



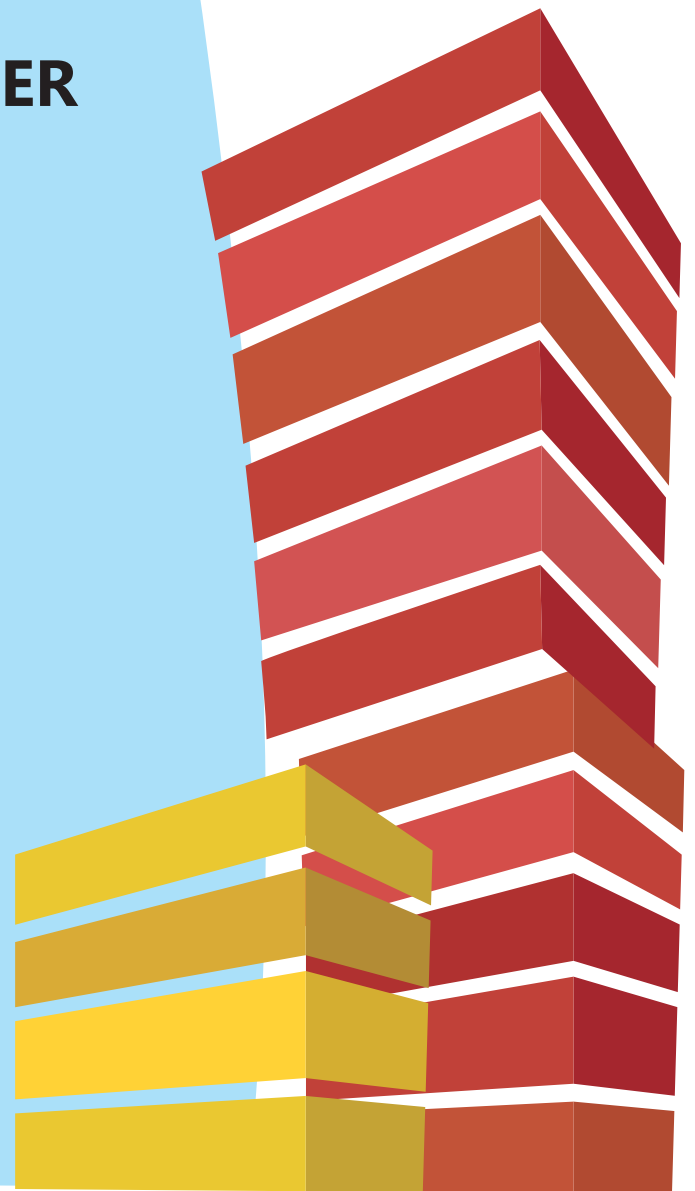
**MONEYLIFE  
FOUNDATION**

THE RIGHT THING TO DO

# **EFFICACY OF REAL ESTATE REGULATION AND DEVELOPMENT ACT, 2016 (RERA) FROM THE CONSUMER PERSPECTIVE**

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A REPORT FOR  
**HOUSING DEVELOPMENT  
FINANCE CORPORATION**



**PRESENTED BY MONEYLIFE FOUNDATION**

## **AUGUST 2020**

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Mumbai

Date: 31 August 2020

Sucheta Dalal and Debashis Basu  
(Trustees, Moneylife Foundation)

## 2. Research Objectives

1. To evaluate the provisions of the Real Estate Regulation and Development Act, 2016 (RERA), and the relevant rules adopted by States that have notified the Act and have a functioning web portal.
2. To observe the effectiveness of the implementation of RERA in States that have notified RERA and have a functional website.
3. To list possible amendments that would help the State-level RERA Authorities and the ministry of housing and urban affairs (MoHUA), government of India, to take measures to fix the grey areas and address the concerns of various stakeholders.
4. To evaluate the effectiveness of conciliation as a form of alternate dispute resolution (ADR) in RERA.
5. To identify and understand the limitations and challenges in RERA and recommend changes for effective implementation.
6. To assess the impact of RERA on the real estate industry across the country.

## 3. Research Design

1. An online survey of home-buyers who have approached RERA for resolution was conducted to capture the experience of all the parties involved—buyers, builders, agents, etc.
2. Collated the experience of those who have purchased a home under RERA and documented the challenges faced by them.



## 4. Research Methodology

1. Study published materials, such as articles and research papers, and file applications under the RTI (Right to Information) Act, or obtain information by personal visits to RERA offices of a few States or conduct telephonic interviews of RERA officials to get a clearer understanding of the effect of RERA over the past three years (2017- 2020).
2. Interview market leaders and professionals in the real estate industry to understand the effect of the implementation of RERA in various States.
3. Create a tabular format of the data collected, to make the analysis comprehensible.
4. Conduct an online survey of individuals who have purchased a home under RERA or have used the State RERA Authority to get their dispute resolved.
5. Meet lenders to know the impact of RERA on sanctioning and recovery of home loans.
6. Meet and interview activists who work to assist individuals with property-related matters, to get feedback on our findings.
7. Meet developers to understand their perspective on how their business has been affected after RERA.

## 5. Expected Research Output

1. Documenting the status of implementation of RERA in various States.
2. Examination of RERA's effectiveness in States where it has been implemented.
3. Feedback from all parties actively using RERA (buyers, builders, agents, State RERA Authorities etc).
4. Role of government in effective implementation of RERA across States.
5. Recommend steps to make RERA more accessible and effective.

## 6. Key Findings

RERA came into effect from 1 May 2017, with the objective of bringing in fair practices and protecting the interests of home-buyers. It imposes penalties not only on errant builders but also on delinquent real estate agents.

RERA is expected to bring in the kind of transparency and accountability that prevails in developed markets like the UK and Europe, where people know exactly what they are buying, how much it is worth, the legal status of the property, etc.

RERA, which has an effective redress mechanism, has been well-received as an avenue for providing a speedy and inexpensive forum of choice, as most home-buyers are averse to long-drawn litigation. Despite being at a nascent stage in its implementation, it is encouraging to note that there is a decline in some of the common complaints such as delay in delivery, false promotions and incorrect charges for excess areas, etc.

If RERA is properly implemented across the country, it would create the required level playing field between the key stakeholders of the sector—developers and buyers. This would instil greater confidence among buyers. However, our research points to the following areas that need attention:

### 1. Uneven Adoption and Patchy Implementation

The benefit ensuing from RERA hinges entirely on adaptation and implementation of the Central statute, in letter and spirit, by various States. Wherever it has been implemented, RERA has boosted project registrations, developers' compliance and transparency. (Chapter 10)

Under the Act, each State is required to have a RERA Authority responsible for the implementation of rules and regulations and ensuring transparency in real estate transactions. However, its implementation continues to be uneven in many States.

Some States are currently well regulated (handling real estate disputes between developers and home-buyers), while others are still struggling to get the basics (setting up State RERA Authority, registrations and dispute resolutions) right.

- a) **Establishment of Regulatory Authority:** So far, 31 States and Union Territories (UTs) have appointed this Authority; seven States have interim bodies. The interim regulators' efforts fall short of the intended goal of a permanent regulatory authority (dedicated real estate regulator), leaving consumers in the lurch. The setting up of a permanent authority is, hence, critical to the progress of RERA. Significant progress has been made in 2019 and several States have established the RERA Authority only in FY18-19. (Chapter 10)

As per the Central RERA, promoters had to register all ongoing projects by 31 July 2017, but old registrations are still going on. As on 15 February 2020, a total of 49,863 projects were registered across the country. (Chapter 10)

- b) **Appellate Tribunals:** Under RERA, every State has to establish a dedicated Appellate Tribunal to address grievances and offer timely redress. If a promoter has violated the terms of the agreement or has delayed handing over of projects, consumers can approach the Tribunal and lodge a complaint. The Appellate Tribunal is expected to adjudicate cases within two months. According to data obtained from MoHUA in February 2020, only 17 States and UTs have permanent Appellate Tribunals while eight, including Telangana, Uttarakhand, Goa and Gujarat, have interim arrangements. The rest, including Assam, Himachal Pradesh, Kerala, Lakshadweep and Mizoram, are yet to set up an Appellate Tribunal. Therefore, the progress of complaints registered and settled in these States is unknown. (Chapter 10)

Even after two years of being formed, Gujarat Real Estate Appellate Tribunal (the forum where aggrieved parties—home-buyers and builders—can challenge the decision of the Gujarat Real Estate Regulatory Authority—GujRERA) is yet to get a full-time presiding judge and technical member. In fact, until February 2020, the Food and Safety Tribunal judge was presiding over the real estate Tribunal in an 'in-charge' capacity. Also, no technical member, as mandated by RERA, has been appointed to the Tribunal. (Chapter 12.1.6)

This can have serious ramifications. As per a judgement<sup>1</sup> delivered by the

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<sup>1</sup> <https://www.legaleraonline.com/news/bombay-high-court-quashes-maharera-ruling-and-rules-that-a-single-member-bench-cant-decide-rera-appeals>

Bombay High Court (HC) in October 2019, a verdict passed in the absence of a technical member can be set aside. In one of the cases related to RERA, the Bombay HC termed illegal an order passed by a single member. If one goes by that ruling, all orders delivered by the Tribunal in Gujarat can be set aside. In such cases, builders can take benefit, if the order has gone against them, at the cost of home-buyers. (Chapter 12.1.6)

- c) **Legal Interpretations:** One of the reasons for a widespread gap in across implementation different States was that several clauses and sub-clauses of the Central Act are open to differing legal interpretations There is ambiguity in definitions. This needs amendments, which are awaited (Chapter 14).

For example, the term, '**allottee**' does not include a person to whom a building or apartment or plot has been leased out. An issue in this connection may arise about whether a long-term lease, say of 99 years or 999 years, can be taken as a sale. Although a long-term lease is technically a lease and a lessee is not an allottee within the meaning of the Act, the long-term lease with provision for extension gives right to occupy in perpetuity and is a viable and proven form of ownership. The possibility of such lease being taken as sale cannot be ruled out. MahaRERA has clarified that long-term lease will be within the purview of RERA.

Another example is the definition of '**building**'. For the purpose of the Act, a building need not be a self-contained independent building, to form part of a real estate project. It can be a part of the total structure or extension of an existing building by way of construction of additional floors.

The use of '**industrial purposes**' is conspicuous by its absence in the definition of a building. However, considering the intent and purpose of the legislation, the construction for industrial purpose appears to be within 'commercial purpose' and a building used for industrial purposes is also 'building' within the meaning of the Act.

The rules framed by Delhi, Karnataka, Haryana, Gujarat, Tamil Nadu and Uttar Pradesh do not specify the form and content of audit certificates to be issued by architects, engineers and CAs. This may lead to overlapping and duplication of roles of the various stakeholders and might lead to inconsistent

verdicts. A few other points where the Act lacks clarity is the definition of land cost, construction cost and whether garage space can be sold to an allottee. (Chapter 11)

Within RERA, too, some clauses clash with each other; for example, Section 43 (3) of RERA states that every bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative or technical member. So orders passed by a sole member of the Tribunal are without jurisdiction and can be set aside by a High Court. (Chapter 14)

But Section 55 of RERA can be used to counter this Section 43 (3) and used as an escape route. Section 55 of RERA states that no act or proceeding of the Appellate Tribunal shall be invalid merely because of any vacancy or any defect in constituting the Tribunal or appointment of its members. Section 55 (C) specifically says that any irregularity in the procedure of the Tribunal should not affect the merits of a case. (Chapter 14)

- d) **Lagging States:** Some States, such as Arunachal Pradesh, Jharkhand, Himachal Pradesh, Kerala, Manipur and Meghalaya, have not implemented the Central legislation in its entirety. Arunachal Pradesh, Meghalaya, Nagaland and Sikkim are yet to notify rules under RERA. This is mainly due to issues related to land belonging to certain communities. West Bengal, on the other hand, has come out with its own parallel legislation – HIRA (Housing & Industrial Regulation Act, 2017). (Chapter 12.2)
- e) **Constitutional Let-down by West Bengal Not Implementing RERA:** Abhay Upadhyay, president FPCE and member, CAC says, a classic case as regards RERA implementation is that of the State of West Bengal which, ignoring all constitutional propriety and responsibility, has chosen not to implement RERA. It has enacted its own law – The West Bengal Housing Industry Regulation Act, 2017 (WBHIRA). This approach of the State of West Bengal questions the very supremacy of parliament to make laws and is an assault on our federal structure. This would open floodgates for States not wishing to follow Central laws. Needless to say, WBHIRA has also diluted many provisions in favour of builders.

FPCE (Forum for People's Collective Efforts) has challenged the constitutional validity of WBHIRA in the Supreme Court which has been admitted and awaiting final hearing. The Union of India, *vide* its affidavit in the matter, has also stated that WBHIRA is constitutionally invalid and has supported the views of FPCE requesting for its repeal. (Chapter 12.2.2)

- f) **Leading States:** Maharashtra was one of the first States to adopt and implement RERA fully; it leads in project and agent registration and also in speedy disposal of home-buyers' complaints. MahaRERA has registered 24,347 projects and 23,109 agents, and disposed 7,476 complaints out of the 10,370 received, as per data as on 6 February 2020. (Chapter 12.1.1). In Gujarat, Karnataka, Madhya Pradesh and Uttar Pradesh, too, RERA made a lot of progress in 2019. In Karnataka, for instance, project registration has gone up from 2,465 in December 2018 to 3,135 in January 2020. (Chapter 12.1)
- g) **State RERA Authority Online Portals:** The online portals of State RERA Authorities play a vital role in boosting buyer confidence. A good State RERA portal allows an individual to view the project type, its status (ongoing or completed), proposed date of completion, whether it is subject to litigation, FSI (floor space index) details and the number of flats booked. Some portals include the booking details (name and details of person / entity booking the flat). Ideally, the RERA portal must also include details of orders passed (for cases disposed) and the implementation status for orders passed. At present, 26 States /UTs have official RERA portals up and running; most have also enabled online fee payment. (Chapter 10)
- h) **Incomplete Information:** "In some States where the implementation is not at the level it should be, we see new real estate projects slipping through the regulatory net. It is similar to the challenge of GST (goods and services tax) and real estate: uniform implementation across different States is needed," said Pankaj Kapoor, founder and MD Liasis Foras. He adds: "In some States, there is lack of sufficient information and user-friendly online access for home-buyers. In some States, it is observed that periodic updates of some ongoing projects and on the part of the developers are not available online." (Chapter 10)

- i) **Data Analytics:** According to Pankaj Kapoor, “Ideally, the huge quantum of data already collected by regulatory authorities across States should be analysed efficiently and made available in simple to understand formats to stakeholders – especially home-buyers – so that they are well-informed and updated about the general scenario in their State’s real estate. In some States, we see that for projects under construction, data is being collected – but not being analysed or shared with all stakeholders. Data should be analysed, numbers crunched – and the results need to be acted upon in the form of guidelines or new norms to increase the positive effects of RERA.” (Chapter 14)
- j) **Buyers’ Confidence:** Though several States have implemented RERA, this has not yet given a boost to buyers’ confidence nationwide. The slow pace of implementation of RERA in some States, including project and agent registrations, is one of the reasons.

