction' within the ambit of the term 'Service',⁸ however the remedies available to aggrieved buyer against the fraudulent builders under the Consumer Protection law are only curative, not preventive, The Consumer Dispute Redressal Commissions provides justice to an injured consumer in the form monetary compensations not in terms of specific performance. Ultimately, the Government of India considering the consumer expectations against Builders, Housing Construction authority, and society in Real Estate Industry it enacted the Real Estate (Regulation and Development) Act.⁹

The RERA regulates every aspect of the real estate property transaction,

⁷ Shirish B Patel et al., "Revisiting the Real Estate Bill" 2013 34 EPW (2013).

⁸ The Consumer Protection Act 2019. (Act 35 of 2019) s.2 (1) (c).

⁹ The Real Estate (Regulation and Development) Act, 2016. (Act 16 of 2016).

excitation, selling, buying, transfer, and foreclosure of the property. The real estate law protects the consumer or the parties' rights in the property owned or purchased or sold. In the *Newtech Promoter and Development Pvt Ltd. V. State of U.P.*¹⁰ the Supreme Court interprets and culminates the importance and enactment of RERA. The Court also brings to the forward to prevent the builders who involve capricious activities indicates the reasons behind the enactment of the Act is for the protection of consumers. It also highlights provisions under the law about uniformity, and standardization of business practices and transactions in real estate sectors needs to be maintain by the builder to ensure the greater accountability towards consumers to prevents frauds, delays, and higher transaction costs, intended to balance consumer interest and the duties and responsibilities. The court highlights the significance of 'competition certificate' to administer, regulate and supervise the unregulated real estate sector. All the ongoing projects that may be executed either before or after the commencement of RERA should be obtained a Completion Certificate. The following issues recognized and regulates by RERA, (a) Legal Contracts and Agreements, (b) Dispute relating to real estate property distribution, and (c) Issues with regards to buying, selling, acquisition, transfer, leasing, and disposal of real estate property, (d) Taxation issue concern to real estate (e) Monitoring the planned construction of the real estate, (f) Administer the legal issue involved in the real estate foreclosure, and more.

The Administration of RERA on Authorities and Functions

The RERA keeping in mind common peoples' requirements simplified the rigidity of the Township Act, Municipal Act, and the Apartment Ownership Act regarding the transaction between the house buyer and seller. The Act interprets with the legal implication of the essential concepts to identify the sphere to protect the consumers who purchase flat/plot. "agreement to sell", "advertisement", "allottee", "apartment"¹¹ "building", "carpet Area", "appellate tribunal", "authority", "common Area", "development", "immovable property", "occupancy certificate", "real estate agent", "promoter", etc., The application of the Act, is limited the residential real estate or the housing construction activities above the 1000 sq. Land but the Central Government has power to reduce the threshold of 1000 sq. If in case local conditions demanded. The Act made registration of real estate compulsory to protect the interest of consumers against misleading.

The promoter is not authorized to make an advertisement, offer to sell Immovable Property, or distribute invitation any person to acquire a plot unless it is registered. The promoter has applied before the Real Estate Regulatory Authority

¹⁰ 2021CPJ 21(SC).

¹¹ *Supra* note 10, s. 2(e)- "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, go-down, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or go-down or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

(REGA) to getting registered¹² after the approval from the authority about the pre-requisition fulfillment; the Regulatory Authority can grant the registration within 15 days from the application. The authority can reject the application if the said requisition does not accord with the rules and regulations of the Act. The Act is particular about the disclosure of all the details to the public, especially, the duties and functions of the promoter, approval plan, statutory approval details, names and addresses of the Real Estate Agents who involving, engineers, contractors, and architecture to protect the interest of a home buyer. If the promoters disclose false information to Regulatory Authority for registration, the promoter will be responsible, and Regulating Authority can revoke the registration.¹³

The Rights and Education of RERA on Society

The Real Estate Act, educate the home buyer on various rights to protect themselves, namely, information about property booked, the right to know the gradual step by step completion of building, including the provision of facilities such as electricity, water, sanitary, right, claim possession of the plot, legal importance of occupancy certificate, completion certificate, right to get the refund deposit amount with interest, if the promoter become defaulter to provide the possession, right receive the necessary documents and plans. The buyer also has certain duties against the apartment purchased, he must pay the building registration charges, property tax, the basic amenity charges, all these details are exhibited transparently to prevent any disputes occurring between buyer and promoter. The constitution of apartment Every athlete association need follows the same procedure as prescribed the law. .

On the top of it, the Act precisely describes the rights and duties of the promoter. The promoter after obtaining the login ID and password from regulating authority should create the website to provide all the information about the proposed projects, details of registration granted, a list of numbers and types of apartments, commencement certificate, approval, and pending approval, the status of projects, sanctioned plan, layout plan from local authority stage-wise completion of the building or apartments, and he should liable to possess the completion certificate as well as occupancy certificate as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the elites individually or the association of athletes. It is the prime duties of the promoter they should not receive more than 10% of the overall cost of the building from the buyer as quantum leap; the promoter should bear all the charges or any outgoing payments till the hand over the physical possession of building to buyer. The most elegant knowledge needs to be aware the by the buyer the duties and responsibilities of the building should not be transferred to any other person by the promoter without obtaining prior written permission from two-third of buyers'

¹² Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.

¹³ *Supra* note 10, s.7. If the promoters violate the terms and conditions of the Act, if he involve to unfair trading.

association, in continuation without the prior written approval of the authority. Notwithstanding such transfer or assignment will not affect the allotment or the sale of the apartments, plots or buildings made by the erstwhile promoter. The promoter is liable to obtain the insurance for the project and he should pay the premium till the completion of the project.