In Jharkhand, just 178 projects have been registered after nearly three years of RERA implementation. In Punjab, 840 projects are registered. Due to the uneven adoption of RERA, home-buyers are left without an avenue for redress. Data reveals that only 17 States have dedicated permanent Appellate Tribunals to handle cases. (Chapter 10)

According to industry experts, a large inventory of projects remains outside the purview of RERA; the number of projects registered represents only a small number. Thus, the Act’s objective of protecting buyers’ interest is still work-in-progress.

- k) **RERA Orders Not Getting Implemented:** Despite the RERA Authorities’ pro-active hearing of cases and delivering pro-buyer judgements, it has been witnessed that execution of these orders has been a big challenge.

Abhay Upadhyay revealed that the most alarming distress among home-buyers is that, in spite of favourable orders (refund, possession, interest, compensations, etc) from RERA Authorities, they are unable to get these orders enforced. He says it is perplexing that RERA Authorities are mute spectators to such non-execution of their own orders and it is also a mystery why provisions of Section 63 are scarcely used against such defaulting

promoters. In the process, home-buyers are harassed and forced to run from pillar to post to get orders executed. He says that contrast this with the fact that regulatory authorities are on record that they facilitated issuance of occupation certificate (OC) by meeting development authorities to help builders, whereas they never attempt to meet authorities responsible for executing recovery certificate. (Chapter 14)

Pranay Vakil, founder chairman of Praron Consultancy India Pvt Ltd and former chairman of Knight Frank India Pvt Ltd, explained that it is still early days for RERA, so there is no purpose in focusing on its slow implementation. In four-five years from now, real estate will be a totally different industry, courtesy RERA. The improving real estate environment is the key reason for experts' optimism.

Due to the dissimilarity in the implementation of RERA at the State level, some States are currently relatively better regulated in terms of handling real estate disputes between developers and home-buyers, while others are still struggling to get the basics right regarding RERA Authority, registrations and dispute resolutions. (Chapter 10)

Anil Harish, Partner DM Harish & Co Advocates, said that over the past two years, RERA Authorities have striven to develop processes to make registered projects compliant with RERA requirements. This is starting to show early results. Buyers and lenders are more confident about their investment decisions today than they were two years ago. Rising confidence will spur home demand in the days to come and developers are realising this fast. In fact, developers are now viewing RERA registration tag as a branding tool and proactively registering their projects to attract buyers and offering flexible financing facilities. This arrangement is leading to a win-win situation for all the stakeholders.

According to experts, the RERA roll-out should have been in the form of a 'process' rather than 'a guiding policy document' to send the right message to States at an early stage before they drafted State-level laws. This would have helped avoid dilution of the framework and a situation like West Bengal Housing & Industry Regulation Act (WBHIRA) arising. (Chapter 12.2.2)



## 2. Impact on Prices

RERA has introduced transparency and accountability in the industry and instilled confidence among buyers. However, it has also led to an increase in project costs, tighter liquidity, higher capital cost and an elongation of project timelines. (Chapter 14)

RERA has put pressure on property developers, especially the smaller ones, and prices were expected to rise as developers are also facing a credit crunch. But the huge unsold inventory lying in many urban centres has kept the price rise at bay.

Pre-RERA, the risk and the cost of poor quality, delays and changes in the project proved very costly for customers. A section of industry experts feels that, post-RERA, these costs will be borne by the developers and loaded on to the cost of the apartments and homes. This will inevitably inflate prices.

## 3. Impact on Projects

RERA has had an impact on all aspects of real estate development—from the inception of the project to dispute resolution. Here is a look at some of the areas in which the Act has had a big impact.

- a) **Registration:** Every real estate project exceeding 500 square metres (sq mtr) or more than eight apartments must be registered under RERA for which a fee has to be paid. This applies to existing projects, where the completion certificate (CC) or OC has not been issued. For registration, developers have to provide detailed information on the project, such as the land status, approvals, schedule of completion, etc. Only when the registration is completed can the project be marketed. To ensure compliance, stiff monetary penalties (up to 10% of the project cost) and imprisonment are prescribed. (Chapter 8)
- b) **Redress for Home-owners:** The Act, which has an effective redressal mechanism, provides a speedy and inexpensive forum of choice for home-buyers who cannot afford litigation. In another important development, following an amendment<sup>2</sup> in August 2018, customers of a project are deemed to be financial creditors within the meaning of the Insolvency and Bankruptcy Code, 2016 (IBC). Hence, they are entitled to file an insolvency application and, in case the insolvency process is admitted, promoters of the companies will face reorganisation and or even a takeover.

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<sup>2</sup> <https://www.prsindia.org/billtrack/insolvency-and-bankruptcy-code-second-amendment-bill-2019>

(Chapter 15) While RERA has done the groundwork for fast dispute resolution, the litmus test for its success will be how disputes are actually resolved expeditiously with a degree of finality.

- c) **Standardisation:** Earlier, the apartment area was calculated / sold in three different ways, namely, carpet area, built-up area and super built-up area, which often led to confusion and a mismatch between what customers thought they were paying for and what they got. RERA broke through builders' hard resistance to transparency by making it mandatory for developers to disclose the size of apartments on the basis of its carpet area, which is defined as "the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, excluding balcony or veranda and open terrace, but includes area covered by internal partition walls." It has now been universally adopted leading to a big leap in transparency, especially in expensive metropolitan cities like Mumbai. (Chapter 8)

However, Pankaj Kapoor pointed out that some stakeholders have redefined the meaning of carpet area. They use a term called 'RERA carpet'. The new definition allows developers to include the width of inner walls to the total carpet area. The changed calculation method eventually increases the size of an apartment unit approximately by 5% making flat costlier by 5% post-RERA. That is a manipulation that needs to be rectified by defining the norms across all the States. (Chapter 14)

- d) **Adjudication:** RERA has evolved as an adjudication authority that has delivered several significant judgements. In February 2019, the Maharashtra RERA (MahaRERA) directed a company<sup>3</sup> to refund the buyer with interest for failing to hand over possession even though the date of possession was not specified in the agreement. MahaRERA, relying on a *non-obstante* clause under the Act, has also taken the view that it has the jurisdiction to adjudicate disputes that are the subject of an arbitration agreement between the parties. Courts have also upheld the provision that developers should display sanctioned plans at the project site. (Chapter 12.1.1)

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<sup>3</sup> <https://www.moneylife.in/article/maharera-asks-rna-group-to-refund-rs106-crore-with-1055-percentage-interest-to-buyer-vrajesh-hirjee/56439.html>

#### **4. Inconsistencies**

The model sale agreement is not being implemented/ enforced by any State RERA Authority. Developers continue to have their own versions; most of them continue with one-sided agreements even now. (Chapter 11)

Although the RERA Act calls for synchronisation with other legislations, several inconsistencies have remained, partly due to insufficient dialogue amongst stakeholders and partly the lack of political will to resolve them. The Central government too failed to invoke the provisions of Section 91 of the Act, which provided for "... incorporation of provisions not inconsistent with the provisions of the Act, for removal of difficulty arising in giving effect to the provisions of the Act, within a period of two years from the date of commencement of the Act." (Chapter 14)

#### **5. Absence of a Uniform Licence Fee Structure Limiting the Registration of Real Estate Agents**

While acknowledging RERA as a step in the right direction, realtors feel that the absence of a uniform licence fee structure is limiting the registration numbers in India. (Chapter 14)

As per rough estimates, only about 39,136 real estate consultants across India have registered under RERA till date, even though the community comprises close to two million.<sup>4</sup> There appears to be a lack of awareness among real estate agents who play a vital role in the promotion of the sector and spreading awareness among buyers. Registration of agents is required only for sale of RERA-approved projects and not for second sales.

#### **6. Consolidation in the Industry**

Earlier, in the absence of regulation, anyone with a land bank or money could become a developer. That has become difficult in the current regulated environment, which requires enhanced compliance by developers. Also, given the tough market conditions, where even established entities are struggling to sell units, non-serious developers lacking professional capabilities are exiting the business. This is leading to consolidation in the industry.

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<sup>4</sup> <https://timesofindia.indiatimes.com/city/hyderabad/one-nation-one-licence-for-reras-success-say-realtors/articleshow/70823214.cms>

Some big developers such as Godrej Properties, Mahindra Lifespace Developers and Prestige have begun to acquire projects that are financially unviable. Such moves will benefit home-buyers.

The end-consumer will clearly be more empowered and is set to enjoy the fruits of consolidation which will lead to standardisation in quality, transparency in pricing and, most importantly, timely delivery. (Chapter 9)

## **7. Unfair Exclusions in RERA**

Currently, the rehabilitation component of redevelopment projects involving housing societies and old tenanted (*pagdi*) buildings is not covered in Maharashtra under MahaRERA.

In the first year after MahaRERA was set up, many cases that it heard related to disputes over alternate accommodation/ non-payment of rent / stuck redevelopment projects and led to dismissals.<sup>5</sup> Gautam Chatterjee, chairperson MahaRERA, explained that the provisions of Section 13 of the Act are applicable only to transactions that involve an agreement for sale and not an agreement for permanent alternate accommodation. He noted that these complainants could not point out any contravention or violation of the provisions of RERA, and that the Authority is not the proper forum to resolve the issues raised by them. (Chapter 14)

When an old building enters a development agreement with a builder, the existing members are generally to be given apartments in the new building in lieu of their existing flat. However, the builder is not obliged to register the rehab component under RERA since only the saleable component is covered under RERA. Hence, the existing flat-owners/ tenants do not get protection under RERA and also may not get protection under the Consumer Act. In a city like Mumbai, that has little scope of fresh development and most of the projects in the next 10-20 years will be redevelopment projects, it is vital that consumers of the rehab component are also covered under RERA.

There were reports in mid-2019, that MahaRERA rules were to be tweaked to bring rehabilitation component of redevelopment under the ambit of the Authority but there has not been any progress on this front.<sup>6</sup> The legal fraternity is, however,

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<sup>5</sup> <https://www.dnaindia.com/mumbai/report-maharera-s-identity-crisis-clears-air-on-cases-of-building-redevelopment-2603379>

<sup>6</sup> <https://timesofindia.indiatimes.com/city/pune/govt-yet-to-take-decision-on-maharera-proposal-to-tweak-rules-for-redevelopment/articleshow/70149952.cms>

divided on whether amendments to MahaRERA rules alone is enough to cover the rehab component of redevelopment; some feel that amendments are also required to the Central RERA and rules.

The other problem we have observed is excluding ongoing projects (projects which were started before 1 May 2017) from RERA if the developers manage to secure part OC. In such a scenario, developers do not focus on timely delivery of the project. Pankaj Kapoor said that they have seen several incomplete projects being marketed with the tagline—OC received—even when a lot of work remains to be done. (Chapter 11)

### **What the Future Holds**

RERA's future success will depend on its effective and uniform implementation across India. A uniformly regulated environment will instil trust and strengthen business conditions. Taking a cue from the rapid progress within the first three years, this would soon be a reality.

Some activists and victims believe that when it comes to coercive action against defaulting builders, RERA has been a 'toothless tiger'. This perception needs to change. Some say that there is a clear lack of political will in helping home-buyers who are being duped.

A separate recovery department is needed at all State RERA offices for recovering dues from builders or for enforcing orders. According to the current provisions, the deputy commissioner (DC) of the respective district has the authority to act on the RERA orders. The DC's office itself has to issue another round of notice to the defaulter before it starts attaching properties of the developer. And, further, the DC has to auction the seized property and recover the cost. Most State RERA Authorities confirmed that they have no authority to recover assets themselves but can only forward the details to the DC. Our research also points out that people have complaints about getting the RERA orders executed. (Chapter 11, Chapter 14 and Chapter 16)

Most activists in other States are also exhorting their States to follow the Madhya Pradesh model. There is a district judge-level officer (execution officer) having powers of civil and revenue court who acts as the recovery officer in Madhya Pradesh RERA (MP RERA). With the appointment of an execution officer, it will be legally

binding on parties, including realtors and consumers, to follow the directives of the Authority. (Chapter 12.1.3)

Leaky escrow accounts, delayed execution of RERA orders, inadequate administrative machinery and bias towards builders are issues<sup>7</sup> that need to be addressed in some States. Model agreements for sale are not yet being enforced/ implemented / followed in letter and spirit. Some home-buyers feel that it is far better to have some protection, albeit incomplete, than having none at all. (Chapter 14)

In our opinion, one factor that can increase the efficacy of the Act is to enhance the powers of the RERA Authority. It should be empowered to exercise its power over all stakeholders, including government agencies and administrative departments responsible for approvals/certificates, etc. (Chapter 14)

In fact, pursuant to RERA objectives, all State governments should develop a single-window mechanism for registration and processing of applications related to this Act. This window's performance should be monitored under RERA. (Chapter 12.1.2 and Chapter 14)

Fast-tracking the decision-making process will further expedite project completion timelines as envisaged by RERA. According to the World Bank's Ease of Doing Business Index, India has significantly improved its global ranking for dealing with construction permits – moving from 181<sup>st</sup> to 52<sup>nd</sup> – in a span of four years supported by a steady decline in days required and processes<sup>8</sup> required for such permits. This can be improved further by closing some of these last-mile gaps in implementing RERA.

The IBC amendment (in August 2018) to include home-buyers as financial creditors has protected their investments, to an extent. However, when a builder is in financial trouble, there is a need to balance the interests of those who seek a refund of investments *versus* those who want delivery of homes. The RERA Authority should be given a chance to resolve a dispute between allottees and builder before invoking insolvency proceedings, subject to a specific time frame. (Chapter 15 and Annexure 1)

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<sup>7</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

<sup>8</sup> <https://www.worldbank.org/en/news/press-release/2018/10/31/doing-business-report-with-strong-reform-agenda-india-is-a-top-improver-for-2nd-consecutive-year>

To conclude, RERA has brought about a significant amount of standardisation in real estate. In the coming years, a refined and efficient implementation across the country would promote a more equitable and fair transaction between the buyer, developer and financier by fostering high levels of transparency and trust between them.

## 7. Recommendations

- 1. Bring Rehab Component of Redevelopment under RERA Ambit:** States like Maharashtra must consider getting redevelopment of cooperative societies and tenanted buildings into the ambit of MahaRERA. Currently, the redevelopment rehab component (redevelopment of housing societies and old tenanted –*pagdi* – buildings) is not covered under MahaRERA. This was highlighted to us by several people who are bearing the brunt of this unfair exclusion. (Chapter 14)
- 2. Adopt Conciliation for Dispute Resolution:** The conciliation platform of MahaRERA has been immensely successful. It is recommended that all the other RERA Authorities should emulate MahaRERA and take steps to set up dispute settlement forums for amicable conciliation of disputes between the promoters and allottees. Section 32(g) of RERA provides for setting up of such forums by the State RERA Authority. (Chapter 13)
- 3. Enforce Model Sale Agreements:** Although RERA mandates model agreement for sale, it is not being followed in letter and spirit. A few developers are violating the Section 13 of RERA by receiving more than 10% of the total cost of apartment from home-buyers without the execution of a registered agreement. Instances of such violations should be brought to the notice of the concerned RERA Authority. (Chapter 11)
- 4. Improve Execution of Orders:** There have been several instances of non-execution of orders passed by the regulatory authority and adjudicating officer under RERA. In such cases, the aggrieved party has to approach local civil court by filing another case. It is, therefore, suggested that RERA Authority should be empowered to execute its orders without filing another case before civil courts. (Chapter 14)
- 5. Standardise Stamp Duty Calculation to Carpet Area:** States like Maharashtra must consider calculating and imposing stamp duty on carpet area instead of built-up area, to remove ambiguity on the methodology adopted under RERA. The sale value is calculated on the basis of carpet area and not on built-up area. (Chapter 14)
- 6. Set Minimum Quality Standards:** RERA is meant to be a preventive legislation which is a distinctive feature that separates it from the curative consumer laws.



Despite this, currently, State RERA Authorities do not ensure a minimum standard of quality of construction. This can be changed by having a minimum parameter of quality of construction prescribed under RERA. This is being followed by MHADA after it brought out a notification in 2019. This would mean that the State RERA Authorities pre-empt the possibility of the developer delivering a sub-standard / defective apartment to the home-buyer by indicating a clear set of minimum quality standards for raw materials used in construction and the quality of construction. (Chapter 16 and Annexure 1)

**7. Enhance Disclosure about Ongoing Projects:** All the data on the projects registered with RERA Authorities must be placed in the public domain and shared on web portals of the Authorities to enhance transparency and accountability. (Chapter 11, Chapter 12.1.3, Chapter 14, Chapter 16 and Annexure 3)

**8. Push for Adoption of RERA by All States:** The implementation of RERA in different States/UTs is lacking pace. MoHUA should facilitate speedy execution. (Chapter 10)

**9. Empower RERA To Resolve Conflicts by Issuing Directions to All Stakeholders:** There is a need to give State RERA Authorities power to issue directions to all stakeholders including the government. Section 37 should be extended to cover all the stakeholders. An example is UP RERA: There have also been issues like piling up of the dues of the development authorities, especially NOIDA, GNOIDA and YEIDA (Yamuna Expressway Industrial Development Area), withholding of the approvals and CC/OC by the authorities, non-delivery of lakhs of houses, dismay among the home-buyers leading to complex litigation and non-payment of instalments and fraudulent trade practices by some promoters. (Chapter 14)

**10. Include RERA Perspective in IBC Decisions:** There is a need to combine the powers of the bankruptcy Tribunals with the larger role entrusted to the RERA Authorities to maximise and safeguard the interest of all stakeholders with a focus on project completion before liquidation. RERA is entrusted with the interests and perspective of all stakeholder in a project and is in a position to enhance the value of a project, for lenders as well, by ensuring completion. (Chapter 15 and Annexure 1).

In case anybody approaches National Company Law Tribunal (NCLT) with a petition (this is with respect to stalled projects that are not in limbo) and if NCLT

admits the petition, Section 14 relating to moratorium applies. Before NCLT admits the petition, it needs to find out if the matter is related to a RERA registered project. If it is related, then it should refer it to the respective State RERA Authority and take the State RERA Authority's view into account. The RERA Authority's priority is not liquidation but how to help home-buyers get possession of their under-construction homes. The IBC will treat home-buyers as financial creditors with the result that home-buyer may get back only a fraction of what has been paid, after applying a haircut, and may need to purchase the flat again at existing rates from the new owner of the project. The State RERA Authority may have a better chance of taking complete responsibility for the registered project and find a better and more equitable solution.

**11. Facilitate Formation of an 'Association of Allottees' for Every Project To Ensure Transparency and Accountability:** MahaRERA has started self-regulatory organisations (SROs) in an effort to improve awareness and compliance of rules and to facilitate the completion of stalled projects. SROs must conduct awareness programmes for its members and empower them with relevant information and technical support. To this end, names of the contractors who help finish projects are displayed on the MahaRERA website. SROs will succeed only if they do not become a builders' lobby. The regulator can facilitate forming an 'Association of Allottees' for each project and of different stakeholders, such as consumers, architects, engineers, financial institutions and CAs, to ensure transparency and accountability.<sup>9</sup> (Chapter 12.1.1)

**12. Increase Resources and Provide Additional Infrastructure:** The time taken to resolve complaints and appeals is an issue with most State RERA Authorities. For example, although MahaRERA has handled a large number of cases, there is some backlog. If the nearly 2,800 pending cases have to be cleared within the stipulated 60 days, i.e., about 50 working days, this would mean MahaRERA has to pass 54 orders a day, which is obviously a tall order. More officers need to be appointed to be able to pass orders. (Chapter 14)

**13. Misinterpretation of Law Needs To Be Obviated Especially with Regard to Exclusion of Small Projects of Less Than 500sq Mtr or Less Than 8 Flats:** It is noticed that Section 3 (2) of RERA excludes registration of small projects that can be developed in an area of less than 500sq mtr or less than eight flats. This misinterpretation of the

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<sup>9</sup> <https://www.mid-day.com/articles/maharera-forms-self-regulatory-bodies-for-stalled-projects/22431354>

law by many developers has resulted in their taking advantage of ‘non-registration’, as they have plot area below 500sq mtr but have constructed over 20 flats. This defeats the purpose of the Act. While RERA insists on registration, the very purpose of the Act is defeated if the law is interpreted in such a way that, in spite of the area being small, the developers have chosen to go higher. And, if such projects are left outside the purview of RERA, the consumers are the ones who suffer.

It is recommended that the word ‘or’ needs to be removed and be replaced by ‘and’ so that exclusions would be strictly restricted to really small projects. The sanctity of the Act will not remain the same unless it is amended because developers would continue to take advantage of it. (Chapter 14)

**14. Prevent Misappropriation of Money Collected by Promoters from Allottees through Multiplicity of RERA Project Bank Accounts:** The entire amount realised by the promoter from the allottee should be held in a single account, which is registered with the RERA Authority at the time of registration of the said project. Any withdrawal from the specific bank account from out of the 70% of the total amount (which is to be utilised for land and construction costs) should require the assent of the project engineer, architect and CA.

Banks providing loans to projects should not coerce the promoter to open a project account with them. No bank should be allowed to hold any lien or allow any lending agency to do it with the project account maintained with them. (Chapter 12.1.4 and Chapter 14)

**15. Specify Extent of Incomplete Work while Extending Registration of a Project:** The extension of registration provided to a project as per provisions of RERA should be in proportion to the amount of work left to be completed in the project. This will help in avoiding repeated defaults by the promoter and set a realistic deadline. (Chapter 8, Chapter 11, Annexure 1 and Annexure 3)

Such extensions of the registration beyond one year should be accompanied by approval of at least 2/3<sup>rd</sup> of the allottees and be accompanied with such terms and conditions as deemed fit by the RERA Authority. This would help control misuse of Section 6 for indiscriminate extensions.

**16. Need for Effective Project Control Transition on Revocation of Project Registration:** The Act may be amended to include the supervisory role of the interim

administrator (IA)/IA panel in the post-project revocation scenario wherein the completion of the project is to be carried out in consonance with the provisions of Section 8 of the Act.

This provides a solution for circumventing inordinate delays in the completion of the project that have the potential to result in a drop in prices of the property and cause damage to the project reputation which could be detrimental to the interests of allottees and financial institutions attached to the project. (Chapter 14)

**17. Need for Single-window Clearance:** The process of obtaining approvals for the construction of a real estate project is a cumbersome one which requires developers and builders to approach several different departments. A single platform to ensure the speedy clearances of all approvals within a month's time can allow for the speedy commencement of the projects. This single-window system for the issuance of all approvals for the real estate projects must be established. The various sanctioning authorities involved in different aspects of approval of a project must also be made accountable for developers to ensure the completion of projects within the predetermined deadlines. Timely completion of projects, brought about by an efficient approval system under one roof, may increase foreign direct investment (FDI) in the real estate sector which is currently on the wane. (Chapter 12.1.2 and Chapter 14)

**18. Need To Increase Vigilance, Conduct Random Audits and Keep Promoters in Check, Documents (Such As Quality Reports) Must Be Updated Regularly:** Post-registration, promoters must submit quarterly reports of progress. Audits of budget can be done through the coordination with third-parties such as chartered accountants. Registered projects/ registered agents should be randomly selected for auditing and detailed checks must be carried out. Those who have provided false information under self-declaration should be severely penalised. This randomised audits will create a fear in the minds of the respective builders, agents and the chances of developers and agents providing false information will be considerably lower. (Chapter 9 and Chapter 12.1.1)

**19. Need for Clear Procedures To Adjudicate Problems of Home-buyers in Unregistered Projects:** At present, there is no clear procedure to adjudicate/settle the problems faced by buyers/ allottees of unregistered projects. Therefore, clear procedures must be laid down to address the unregistered project complaints.

MahaRERA and Haryana RERA have been addressing complaints of home-buyers about unregistered projects. (Chapter 14)

**20. Create a Central Repository:** Since real estate is a State subject, a central repository with identical data fields across States and union territories will help generate authentic information and metrics about on a pan-India basis and help monitor the growth of the industry and target developmental work. (Chapter 14 )

## 8. RERA Background

The real estate sector plays a key role in India's economic growth story and is one of the largest sources of job creation, making it a strategic sector for nation-building. According to Pankaj Kapoor, founder & MD Lias Foras, real estate and associated activities in India provide employment opportunities for 22 million people (equivalent to 5.5% of the working population). By 2025, the sector can generate 33 million jobs.

As per data shared by Mr Kapoor, presently government taxes account for Rs1.1 lakh crore and the collection is expected to grow three times within five years. The estimated value of stock sold hovers close to Rs12.58 lakh crore, that's about 6.1% of our GDP (gross domestic product). Revenues through this sector can increase to Rs19.5 lakh crore by 2025, accounting for 6.7% of the projected GDP (considering 7% GDP growth rate to US\$4.1 trillion by 2025). Unfortunately, in the absence of a regulator in the past, the sector had been characterised by high levels of information asymmetry, often leading to mistrust and low confidence among stakeholders – including home-buyers, financiers and developers.

The real estate sector has come under tremendous pressure since 2015, a large number of the real estate projects came to a halt or there was very little progress on the ground. Home-buyers, who had invested their life-time savings, had limited recourse to a rapid resolution of their problems. Developers were non-responsive, over-leveraged and cash-strapped. There were no regulations. The need of the hour was transparency, discipline and the timely delivery of projects. Policy-makers had not bothered about this but the issue was too important to be neglected any further. Therefore, the government of India (GoI) resolved to establish a regulatory authority in all the States and the UTs across the country to help consumers, bring about financial discipline and transparency among builders that would transform the real estate sector, one of the largest sectors in any economy.

The enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA) was a watershed in the growing real estate sector in India as it brought the hitherto unregulated real estate sector under the regulated ambit. For a sector with no precedence of a dedicated Tribunal, it means a significant granular change at the national and state governance level. RERA's aim, to promote higher transparency

as well as accountability and to safeguard home-buyers' interests, brought in a new era in the real estate sector.

The Real Estate (Regulation and Development) Act, 2016, was passed by the parliament on 15 March 2016 and was notified on 1 May 2016, with only 59 provisions in effect. It came into full force, on the 1 May 2017, with all 92 provisions notified. Since real estate is a state subject, all States have had the flexibility to re-draw and adopt the Central Act. Completion of the real estate projects within the timeline declared by the promoter and protection of the rights of the home-buyers are the twin pillars of RERA.

Accordingly, it has been provided under Section 31 of RERA that any aggrieved person may file a complaint with the RERA Authority or the adjudicating officer, about any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

We have often heard how home-buyers have been harassed and troubled by extreme delays in delivery or lack of proper documentation provided by developers. There have been cases of property agents taking undue advantage of home-buyers by misleading and misinforming them. RERA was meant to be a tool for consumers allowing them to break through the opaqueness of the real estate sector and promote transparency.