The Constitution of Regulating Authority and Administration of Justice

The appropriate government constitutes the Real Estate Regulatory Authority and empowers it to regulate real estate. The Authority consists of a chairperson and two whole-time Directors with mandatory qualifications. The Appropriate Government has power to appoint the Chairperson and other members of regulatory authority on the recommendations of a selection committee comprises Chief Justice of High Court or his Nominee, who should be the secretary of the department dealing with housing and the law secretary. The Chairperson must be having adequate knowledge, and professional experience of at least twenty years (20) in respective area, and with respect to members they should have fifteen years' (15) experience in the field of urban development, housing, real estate development, infrastructure, economics, and technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs, or administration.

All the above said appointments of the regulating authority should be concluded by Appropriate Government. The duration of the chairperson and members is five years or up to the age of 65 years, whichever is earlier. The main functions of the authority are explicitly advising the appropriate government on the development of the real estate industry, according to the interest of the society and the protection of the consumer. The website records all the details of projects, details of promoters, revocation of registration projects, penalized projects, details of real estate agents, details including cancellation of registration such all these kinds of information must be provide in transparent manner which educate all the home buyers and the effective communication of such information to society ultimately prevent unfair treatment and consumer exploitation. The jurisdiction of registration, and stamp duty is most significance information it should be completely aware of the society. To protect the interest of consumer who are willing to buy house or flats in the apartment, the Real Estate Authority facilitate improvise the development and promotion of a healthy, transparent, efficient, and competitive real estate Industry, and it make recommendations to the appropriate government empower the competent authority for creating a single-window system for approval as well as completion of projects. The system of Single-Window encourages the construction of a building should be environment-friendly, sustainable, and affordable. The housing, promoting standardization, and use of appropriate construction materials, fixtures, fittings, and construction techniques, facilitate should be amicable redress the disputes between the promoters and buyer. The dispute settlement forums are set up by the consumer or promoter associations.

The RERA act largely empowered authority has the power to call information from all the stakeholders for the smooth conduction of investigation, and issue directions to promoters, and elite real estate agents for discharging its function. The power to impose penalty and interest, such matters laid with CCI, any cases involving affect the competitive sectors or it leads to a monopoly market. To regulate the Real Estate Industry the Central government established the 'Central Advisory Council'(CAC)¹⁴ it comprises the members who are the representative of the consumer, real estate, and housing sectors thus the recommendations for the establishment of the Central Advisory Council are fruitful for the protection of consumers.

Further, the appropriate government shall, within one year from the date of enforcement of the Act, by notification, establish an Appellate Tribunal to be known as the (name of the State/Union territory) Real Estate Appellate Tribunal.¹⁵The Tribunal has the authority to receive an appeal against the order or decision given by the Real Estate Authority and the Adjudicating officer. The Tribunal should entertain the appeal within sixty days from the date of the decision. The tribunal should have the responsibility to dispose of the appeal within sixty days from the date of appeal. The Tribunal consists of one Judicial member and one Administrative or technical member. Any parties who are not satisfied the decision of Tribunal they are having provision to file an appeal before the High Court.

In the above, the Tribunal has the power to impose a penalty against any builder for deregistration of the project, non-compliance procedures, or violation of the order of the authority. The promoter before the registration if he sold any house to consumer, he will be liable to pay a penalty of 10% of the estimated cost of the project, and in case the promoter fails to follow the orders or direction of the regulating authority he will be liable for punishment of imprisonment it is up to 3 years or a fine of 10% of the estimated project cost or both. The Tribunal penalizes home buyers and real estate agents if they fail to follow the provisions or violate the order of the authority or tribunal. Every order made by the Appellate Tribunal shall be executable as a decree of a Civil Court, and for this purpose, the appellate tribunal has all the powers of a civil court.¹⁶

Conclusion

The Housing Industry denotes one of major development Sectors in the present Business world. The Builders, Sociality, Housing Construction authority and government bodies who are involved in such business in long haul started incorporating into unwelcome monetary accumulation by exploiting consumer in terms of house buyer by pertaining to fraudulent trading. Till 19th century the fate of the house or flat buyers is worst and over exploitation as there is no specific sphere of the housing business. Nevertheless, valuable credit transfer to Consumer

¹⁴ *Id.*, s. 42.

¹⁵ *Id.*, s 43.

¹⁶ *Id.*, s.57(1)

Protection Law as it through Precedent incorporate the Housing as part of Services, and different kinds of exploitation from the builder concluded within the ambit of Deficiency of Services, The Consumer Dispute Redressal Commission, High Court and Supreme Court Extend the scope of Housing Serves and deficiency of Housing service into various area by interpretation. Hence The Consumer Protection Act is Milestone to protect the interest of consumer in real estate industries, as some of the regions were not encompassed by the Consumer Law, The Government of India Introduced the Real Estate (Regulation and Development) Act 2016 specifically to real estate industry and it regulate several spheres where consumers are much protected against unscrupulous trading by the Builders, provided in this research article researcher strongly arguing and recommending RERA Act is not properly reached to society as it is not provided real estate education to society due to such unawareness more number of house service disputes are filing before RERA Authority, many basic information such as, local authority, layout planning, Completion Certificate, Occupancy Certificate, deviation issues threshold problems it does not reach out society henceforth all these information needs to be reach to the society as all the people are main object is to own house but due to ignorance of knowledge, education and concern authority negligence causes ill effect society for example: 2400 Sq Ft any residential apartment is meant for ground Floor plus three floors are permitted but we witnessed many builders constructed ground floor plus 4 floor even though law regulates such matter taking consider this matter if the RERA Act did not spread the required information. The RERA having the limited penalising power it appear to be "Tiger without Teeth".

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