Though it has a long way to go in terms of nation-wide adoption, the degree of acceptance it has already achieved is a remarkable feat, especially since the Act was finally passed after close to 10 years of deliberations. (Annexure 2) The key tenets of RERA that struck a chord with buyers as well as real estate lenders include:

- Projects to be registered only after receiving all clearances.
- Developers can advertise / market a project only post-registration with RERA.
- Model agreement for sale document.
- Creation of a separate bank account for a particular project.
- Timeline to be provided for project completion.
- Consent of 2/3<sup>rd</sup> of the allottees has to be obtained to modify the layout of a project.

Under RERA, all States are required to set up an Appellate Tribunal to address home-buyers' grievances. The Act requires that all the developers register their projects with the RERA Authority. The registration process, among other things, includes stating a definitive date when the builder will hand over the project to a home-buyer. In case of deadlines not being met, the Tribunal can award compensation to the home-buyer and can also penalise the builder for failing to adhere to the deadlines.

RERA is meant to protect home-buyers from fraudulent builders, promoters and developers. A consumer or seller can file a complaint with RERA, on their State RERA's website, or by filling up a physical form with the State RERA Authority. The complainant can then choose between adjudication and conciliation, as a form of dispute resolution.

All orders of RERA Authority are binding, until either of the parties decides to approach the appellate authority. This appellate authority is a Tribunal with quasi-judicial powers to review the decision of the RERA Authority. Its judgements can be challenged in the High Court, where it would only follow the normal course of litigation. This process is long and tedious. Many home-owners would be left without homes, and other builders, promoters and investors with a stake in the project would suffer losses. With RERA, this process would improve slightly, as it resolves the disputes outside the judicial process making it faster, and prevents the courts from receiving the complaints, adding to the burden of the already overburdened judiciary.

RERA falls under the jurisdiction of MoHUA, making it responsible for the regulation of urban infrastructure, and ensuring that the consumer is able to buy, sell and reside in various cityscapes in the country. However, the implementation of RERA has not been uniform across all States and UTs in India.

In fact, most States have diluted the rules to favour developers. There have also been mixed reports from consumers; some feel they have benefited from RERA and others have found no support from RERA for their grievances. West Bengal has decided to create its own regulatory authority outside the purview of RERA, known as the West Bengal Housing Industry Regulatory Act, 2017, which came into effect from 1 June 2018.



### Key Features of RERA

1. Registration is mandatory for all commercial and residential real estate projects where the land is over 500sq mtr or includes eight apartments that are under-construction.
2. Failing to register a property will attract a penalty up to 10% of the project cost and a repeated violation could send the developer to jail.
3. The developer cannot make any changes to the registered project plan without the written consent of the buyer. This provision will not allow the developer to increase the cost of their projects.
4. The law ensures that realty project is completed in time. If delayed, the developer will have to pay interest on the amount paid by the buyer.
5. As per the Act, every phase of an apartment complex will be considered a stand-alone real estate project, and separate registration needs to be obtained for each project.
6. It is compulsory for a State to establish a State RERA Authority. Buyers could approach this Authority for redress of their grievances.
7. The property will have to be sold to buyers based on carpet area and not on super built-up area, which has become illegal under the Act.
8. The developer will have to place 70% of the money collected from buyers in a separate account to meet the construction cost of the project. This will keep a check on developers who divert the buyers' money to start a new project, instead of finishing the one for which money was collected and ensure that the concerned project is completed in time.
9. If buyers find any shortcomings in the project, they can contact the developer in writing within five years of taking possession.
10. The law has a provision of a maximum jail term of three years, with or without a penalty, for a developer who violates the order of the Appellate Tribunal of RERA.
11. There is a provision for compounding of offences. As per Section 70 of the Act, if any person is punishable with imprisonment under the Act, the punishment may be compounded on such terms and conditions, which may be prescribed by rules made by the appropriate government. In addition, the fine payable in lieu of imprisonment needs to be specified by the said rules, which cannot be more than the maximum fine payable for that offence.

## Five Pillars of RERA

### Transparency

1. A separate bank account for project transactions.
2. No advertisement before registration with RERA.
3. Consent of 2/3<sup>rd</sup> allottees about any addition or alteration of the plans and for transferring majority rights to third-party promoter.
4. No false statements or commitments.
5. No arbitrary cancellation of units by the promoter.
6. Quarterly updating on the State RERA website with details such as unsold inventory and pending approvals.

### Accountability

1. Every director/partner of a company, who is in charge or responsible, will be liable for the conduct of the company and deemed to be guilty.
2. An officer, or any director, manager, secretary or other officer of the company, with whose consent or connivance an offence is committed, will also be guilty.
3. Quarterly updates of project progress along with pending approvals are posted on the respective State RERA website.

### Financial Discipline

1. 70% of the funds collected from allottees needs to be deposited in the project account.
2. Withdrawals to cover construction and land cost.
3. Withdrawals to be in proportion to the percentage of completion of the project.
4. Withdrawals to be certified by engineer, architect and CA (third-party).
5. Provision for RERA to freeze project bank account on non-compliance / revocation.
6. Project accounts to be audited annually.
7. Provision for stronger financial penalties for RERA non-compliances.
8. Interest on delay will be the same for customer and promoter.
9. Promoter to compensate buyer for any false or incorrect statement with a full refund of property cost with interest.

### **Customer-centric**

1. An improvement in the quality of construction due to a defect liability period of five years.
2. Increased adherence to the timely completion of projects and delivery to the consumer.
3. Sharing information project plan, layout, government approvals, land title status, sub-contractors.
4. Formation of allottee association within the specified time or three months after the majority of units have been sold.
5. Consent of 2/3<sup>rd</sup> allottees for any other addition or alteration.
6. Unbiased interest on delays.
7. Right to approach RERA Authority in case of any grievance.

### **Compliances**

1. Registration of developers and agents/brokers with RERA.
2. Project registration with RERA.
3. Maximum one-year extension in case of delay due to no fault of the developer.
4. Dispute resolution within six months at RERA Authority and RERA Appellate Tribunals.
5. Developers to share details of projects launched in the past five years with status and reason for the delay with RERA.
6. Annual audit of project accounts by a CA.
7. Conveyance deed for common area in favour of association of allottees.
8. Separate registration of different phases of a single project.
9. Mandatory registration of new and existing projects with RERA before launch.
10. Authenticated copy of all approvals, commencement certificate, sanctioned plan, layout plan, specification, plan of development work, proposed facilities, Pro-forma allotment letter, agreement for sale and conveyance deed to be given when applying for project registration with RERA.

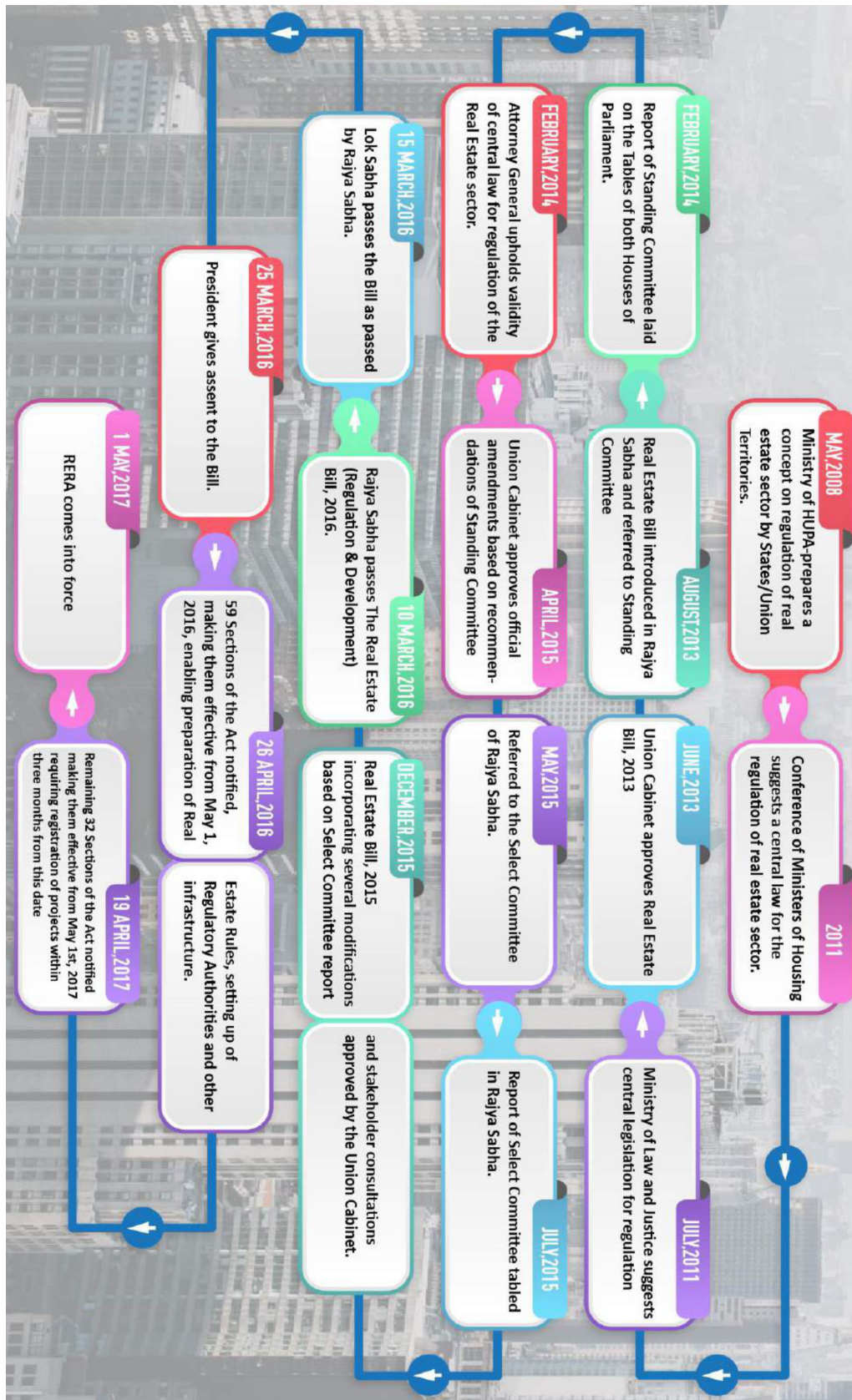
***Build up to RERA<sup>10</sup>***

There was nearly a decade long struggle by various consumer activists and organisations to see this Act come into effect. Details of this journey are given in Annexure 2.

<b>Date</b>	<b>Event</b>
20 January 2009	National Conference of Ministers of Housing, Urban Development and Municipal Affairs of states and UTs proposing a law for the sector
July 2011	Ministry of Law & Justice suggested Central legislation for RE sector under specific entries of concurrent list of the constitution for regulation of contracts and transfer of property
04 June 2013	Union Cabinet approved the Real Estate Bill, 2013
14 August 2013	Real Estate Bill, 2013 introduced in Rajya Sabha
23 September 2013	Bill was referred to the Department related Standing Committee
13 February 2014	Report of the Standing Committee tabled in Rajya Sabha on 13 <sup>th</sup> Feb 2014 and in Lok Sabha on 17 <sup>th</sup> Feb 2014
09 February 2015	Attorney General upheld the validity of Central legislation for RE sector and the competence of the Parliament
06 March 2015	Real Estate Bill, 2013 and official amendments referred to the Select Committee of Rajya Sabha
07 April 2015	Union Cabinet approved official amendments based on Standing Committee Report
30 July 2015	Select Committee of Rajya Sabha tabled its report along with Real Estate Bill, 2015
09 December 2015	Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of Rajya Sabha for further consideration of the Parliament
10 March 2016	Real Estate Bill, 2015 passed by Rajya Sabha
15 March 2016	Lok Sabha passed the Real Estate Bill, 2015
25 March 2016	the President of India accorded his assent to the Real Estate Bill, 2015
26 March 2016	Real Estate (Regulation and Development) Act, 2016 published in the Gazette for public information
27 April 2016	69 Sections (Sections 2, 20-39, 41-58, 71-78, 81-92) of the Act notified by the Ministry of Housing and Urban Affairs bringing the Act into force with effect from 01 <sup>st</sup> May 2016- Remaining to come into force on 01 <sup>st</sup> May 2017
28 October 2016	Issues Real Estate (Regulation and Development) Removal of Difficulties Order , 2016

<sup>10</sup> Press Information Bureau, Government of India.

RERA TIMELINE <sup>11</sup>



<sup>11</sup> [https://www.rerafilings.com/upload/research/research\\_1468983848.pdf](https://www.rerafilings.com/upload/research/research_1468983848.pdf)

## 9. RERA: Overall Implementation

The Central Act requires each State to set up its own RERA Authority, which can draw from the Central rules applicable in UTs. A State's RERA Authority is established by its housing department or ministry through a notification, issued in exercise of the powers conferred by Section 20 of RERA. The Authority functions in accordance with the provisions laid down in the Central Act and the rules and regulations notified by the State's housing department/ministry.

For example, although MahaRERA is an autonomous body, it comes under the Maharashtra State government and its housing department is the Authority's administrative head. However, MahaRERA does not report to anyone in the State government.<sup>12</sup> At the Centre, the housing and urban development department serves as the administrative department for all State RERA Authorities. The State housing department is in charge of appointments. Decisions regarding the budget and various posts to be created are taken by the administrative department.

### **Where Does the Money Come from?**

RERA makes it mandatory for builders to disclose, well in advance, details of the 'carpet area', which is defined as the apartment's actual size, along with project specifications such as layout, design, structure and expected date of completion. Before launching or advertising a housing scheme, projects exceeding 500sq mtr, with eight or more apartments, must register with the concerned State's RERA Authority. The registration of real estate agents and brokers has also been made mandatory. State RERA Authorities obtain a large part of their funding from registration fees. With a large number of projects and agents registered, leading State RERA Authorities like MahaRERA, UP RERA and GujRERA are financially independent and don't need funds from their respective State governments. Instead, the revenue coming from registrations is enough to run their operations. If a State's RERA is not earning enough through registration fees, then the State government will finance the Authority. There are many States where the projects are negligible, like Uttarakhand, Jharkhand and Delhi. There, the State government allocates money from its own budget.<sup>13</sup>

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<sup>12</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

<sup>13</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

## Understanding the Grievance Redress Mechanism

A key issue faced by many home-buyers at present is the multiplicity of forums for grievance redressal. Clarity about the dispute resolution structure among buyers would go a long way towards their mental peace. If there is a dispute with the developer, an aggrieved buyer can approach his or her concerned RERA Authority which will prescribe the penalty or punishment for violations, if any. They can appeal to the real estate Appellate Tribunal (REAT), set up by their State government, if they are aggrieved by the decision of RERA Authority. The buyer can also appeal in the High Court within 60 days of receiving the decision of the REAT, if he or she is unhappy with it.

Buyers can also approach the consumer forums (national, state or district) if the builder defaults on the promises made at the time of the project's launch. Take Maharashtra, for example. "The forums for dispute resolution are the MahaRERA Authority, its adjudicating officers, the Appellate Tribunal, and the Authority's conciliation forum," explained Gautam Chatterjee, chairperson of MahaRERA. He added that home-buyers have the choice to approach either the consumer forum or MahaRERA. But he specified that 'forum shopping' is not permitted.

For example, if an aggrieved home-buyer has gone to one of the consumer forums, such as the National Consumer Disputes Redressal Commission (NCDRC), he or she cannot take the matter to the concerned RERA Authority, unless the case is withdrawn from the former. Many people now prefer to approach RERA Authority because it takes comparatively far lesser time (six to eight months) than the NCDRC<sup>14</sup> (going through the respective district/ state consumer forum) where it takes three to four years.

Amarjit Singh, chairman of Gujarat RERA (GujRERA) Authority, explained that the Authority does follow the consumer forums' judgements as broad guidelines, while taking all steps to ensure that projects are completed. As an example, he referred to NCDRC coming to the aid of home-buyers who have been struggling to get possession of their flats for years.<sup>15</sup> In May 2019, the apex consumer commission had determined a period of one year for stalled realty projects beyond which home-buyers can claim refund from builders.

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<sup>14</sup> After the new Consumer Protection Act 2019 came into effect from July 2020, the pecuniary jurisdiction has been changed and a complaint can be filed in NCDRC only if payment made is more than Rs10 crore.

<sup>15</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

Mr Singh said, while normal complaints are dealt with by members of GujRERA, the adjudicator, who is a retired district judge, is brought in if there is a matter of compensation. “We also have a conciliation forum and it has been very helpful in a number of cases,” he added.

After home-buyers file an online complaint, they are called for a hearing. Almost 95% of the times, either the home-buyers ask for a refund of the money deposited with the builder or for possession along with a penalty for delay. Orders in this regard are passed by the Authority which takes a decision within three to four months.

### **Settling Amicably**

Aggrieved persons have a choice to either go through the conciliation route when both parties consent to attempt conciliation, or file an online complaint with their concerned RERA. Also, if the conciliation attempt fails, the aggrieved person can file an online complaint. RERA Authorities in Maharashtra, UP and Gujarat have already set up conciliation forums. Karnataka, Haryana and MP are going to set up a conciliation forum soon.

UP RERA has two benches of conciliation forums—one for the NCR (national capital region) region and another for Lucknow. “Right now we have more than 600 applications lined up to be taken for a conciliation forum. More than 100 cases have already been heard and 80% out of these were settled,” said RD Paliwal, conciliator, NCR bench, UP RERA.<sup>16</sup>

Giving an example, UP RERA’s Balvinder Kumar said that if there is a case regarding wrong maintenance charges or not getting parking facility, people may feel it can be settled through the conciliation forum. But builders tend to resist demands such as refund or possession with delay penalty.

### **The Internal Machinery**

In Maharashtra, Gautam Chatterjee explains that MahaRERA is a 100% digital platform, which operates all its 16 government-to-business and government-to-customer services in online mode. He said to *Business Standard* in a web exclusive article dated 26 June 2019, “MahaRERA has a vision of zero footfall, paperless office. Following the principle of minimum government and maximum governance, MahaRERA operates with staff strength of little over 40 people.”

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<sup>16</sup> <https://www.livemint.com/money/personal-finance/rera-s-conciliation-forums-act-as-a-short-cut-for-aggrieved-buyers-1567529369522.html>



GujRERA has staff strength of about 70, currently. Mr Singh said: “We have a team of lawyers and CAs who are working with us to look at legal and financial aspects. The lawyers ensure the documents are legally sustainable, while the team of CAs ensures the mandated amount of funds are kept in the escrow account and used for the concerned project only.”<sup>17</sup>

UP RERA also has professionals for such tasks in its team and has outsourced some of its work (verification of documents, back-office administration, web modules, etc) to PricewaterhouseCoopers (PwC). Under RERA, builders also have to deposit 70% of the funds collected from buyers of a project in an earmarked account; these funds can only be withdrawn for the specific project for which they have been collected. In many earlier cases, where buyers did not receive their flats, it was found that the funds had been diverted.

### **Monitoring Progress, Keeping Builders in Line**

In case developers indulge in any ‘unfair practices’ defined under RERA, the Authority has the right to de-register their projects. RERA also imposes a set of penalties for home-buyers, agents and developers in case of non-compliance. All of this requires constant monitoring. UP RERA has appointed PwC as a consultant to monitor the builders’ quarterly progress reports in terms of whether it is being uploaded or not and are the formalities and compliances being met by the builder. This is based on data provided by builders online. They have also started physical inspections last year.

Mr Singh said that Gujarat’s is one of the few RERA Authorities that has introduced a separate form, in accordance with the national building code, for quality monitoring in terms of cement strength, steel strength and concrete strength, etc. Builders in Gujarat have to submit this statement, too, along with other documents. He said, “I think Maharashtra and we are the only two RERAs which are doing this.”

Of the 1,173 projects GujRERA expected to be completed by May 2019, 1,110 had been completed.<sup>18</sup> MahaRERA chief Mr Chatterjee said that “disclosures of complete information of over 22,000 registered projects and over 21,000 registered real estate agents in the public domain, through the MahaRERA website, have enabled

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<sup>17</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

<sup>18</sup> [https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250\\_1.html](https://www.business-standard.com/article/economy-policy/how-rera-works-in-major-states-and-its-uneven-operation-across-india-119062600250_1.html)

aggrieved persons to file online complaints whenever they find a discrepancy or violation of the provisions of the Act.”<sup>19</sup>

### **Consolidation in the Industry**

Earlier, in the absence of regulation, anyone with a land bank or money could become a developer. That has become difficult in the current regulated environment, which requires enhanced compliance by developers. Also, given the tough market conditions, where even established entities are struggling to sell units, non-serious developers lacking professional capabilities are exiting the business. This is leading to consolidation in the industry.

The number of new and upcoming builders will decrease, as it will be hard to find buyers in new projects. Even as fewer new developers are expected to enter the business, some of the existing ones are being taken over by big builders.

Some big developers such as Godrej Properties, Mahindra Lifespace Developers and Prestige are acquiring a lot of projects that are financially unviable. Such moves will benefit home-buyers.<sup>20</sup> The end-consumer will clearly be more empowered and is set to enjoy the fruits of consolidation, which will lead to standardisation in quality, transparency in pricing and, most importantly, timely delivery.

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<sup>19</sup> <https://realty.economicstimes.indiatimes.com/news/regulatory/maharera-moots-self-regulatory-organisations-to-ensure-greater-efficiency/71367181>

<sup>20</sup> <https://www.livemint.com/money/personal-finance/four-factors-that-may-rekindle-buyers-interest-in-real-estate-11580812633833.html>

## 10. Implementation of RERA across States

The Union ministry of housing – MoHUA – responsible for implementation of the Act, uploads data on the progress and implementation of RERA across states. The data shared by the ministry on 15<sup>th</sup> February 2020, showed the following details.<sup>21</sup>

### Real Estate (Regulation & Development) Act, 2016 [RERA] Implementation Progress Report (as on 15-02-2020)

Sl.	State/UT	General Rules	Establishment of Regulatory Authority	Establishment of Appellate Tribunal	Web Portal	Registrations		Total no. of Cases disposed by Authority
						Projects	Agents	
1	Andaman & Nicobar Island	Notified	Permanent	Permanent	Setup	1	21	0
2	Andhra Pradesh	Notified	Permanent	Permanent	Setup	695	95	123
3	Arunachal Pradesh	Not Notified	Interim	Not Established	Not Setup	--	--	--
4	Assam	Notified	Interim	Not Established	Not Setup	146	13	10
5	Bihar	Notified	Permanent	Permanent	Setup	874	275	163
6	Chandigarh	Notified	Permanent	Permanent	Setup	3	14	0
7	Chhattisgarh	Notified	Permanent	Interim	Setup	1109	463	670
8	Dadra & Nagar Haveli	Notified	Permanent	Permanent	Setup	84	2	0
9	Daman & Diu	Notified	Permanent	Permanent	Setup	23	0	0
10	NCT of Delhi	Notified	Permanent	Permanent	Setup	21	214	73
11	Goa	Notified	Permanent	Interim	Setup	524	186	25
12	Gujarat	Notified	Permanent	Interim	Setup	6758	1112	1687
13	Haryana *	Notified	Permanent	Permanent	Setup	761	1805	8,208
14	Himachal Pradesh	Notified	Permanent	Not Established	Setup	51	42	80
15	Jammu & Kashmir **	Under Process	--	--	--	--	--	--
16	Jharkhand	Notified	Permanent	Interim	Setup	178	4	42
17	Karnataka	Notified	Permanent	Permanent	Setup	3253	1795	2011
18	Kerala	Notified	Permanent	Not Established	Setup	05	25	02
19	Ladakh**	Under Process	--	--	--	--	--	--

<sup>21</sup> [http://mohua.gov.in/upload/uploadfiles/files/RERA\\_Status\\_Tracker%20\(15-02-2020\).pdf](http://mohua.gov.in/upload/uploadfiles/files/RERA_Status_Tracker%20(15-02-2020).pdf)

20	Lakshadweep	Notified	Permanent	Not Established	Not Setup	--	--	0
21	Madhya Pradesh	Notified	Permanent	Permanent	Setup	2535	664	2,929
22	Maharashtra	Notified	Permanent	Permanent	Setup	24347	23109	7,476
23	Manipur	Notified	Interim	Interim	Not Setup	--	--	0
24	Meghalaya	Not Notified	Not Established	Not Established	Not Setup	--	--	--
25	Mizoram	Notified	Interim	Not Established	Setup	--	--	0
26	Nagaland	Not Notified	Not Established	Not Established	Not Setup	--	--	--
27	Odisha	Notified	Permanent	Permanent	Setup	350	54	767
28	Puducherry	Notified	Interim	Permanent	Not Setup	42	2	1
29	Punjab	Notified	Permanent	Permanent	Setup	840	1922	703
30	Rajasthan	Notified	Permanent	Permanent	Setup	1170	1293	272
31	Sikkim	Not Notified	Not Established	Not Established	Not Setup	--	--	--
32	Tamil Nadu	Notified	Permanent	Permanent	Setup	1395	1111	694
33	Telangana	Notified	Interim	Interim	Setup	1638	1035	0
34	Tripura	Notified	Interim	Interim	Setup	06	--	0
35	Uttar Pradesh	Notified	Permanent	Permanent	Setup	2785	3588	16860
36	Uttarakhand	Notified	Permanent	Interim	Setup	269	292	369
37	West Bengal***	Not Notified	Not Established	Not Established	Not Setup	--	--	--
<b>Total</b>						<b>49,863</b>	<b>39,136</b>	<b>43,165</b>

\* Haryana has 2 Regulatory Authorities i.e. one for Gurugram and other at Panchkula for rest of Haryana.

\*\* Rules under RERA will be notified soon in newly created Union Territories of 'Jammu & Kashmir' and 'Ladakh'.

\*\*\* West Bengal has enacted its own Act namely 'West Bengal Housing Industry Regulation Act, 2017' however, state has been advised by MoHUA to notify the rules under Real Estate (Regulation & Development) Act, 2016.

#### **Summary:**

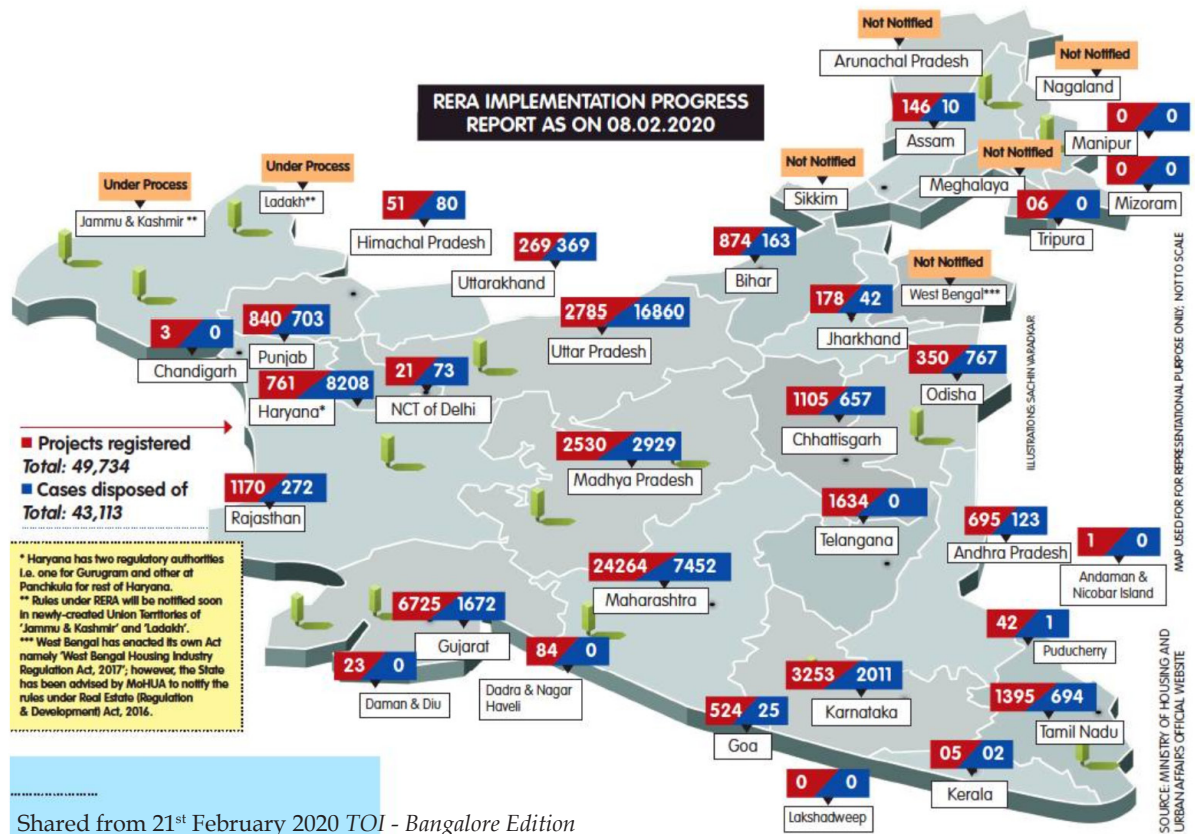
- 30 States/UTs have notified rules under RERA; 4 North Eastern States (*Arunachal Pradesh, Meghalaya, Nagaland and Sikkim*) are under process to notify the rules.
- 31 States/UTs have set up Real Estate Regulatory Authority (Regular - 24, Interim - 07)
- 25 States/UTs have set up Real Estate Appellate Tribunal (Regular -17, Interim - 08) (*Assam, Himachal Pradesh, Kerala, Mizoram and Lakshadweep are under process to establish*).
- Regulatory Authorities of 26 States/UTs have operationalised their websites under the provisions of RERA. (*Assam, Lakshadweep, Manipur & Puducherry are under process to operationalize*).
- **49,863** Real Estate Projects and **39,136** Real Estate Agents have registered under RERA across the country.
- **43,165** Complaints have been disposed-off by the Real Estate Regulatory Authorities across the country.

**Progress across States**

Maharashtra is one of the first States to implement RERA fully; it leads in project and agent registration as also in speedy disposal of home-buyers’ complaints. MahaRERA has registered 24,347 projects and 23,109 agents, and disposed 7,476 complaints out of the 10,370 received, as per data on 15 February 2020. RERA has prioritised buyers’ interests and brought in compliance norms. It has also ensured that there is no delay in project hand-over by setting stringent penalties on promoters for failure to do so.

In Gujarat, Karnataka and Uttar Pradesh, too, RERA made healthy progress last year. In Karnataka, for instance, project registration has gone up from 2,465 in December 2018 to 3,232 in January 2020.

*RERA Progress Report as on 8 February 2020: A Graphic Representation<sup>22</sup>*



**Dedicated Regulator**

Under RERA, each State is required to have a RERA Authority responsible for the implementation of rules and regulations, and ensuring transparency in real estate transactions. So far, 31 States and UTs have appointed this Authority; seven are

<sup>22</sup> <https://content.magicbricks.com/property-news/one-nation-one-rera/111687.html>

interim bodies. The interim regulators' efforts fall short of the intended goal of a dedicated real estate regulator, leaving consumers in the lurch. The setting up of a permanent authority is critical for the progress of RERA.

Also, under the Act, every State has to establish a dedicated Tribunal to address grievances and offer timely redress. If a promoter has violated the terms of the agreement for sale or has delayed handing over of projects, consumers can approach the Tribunal and lodge a complaint.

Abhay Upadhyay said that it needs to be immediately ensured that all States have full-time regulatory authorities and permanent Appellate Tribunals. This is the least of the follow-up that the MoHUA can do with the States and ensure compliance.

### **Role of RERA Authority Portals**

The online portal of a State RERA Authority plays a vital role in boosting buyer confidence. An informative portal allows an individual to view the project type, its status (ongoing or completed), proposed date of completion, whether it is subject to litigation, FSI (floor space index) details and the number of flats booked. At present, 26 States have official RERA portals up and running; most have also enabled online fee payment. Though most States seem to have implemented RERA, it has not yet given a boost to buyers' confidence nationwide. The slow pace of implementation of RERA in some States, including project and agent registrations, could be the reason. This, and high property prices, may also be keeping demand subdued.

According to industry experts, a large inventory of projects remains outside the purview of RERA; the number of projects registered represents only a small number. Thus, the Act's objective of protecting buyers' interest is still work-in-progress. For instance, in Jharkhand, just 178 projects have been registered after nearly three years of RERA implementation. In Punjab, 840 projects are registered. In Delhi, only 21 projects have been registered, while three projects have been registered in Chandigarh.

"In some States where the implementation is not at the level it should be, we see new real estate projects slipping through the regulatory net. It is similar to the challenge of GST (goods and services tax) uniform implementation across different States is needed," said Pankaj Kapoor, founder and MD, Liases Foras. He added: "In some States, there is lack of sufficient information and user-friendly online access for

home-buyers. In some States, it is observed that periodic updates of some ongoing projects and on the part of the developers are not available online.”

Though the progress of registration is slow, all registrations have to be done online in most States; also they need to provide details on the promoter, project, project status and real estate agents. The pace of adoption of RERA has significantly increased in 2019 and FY19-20 saw several States adopting RERA and the establishment of the respective State regulatory authority, establishment of the respective State Appellate Tribunal and the creation/ development of the respective State RERA web portals that have taken off.

While most States have notified rules under RERA, Arunachal Pradesh, Meghalaya, Nagaland and Sikkim are yet to do so. This is mainly due to issues related to land belonging to certain communities; however, these States too are in the process of notifying the rules.

## 11. Dilutions of Regulations by States

The impact of RERA will be evenly felt across the country if all the States implement the provisions of RERA passed by the Central government, in letter and spirit. RERA is designed to ensure project registrations, compliance by developers and a fair treatment for customers through transparency and accountability. Unfortunately, almost all the States have effected substantial dilution of RERA. Dilutions have mainly happened with regard to project completion, ongoing projects, certification by professionals and structural defects and penalties. As per the provisions of RERA, State governments are required to make rules for carrying out the provisions of the Act within six months from the commencement of the Act. The Act explicitly says that the appropriate government shall only make rules for the smooth functioning of the Act and it does not say anything about States' powers to dilute the Central law. Having said that, the States notified rules which clearly dilute the provisions of RERA and, to that extent, benefit the builders.

**Project Completion:** RERA provides that no extension can be given to the project beyond one year. In Bihar, Karnataka, Madhya Pradesh, Rajasthan, Odisha, Andhra Pradesh, Uttarakhand, Uttar Pradesh, Tamil Nadu, Chhattisgarh and Telangana, the extension depends on the time allowed for completion under local laws, which defeats the spirit of RERA. The States have meddled in the matter against consumer interest, ignoring an important clause of Central legislation.

**Ongoing Projects Kept Out:** The Act defines an ongoing project as one "where development is going on and for which completion certificate has not been issued." But several States have added exclusions to this definition. Abhay Upadhyay shared that quite a few States have appropriated illegal powers by notifying rules contradictory to the provisions of the parent Act. Some States (Maharashtra, Karnataka, Haryana, Uttar Pradesh, Punjab, Tamil Nadu and Telangana) have, by virtue of their rules, exempted many 'ongoing projects' from the ambit of the law. This is patently illegal and has also been challenged in a few High Courts. According to him, the States have constricted the provisions and applicability of RERA which is highly immoral and patently illegal, catering to builders' lobby. This has defeated the very purpose of bringing all incomplete projects under RERA and also implementing one-nation-one RERA.



An ongoing project is basically a project for which the completion certificate has not been issued on the date of commencement of the Act. This ensures that projects which are work-in-process come under the Act. A CRISIL research report<sup>23</sup> points out: "Some States like Andhra Pradesh, Kerala and Uttar Pradesh have altered this definition in their notified rules." In Gujarat, the operational rules do not mention any definition of an ongoing project.

A project in Karnataka, for instance, is excluded from RERA jurisdiction, if it meets one of the following five conditions:

- a) Services have been handed over to local authority.
- b) Common areas have been handed over to registered association comprising majority of allottees.
- c) 60% of sale or deeds of the apartment houses have been registered and executed.
- d) Application filed with the competent authority for the CC/OC.
- e) Where partial OC is obtained.

Ongoing project acquires a different meaning in Telangana, where it is defined as a project "where development is going on and for which occupancy certificate or completion certificate has not been issued but excludes such projects for which building permissions were approved prior to Jan 1, 2017 by competent authorities." The number of projects in Telangana registered under RERA in May 2019 was 631. But in Hyderabad alone (in May 2019), according to Anarock Research, 9,600 units worth over Rs6,270 crore were facing delays. This means those who had invested in such projects cannot turn to Telangana RERA Authority for remedial action.

Anuj Puri, chairman Anarock Research, noted that RERA has provisions to ensure timely delivery of projects, but its rules have been diluted in many States. He concluded that "To this extent, RERA may be effective in freeing only a limited amount of the stuck inventory. In short, despite RERA, buyers are still at the mercy of the developer's actual intent to deliver in many cases."<sup>24</sup>

Several States have diluted this definition of ongoing projects, even though a Lok Sabha committee on subordinate legislation later noted that all ongoing projects will be within the ambit of RERA when its relevant provisions came into force, as the

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<sup>23</sup> <https://www.crisil.com/content/dam/crisil/our-analysis/views-and-commentaries/impact-note/CRISIL-Research-Impact-Note-Most-states-miss-RERA-deadline-May02-2017.pdf>

<sup>24</sup> <https://economictimes.indiatimes.com/industry/services/property/-construction/housing-units-worth-rs-4-64-lakh-crore-delayed-despite-rera-implementation-anarock/articleshow/65560160.cms?from=mdr>

law made by the parliament will prevail, even though States did not notify the rules. Karnataka, Himachal Pradesh, Telangana and Tamil Nadu delayed notification of RERA rules to keep ongoing projects out of the ambit of regulations.

UP RERA includes ongoing projects with conditions. It excludes projects where services have been handed over to the local authority for maintenance, where common areas and facilities have been handed over to the association or residents' welfare association for maintenance; sale/ lease deeds of 60% of apartments/plots/houses have been executed and, where all development works have been completed and an application has been filed with the competent authority for issue of CC.

In Haryana, ongoing projects approved under the Haryana Development and Regulation of Urban Area Act, 1975 are out of RERA regulation. Further, projects with CC or OC, even partial, will be exempted from Haryana RERA. In Gurugram, almost 90% of the real estate projects (with 0.17 million houses) are at different stages of construction or completion. This relaxation led to many builders rushing to get an OC to ensure that their project did not come under the Act.

As a news report in *The Economic Times* published on 3 May 2017, pointed out: "Developers in Haryana are making use of the window provided by the draft State RERA rules, to get out of the ambit of the regulatory authority. On the first working day after the draft rules were announced, over 50 applications were submitted with the department of town and country planning (DTCP), seeking occupation certificates (OC)." This has basically made a mockery of what RERA was trying to achieve.<sup>25</sup> In several cases, it was seen that projects were excluded from RERA if the developers managed to secure part OC. Several incomplete projects (when a lot of work was pending) managed to get part OC and dodge RERA registration.

**Time of Refund:** There is no uniformity in the time for refund of money or compensation payable under the rules notified by the States. It varies from 45 days to 90 days.

**Compounding of Offence:** Several imprisonment clauses have been made into compounding clauses (where money is paid in lieu of actual punishment). The offences and penalties chapter of the Act states that, "on payment of a certain sum of

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<sup>25</sup> <https://realty.economictimes.indiatimes.com/news/regulatory/haryana-builders-rush-for-occupation-certificates-to-escape-rera/58487711>

money, any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such a person.”

Four States have fixed the penalty as “up to 10% of the cost of the project”. Bihar, Madhya Pradesh, Odisha, Andhra Pradesh, Uttarakhand, Uttar Pradesh, Himachal Pradesh, Chhattisgarh and Telangana have fixed 10% of fine in lieu of imprisonment. Rajasthan has fixed it at 5%. Gujarat and Haryana have fixed it between 5% and maximum 10%. In Gujarat, the rules empower the State government to amend the quantum of penalty to be paid for compounding the offence. The different rates of penalty may not serve as a deterrent for violating developers across the country.

UP RERA has diluted compounding clause in the favour of builders as the amount required to be paid for compounding is ‘up to’ which means it may even be Re1 or it may even be zero. Further, this could encourage corruption, as the quantum of money to be paid will be at the discretion of the RERA Authority. This should be ideally rolled back to match Central RERA rules on compounding (as given below).

*RERA rules on compounding (from the parent Act)<sup>26</sup>*

<b>Offence</b>	<b>Penalty for Compounding the Offence</b>
Imprisonment under subsection (2) of section 59	10% of the estimated cost of the real estate project
Imprisonment under section 64	10% of the estimated cost of the real estate project
Imprisonment under section 66	10% of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated
Imprisonment under section 68	10% of the estimated cost of the plot, apartment or building, as the case may be

<sup>26</sup> RERA AND CAPITAL GAIN: Law Relating to Immovable Property by KK Ramani and NC Jain, Wolters Kluwer, 2<sup>nd</sup> Edition, 2019.

**Designated (Escrow) Account:** RERA stipulates that 70% of the amount realised for the real estate project from allottees, “shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.” This money can be withdrawn in proportion to the percentage of completion of the project, after it is certified by engineer, architect and CA. This is a key clause in RERA and was put in to prevent builders from raising money for a project and then using it for other purposes like completing an earlier project or paying off debt that was due or buying land for another project. The operational guidelines of many States are not clear on this. Gujarat does not mention the norms for withdrawal of money from the escrow account of the project. Kerala states that “70% (or less, as notified by the government) of the amount realised by developers to be deposited in a separate account.” There is no clarity on withdrawal of money from the escrow account. This is true even for the guidelines issued by Madhya Pradesh.

MahaRERA states that “70% of the amount to be realised from the allottees shall be deposited in such a separate account, in accordance with the provisions of sub clause (D) of clause (I) of sub-section (2) of the Section 4 of the Act.” The amount of money for the project already realised by the developer has been left out of the purview of RERA. This is a major loophole for the ongoing projects. RERA Authorities have been increasingly focusing on the management of separate designated accounts, required to be maintained as per the provisions of RERA. This is with the expectation that such accounts would limit diversion of project funds.<sup>27</sup> But a scrutiny of the separate RERA accounts of developers (even if it is random sampling) is essential to ensure that developers are not misusing these accounts and projects get completed on time.

“Withdrawals from this account are permitted in line with the percentage of completion of the project, as certified by an engineer, an architect and a chartered accountant. This imposes an additional check on the utilisation of the project cash-flows. Such a check is particularly important in cases where the project has sold well and generated robust collections, but financial progress on the project construction has remained low, thus giving rise to increased scope for fund diversion,” said Shubham Jain, vice president and group head – corporate ratings, ICRA.<sup>28</sup> Homebuyers expect this regulation to protect their rights, and have, to that extent, asked

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<sup>27</sup><https://www.moneycontrol.com/news/business/real-estate/effective-certification-of-escrow-accounts-key-to-ensuring-non-diversion-of-funds-icra-4038671.html>

<sup>28</sup> <https://www.moneycontrol.com/news/business/real-estate/effective-certification-of-escrow-accounts-key-to-ensuring-non-diversion-of-funds-icra-4038671.html>

certain RERA Authorities to disclose the details of such designated accounts to the public, thus further underlining the need for increased vigilance on this financial practice.

**No Check on Certification Quality:** The key to the efficacy of the regulation lies in the certification process and the level of checks & balances differ from lender to lender, said rating agency ICRA. But there is no provision in the RERA rules issued by State governments to punish professionals who fraudulently certify that the work has been completed. There is no clarity on the quantum of proportionate completion of the project. This fact can be manipulated by promoters.

Shubham Jain said: “At present, RERA allows any engineer, architect and chartered accountant in practice to provide the required certifications. This exposes the process to some amount of stakeholder influence, given uncertainties on the extent of independence of the certifying parties. While certain lenders have strong checks & balances on the same to ensure that such influence is limited, the overall level of oversight differs from lender to lender. Instead, RERA Authority or lender empanelled and independent engineers, architects and chartered accountants should be considered, as an independent approach is likely to help in further upholding the sanctity of the certification process.”<sup>29</sup>

**Interest Rate on Refund:** UP rules do not have any reference to the rate of interest at which the money has to be refunded to home-buyers. Under Central RERA, developers are required to refund or pay compensation to allottees with an interest at the highest marginal cost of lending rate of the State Bank of India (SBI) plus 2% within 45 days.<sup>30</sup>

**A Wing of a Building as a Project:** MahaRERA’s rules have a provision for ‘phases of real estate project’. It seems to notify a set of buildings, a few floors or even a wing of a building as a project. While RERA allows for large projects that are spread over 100 acres to be completed in phases, it does not allow for dividing a project into buildings, say experts.

<sup>29</sup> <https://www.moneycontrol.com/news/business/real-estate/effective-certification-of-escrow-accounts-key-to-ensuring-non-diversion-of-funds-icra-4038671.html>

<sup>30</sup> [http://www.moneycontrol.com/india/newsarticle/news\\_print.php?autono=8841081&sr\\_no=0&classic=true](http://www.moneycontrol.com/india/newsarticle/news_print.php?autono=8841081&sr_no=0&classic=true)

Abhay Upadhyay alleges that MahaRERA notified rules that are in violation of the parent Act on multiple fronts to the benefit of builders. In his opinion, the rules are drafted in confusing language that an ordinary home-buyer would struggle to comprehend. Here are some issues he raises:

- Rule 2(1)(p) defines “Phase of Real Estate Project”. This definition breaks a real estate project into many parts and, hence, a project may be sanctioned for one wing and then extended to another wing; similarly, initial sanction can be for few floors and then more floors may be sanctioned. This is clearly against the provision of RERA as there is no concept of a project within project under the Act.
- Rule 3(2)(f)(ii) mandates submission of a ‘proposed plan’ for project registration. This is against the intent of RERA, which is clear that a sanctioned plan is necessary for project registration and should be submitted.
- Rule 3(2)(f)(iv), and Rule 3(2)(f)(v) mentions that the proposed number of floors / buildings will be disclosed at the time of registration. Subsequently, if there is a difference between proposed and sanctioned plan, as and when additional floor/building is sanctioned, the same shall be uploaded on the website of the regulator. This too is a clear violation of Section 14, which stipulates the consent of 2/3<sup>rd</sup> members needs to be obtained before effecting any change in the plan. The plan, once registered, cannot be changed as per the will of the builder or the authorities.
- Phase-wise project registration of individual tower or only certain floor which is not a stand-alone project is wrong and not in the spirit of RERA. Real estate projects should be registered on the basis of their advertisements which invariably show the full project composition, and on the basis of sanctioned plans, specifications and layout and not merely on the basis of building plan. Phase-wise registration concept, which is not a stand-alone project without all amenities/facilities, is illegal and is aimed at compromising home-buyers’ interest.

**Only Disposed Legal Cases Uploaded by Delhi:** Under the rules notified by Delhi, the developer will have to give details of only those legal cases which have been disposed and not of all those which are pending adjudication in various courts. This is a dilution in favour of builders and in contradiction of Section 4(2)(b) of RERA, which clearly provides for information to be given regarding details of pending cases, say RERA experts.<sup>31</sup>

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<sup>31</sup> <https://www.moneycontrol.com/news/business/companies/rera-effect-what-different-states-are-doing-to-water-down-the-rules-and-give-builders-an-escape-hatch-2266971.html>

**‘Proposed’ Plans:** Maharashtra rules have a new nomenclature called ‘proposed plans’. As per RERA notified by the Centre, only sanctioned plans can be submitted and not proposed plans. Abhay Upadhyay points out: “Once you have uploaded documents and registered the project with the regulatory authority, you cannot get the proposed plan changed unless you have the approval of two-thirds allottees of the project.”

MahaRERA also has a provision of ‘last approved sanctioned plan’. RERA clearly states that consent from two-third of allottees is required for changes in approved sanctioned plans shared at the time of booking a house. He explained: “Considering only the last approved sanctioned plan is a clear indication to legalise all changes made by the promoter in the plan subsequent to booking.”

**Withholding Information:** MahaRERA’s rules also provide discretionary power to the Authority to withhold any information or document from uploading on the website for public viewing. RERA does not provide for any such power to be given to the Authority. Providing for such discretionary powers seems to defeat the objective of the Act.

**Other Dilutions:** A CRISIL research report says: “According to the Central legislation, the model sale agreement is required to specify 10% advance payment, or charge an application fee from buyers, while entering into a written agreement for sale. In addition, in case of any structural defects arising within five years of handing over the possession of project to buyers, developers will be liable to rectify such defects without further charge. However, there is no clarity on these clauses in most States’ RERA notifications.”<sup>32</sup>

Model sale agreement is not being implemented/ enforced by any State RERA Authority. Developers continue to have their own versions; most of them continue with one-sided agreements even now.

### **Impact of Exempting Ongoing Projects**

Experts point out that housing colonies are usually built in phases and developers may acquire OC for each completed phase. For instance, if an ongoing housing project is planned to be constructed in four phases, the builder can apply for OC even after completing just one phase and get excluded from RERA ambit as per UP

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<sup>32</sup> [https://www.business-standard.com/article/current-affairs/a-117050201040\\_1.html](https://www.business-standard.com/article/current-affairs/a-117050201040_1.html)

RERA rules. This exemption will weaken RERA's ability to safeguard home-buyers' interests and guarantee timely possession.

However, real estate developers say that excluding real estate projects with partial or complete OC/CC from RERA purview would not free developers from the responsibility of ensuring timely completion of the project. Even if they are exempted from RERA's ambit, developers are still accountable to deliver the flat within the stipulated time. The developers explain that the biggest benefit for builders not under RERA's ambit is that they will be able to charge as per the super built-up area instead of the carpet area mandated by Central RERA. This means that buyers would have to pay more as carpet area is usually around 60%- 70% of the super built-up area. Ramesh Nair, CEO and country head, JLL India said: "UP and Gujarat excluded ongoing projects, and home-buyers were pressing the Central government to bring such projects under RERA in these States. Whether or not all ongoing and under-construction projects get covered under the Act will depend entirely on the respective State Governments passing it for their respective regions."<sup>33</sup>

UP's move to exclude projects where 60% units have executed sale deeds would make it easier for many builders to manipulate this rule and home-buyers will be the victims once again. This is because, usually, sale deeds happen before the completion of a project.

Under the amended Uttar Pradesh Construction, Ownership and Maintenance Amendment Act, 2016, there is no control or restriction over the completion time of a project and the changes that a builder can make. Instead of the specified 24 months, a builder can take up to seven or eight years to complete the project. No assurance is required; everything is flexible. The amended Act states that once a CC has been received by the builder, he cannot make any changes to a project. "The inference one can draw from this is that a builder can make changes in the original project plan till he decides to apply for a completion certificate. What this means is that the maximum number of projects will now be out of RERA, especially those who have applied for completion certificates," said SK Pal, a Supreme Court lawyer.<sup>34</sup>

The UPRERA rules have to be read in conjunction with amendments to the Apartment Act – both being equally important public policies. The UP Apartment Act 2010 is

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<sup>33</sup> <https://economictimes.indiatimes.com/wealth/real-estate/rera-from-may-1-2017-are-on-going-projects-being-covered-in-your-state/articleshow/58161531.cms?from=mdr>

<sup>34</sup> <https://www.moneycontrol.com/news/business/companies/rera-effect-what-different-states-are-doing-to-water-down-the-rules-and-give-builders-an-escape-hatch-2266971.html>



unique minus the amendments (of 2016). As per the UP Apartment Act 2010, units in UP had to be delivered within two years (24 months) and buyers compensated for delays under Section 4(4) and 4(5). It had also specified that plans, once sanctioned, could not be changed, laying down jail terms for violations. Read along with RERA rules, UP would have perhaps been the safest place to invest in real estate. But these very Sections have now been diluted.<sup>35</sup>

### **Impact of Diluting Penalties for Offences**

If a builder fails to follow RERA guidelines, such as not meeting possession deadline, he is liable to pay only a certain amount as penalty as 'compounding of offence' and escape stringent penalty or punishment. Exclusion of imprisonment would only bring marginal efficiency in the real estate activity across the State and would unfairly benefit builders in the State. Compounding of offence with up to 10% of the cost of the project has made RERA toothless in many States. This 'up to' 10% of the cost of the project may be a meagre penalty when the cases drag on for a number of years in the court.

If the compounding option is available to developers, they will have nothing to fear as they will avoid punishment for any fault by just paying a simple fine. The rules also mention that the money to be paid for compounding shall be proportionate to the term of imprisonment subject to a maximum of 10% of the estimated cost of the real estate project for three years. Since the minimum is not specified, it could be NIL or a nominal Re1, say legal experts.

After RERA was notified on 1 May 2016, all the States were required to notify final rules within six months. Activist Abhay Upadhyay, a member of the Central Advisory Council, RERA (MoHUA), told us that he had taken up the issue of dilutions by States in a detailed discussion at the committee on subordinate legislation (COSL) meeting in April 2017. COSL took stock of the progress of RERA implementation scheduled on 1 May 2017 and also expressed concern to the ministry officials over the dilution of rules at the State RERA levels. COSL had written to the ministry with a 32-point query, including questions relating to status of the implementation of the Act, establishment of regulatory authority and Appellate Tribunal by State government, and dilution of rules by various States.<sup>36</sup>

<sup>35</sup> <https://www.moneycontrol.com/news/business/real-estate/homebuyers-challenge-up-rera-rules-file-writ-petition-in-allahabad-high-court-2390893.html>

<sup>36</sup> <https://realty.economictimes.indiatimes.com/news/regulatory/parl-panel-takes-up-rera-dilution-by-various-states/58390323>

“Consumer interest was the focal point of the meeting. Strict implementation of RERA was also discussed. In addition to earlier queries, a few more were raised in the meetings that followed. The responses were to be examined by a committee and COSL was to make its recommendations after that,” explained Mr Upadhyay.

According to Mr Upadhyay, most States had diluted the Central law in favour of developers and, therefore, ‘Fight for RERA’ had sought COSL’s intervention to put a stop to this. In 2017 the organisation wrote to the prime minister, the then Union minister of housing, and to the chief ministers of UP, Haryana and Gujarat, to highlight such dilution of rules.

Mr Upadhyay feels that dilution of RERA norms across States, including Uttar Pradesh and Haryana, has affected market sentiment and disappointed the home-buyer community. This is particularly true for markets such as NOIDA (New Okhla Industrial Development Authority), Gurugram, Faridabad and GNOIDA (Greater NOIDA), where delayed projects are already adding to the unsold inventory woes. It is reported that one-third of the country’s unsold stock is in the NCR.

The number of litigations is also very high in UP. Delayed possession is a big issue and in NOIDA and Greater NOIDA; several housing projects launched seven to 10 years back are still in construction stage. Officials say that around 50 ongoing projects in NOIDA are delayed by three to four years.<sup>37</sup> In Greater NOIDA, around 300,000 home-buyers are waiting for their possession letters in 63 delayed realty projects. Ditto for another 13 housing projects in the Yamuna Expressway Industrial Area. If this uncertainty about the efficacy of the diluted RERA norms continues, home-buyers are likely to hesitate and stay away from the real estate market in the near future.

Ramesh Nair, CEO and country head - JLL India, says: “The Centre has shown the way to States by implementing RERA in its entirety in the UTs. States must ensure that they do not dilute RERA and implement it in letter and spirit.”<sup>38</sup> Often, even the fine print of the rules is confusing and leaves several existing home-buyers stranded. For example, the Uttar Pradesh Real Estate (Regulation and Development) Rules,

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<sup>37</sup> <https://www.financialexpress.com/economy/big-relief-to-up-builders-yogi-adityanath-government-redefines-ongoing-projects/787305/>

<sup>38</sup> <https://economictimes.indiatimes.com/wealth/real-estate/rera-from-may-1-2017-are-on-going-projects-being-covered-in-your-state/articleshow/58161531.cms?from=mdr>

2016 notification dated 27 October 2016, covers ongoing projects that have not been issued CC but specifically excludes such projects which fulfil any of the following criteria on the date of the notification of these rules:

- Where all development works have been completed and the application has been filed with the competent authority for issue of CC.
- Where services have been handed over to the local authority for maintenance.
- Where common areas and facilities have been handed over to the association or the RWA (residents' welfare association) for maintenance.
- Where all development work has been completed and sale/lease deeds of 60% of the apartments/houses/plots have been executed.

### **What Comes First – Refunds or Project Completion?**

There have been instances where RERA Authorities themselves have denied refunds to buyers; this may often have to do with keeping in mind the interests of the project and the larger group of buyers who have invested in it.

Gautam Chatterjee, chairman of MahaRERA, said that RERA Authority shouldn't be looked upon as a consumer court. "We are meant to oversee how the project will get completed so that people get their homes." Anthony de Sa, chairman of Madhya Pradesh RERA agrees: "(Our) primary objective is delivery of project with compensation on delay," he says.

He said that if the project is at a standstill, then refunds can be considered. "But if there is a chance the project might get completed and if, let's say, 10 allottees want to opt out, then how will the developer ever complete the project? Other buyers who are waiting to get their homes will suffer," he says.

But balancing the interests of all stakeholders and deciding how much of a delay is permissible to aid project completion is tricky. While it is the responsibility of developers to ensure project completion, the circumstances and facts in each case may vary.

Mr Upadhyay said that the Act empowers RERA Authorities to favour refunds, a provision that he alleges is being ignored by the Authorities. He stated: "The latest judgement of the Supreme Court (*Devasis Rudra vs Kolkata International City Pvt. Ltd*)<sup>39</sup>

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<sup>39</sup> <https://indiankanoon.org/doc/93187707/>

*& Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan*),<sup>40</sup> which ruled in favour of refund for home-buyers, vindicates our stand.”

However, regulators such as Mr Chatterjee are emphatic that if refunds and penalties demanded by a few investors who opt out are likely to jeopardise a large project, then the regulator’s job is to protect the interest of the majority of buyers who have also paid a large amount of money for the project.

### **Non-Implementation of RERA Orders**

Even in Maharashtra, the State with highest compliance with RERA, getting refunds is not easy. In 173 cases, developers are yet to refund money to buyers, despite MahaRERA ordering them to do so. Regulations provide for issue of recovery warrant against the developers – through district collectors who execute them by attaching assets – when orders are not executed. Up to May 2019, Maharashtra has issued 176 recovery warrants out of which only one has been executed; the others are pending with the collector.

Despite that, nearly 7,865 cases (71%) of the 11,080 complaints filed under RERA in the State have been disposed. Over half of such orders were disposed with home-buyers and developers deciding to solve the matter amicably. Over 21% of the projects registered under MahaRERA are now complete.

A similar situation exists in Karnataka, where nearly 90% of RERA Authority’s judgements go in favour of the buyers; but the builders do not honour them. Most of the judgements pertain to delayed compensation, refunds, cancellation among others, said MS Shankar, convenor of ‘Fight for RERA’-Karnataka Chapter.

Mr Upadhyay said: “The biggest problem that complainants face is non-implementation of the orders passed by the RERA Authority.”

### **Lack of Infrastructure**

The Act mandates that developers must provide updates about the project’s status and deposit 70% of the money received for it in an escrow account. It remains to be seen whether the Authorities check if the developers adhere to these regulations. Mr Upadhyay attributes this to lack of infrastructure. There’s no team on the ground that would audit the data provided by developers or verify sales figures reported to RERA websites, he said.

<sup>40</sup> <https://indiankanoon.org/doc/154279163/>

In August 2020, UPRERA announced its decision to audit the escrow accounts opened by builders for projects registered with the authority, and asked the promoters to submit the account details online till 31<sup>st</sup> August.<sup>41</sup> Rajive Kumar, chairman UPRERA said, “Considering the numerous complaints received by the authority regarding non-compliance with the provisions of the RERA Act, the authority has decided to conduct the verification audit of designated accounts.” He said that non-compliance would lead to the imposition of penalties on the defaulting developers.

### *RERA State-wise Rules Analysis and Dilutions*<sup>42</sup>

Sr. No.	State	Notification of RERA	Extensions for Project as per RERA	Ongoing project	Time of Refund	Compounding of offence
1.	Kerala	2/05/2017	Extension depends on consent of majority of allottees	Not required to be registered	As per terms	Not exceeding maximum penalty
2.	Punjab	28/07/2017	Extension as per RERA	Diluted	90 Days	Up to 10 %
3.	Bihar	2/05/2017	As per the Local laws	Not Diluted	60 Days	10 %
4.	Karnataka	10/07/2017	As per the Local laws	Diluted	60 days	Up to 10 %
5.	Madhya Pradesh	22/10/2016	As per the local Laws	Not diluted	45 Days	10 %
6.	Rajasthan	02/05/2017	As per the local Laws	Not Diluted	45 Days	5 %
7.	Odisha	25/02/2017	As per the local Laws	Not diluted	45 Days	10 %
8.	Maharashtra	20/04/2017	Extension as per RERA	Not Diluted	30 Days	Not Mentioned
9.	Andhra Pradesh	27/03/2017	As per the local laws	Not Diluted	45 Days	10 %
10.	Uttarakhand	01/05/2017	As per the local laws	Not Diluted	45 Days	10 %
11.	Uttar Pradesh	27/10/2016	As per the local laws	Not Diluted	45 Days	10 %
12.	Himachal Pradesh	01/07/2017	No extension beyond 1 Year	Diluted	60 days	10 %
13.	Gujarat	29/10/2016	No extension beyond 1 Year	Not Diluted	45 Days	5 % subject to maximum 10 %
14.	Chhattisgarh	26/04/2017	As per the local laws	Not Diluted	45 Days	10 %
15.	Haryana	28/04/2017	No extension beyond 1 Year	Not Diluted	90 Days	5-10 %
16.	Tamilnadu	22/06/2017	As Per the local Laws	Diluted	90 Days	Up to 10 %
17.	Telangana	04/08/2017	As per the local laws	Diluted	90 Days	10 %

<sup>41</sup> <https://www.hindustantimes.com/cities/up-rera-to-audit-escrow-accounts-of-registered-projects/story-Nb2gmWJvGz3xVedOwbiHAO.html>

<sup>42</sup> <http://ijcrt.org/papers/IJCRT1892111.pdf>

## 12. Leader and Laggard States

It has been three years since RERA came into force across the country and the Centre's aim to enforce it in every State is gathering momentum. RERA is intended to cover developers as well as real estate agents across the country. Here are some highlights of implementation.

- West Bengal is the only State that has notified its own real estate law under the West Bengal Housing Industry Regulatory Authority Act (WBHIRA).
- The north-eastern States (including Manipur, Meghalaya, Mizoram, Nagaland and Sikkim), which earlier shied away from it, have agreed to officially notify their RERA rules soon. Kerala RERA was launched on 1 January 2020.
- As it stands now, 30 States/UTs have already notified their RERA rules, out of which 26 States have active online portals. West Bengal too has an active portal for its own real estate law.
- Due to the slow pace of implementation across the country, a large inventory of real estate projects still remains outside RERA's purview.

**Leader States:** Six States – Maharashtra, UP, MP, Karnataka, Haryana (Gurugram) and Gujarat – constitute 90% of the total projects registered and cases disposed. Hence, we will be focusing on these States in this study.

### 12.1.1 MahaRERA

Maharashtra stands out as a model case study for RERA. MahaRERA has been operational since 1 May 2017. It accounts for almost 50% of the total projects registered and nearly 60% of the total real estate agents registered under RERA. Mumbai and Pune account for over 90% of RERA-registered properties in the country.

Anuj Puri, chairman Anarock Property Consultants, says, "Maharashtra is among the largest in terms of real estate development and the successful implementation of RERA is an achievement. The gradual improvement in performance of the State's real estate sector sets the benchmark for other States to emulate."

Dr Niranjana Hiranandani, national president of NAREDCO, president of ASSOCHAM and the co-founder of Hiranandani group, calls MahaRERA "the poster-boy of the successful implementation of RERA." He also lauds the dispute resolution effort saying, "There has been an additional layer added to the process in

the form of a conciliation forum, which seeks to provide an option prior to actually filing a dispute before MahaRERA. This has proven to be a success, with a success rate of over 70%.”

Dr Samantak Das, chief economist and head of research at JLL (India), also says that Maharashtra has had the most effective implementation of RERA so far and this includes data dissemination through the website as well as faster resolution of cases. How did this come about? *MoneyLife* had an extensive discussion with Gautam Chatterjee, former bureaucrat and chairman of MahaRERA (Refer Annexure 18.1), where he explained what went into the State’s successful implementation.

According to Mr Chatterjee, the most important issue that the legislation set out to address was, “the information asymmetry in the sector, the unending wait for the completion of projects into which the home-buyers have put their life savings and the huge trust deficit between home-buyers and developers.” This is how MahaRERA addressed each of them.

**Information Asymmetry:** Mr Chatterjee told us, “A home-buyer faced the problem of having no access to information while buying a home. If you go back to the fine print of MOFA (Maharashtra Ownership of Flats Act, 1963), we were clear that I must know what I was buying into and have every single detail, when I am putting my life savings into it. That was simply not available. How did we tackle this? MOFA merely said that developers should give all information, indicate completion date, sign the agreement in a certain manner, etc. But we had no answer about what to do if the developer did not comply. By the time we came to RERA and MahaRERA, we had the benefit of information & communication technology (ICT). It told us how to use ICT to put out information in the public domain. So transparency through ‘mandatory disclosures’ was adopted, putting the onus on the developer to put all mandatory details in the public domain. A developer could be held for non-compliance for failing to comply with what is ‘mandatory’. The Securities Exchange Board of India (SEBI) had already adopted disclosure-based regulation. So we opted for transparency through adequate and complete disclosure, to tackle information asymmetry.”<sup>43</sup>

**Unending Wait:** On the issue of delays, Mr Chatterjee said, “Getting my house/flat was a never-ending process and I as a buyer had no certainty about when it would be

<sup>43</sup> <https://www.moneylife.in/article/i-tell-people-to-not-use-the-rera-act-to-walk-out-of-the-project-rera-act-is-there-to-give-you-a-home-a-completed-home-gautam-chatterjee-maharera-chairman/58210.html>

constructed and delivered to me. So the aspect of registration was brought in to bring it under the ambit of this Authority. The main objective of registration was to ensure completion. We brought this aspect to the attention of all the builders – we said, it will not be a ‘licence’ that you are seeking when you are applying for registration, so that I use every restrictive parameter to decide whether you are eligible for a registration and thereafter use the same to punish you for not abiding with the so called conditions of the ‘licence’. I am doing it in your interest as well, because once a project is registered, the regulator is also part of the process of looking at how it will be completed. The regulator will assist in tackling every obstacle in your path and all stakeholders who try to delay or play spoilsport will be dealt with.”

“This happened because we do not waste time in sending out piece-meal queries questioning developers who have applied for registration of their project, which has necessary building plan approvals from the competent planning authority. We ensure through our robust software that mandatory disclosures, required as part of the online registration process, are put out in the public domain through the registration web-page of the registered project – without it, the software would not allow the application to be filled in. So the software ensures all fields are completed, but the onus is on the developer to ensure correct and complete disclosures. Once that is done, the information is available in the public domain for all and sundry to see and raise questions, through online complaints, if there is incomplete or false information. We have had complaints about these as well and we have also passed orders on such complaints. That was in fact the objective.”

Mr Chatterjee says, “We were also able to convince developers that all ongoing projects, which are incomplete, should be brought under the ambit of MahaRERA to see what are the obstacles there and how do we remove them and complete the project. So, out of over 21,500 registered projects of MahaRERA (which translate to 2.15 million homes) as many as 13,000 projects are of the past – legacy projects which should have been completed but had not. There was a time over-run in as many as 8,000 projects. Both the parliament and the Hon’ble Bombay High Court wanted these incomplete projects to be brought under the legislation, since ‘incompleteness’ is something we are trying to tackle by ensuring project completion. Interestingly, a majority of such projects were included only in Maharashtra.”

**Trust Deficit:** “We decided that when complaints come to us, the first effort must be to make the two sides sit face to face, talk transparently, and find a way out. I’m



happy, that of the 8,000-odd complaints that have come to us, a majority have been cases where the two sides did talk and understood one another's perspective and said, 'give us time we will resolve things ourselves'. I think this is the correct way to go about," said Mr Chatterjee in the same interview.

He added "If you ask about the rollout of the Central Act in Maharashtra, you can say that the State has been on track over the past three years (since the Act was passed in the parliament) and we are trying to implement the Act in its letter and spirit."<sup>44</sup>

*Promoter and Agent Registration Statistics for MahaRERA (as on 20 February 2020)*<sup>45</sup>

**Registration in Maharashtra**

Applicant Type	Applications Received	Registration Granted	Completed Projects as per Form 4
Promoter	24803	24437	4877
Agent	23457	23170	0
<b>Total</b>	<b>48260</b>	<b>47607</b>	<b>4877</b>

*Complaint Registration and Redressal Statistics for MahaRERA (as on 20 February 2020)*<sup>46</sup>

**Complaint Registration and Redressal**

Total complaints received	A	Complaints against registered projects	Orders passed against registered projects	Total orders passed
10567		9868	7024	7526
	B	Complaints against un-registered projects	Orders passed against un-registered projects	
		699	502	

Since its launch, MahaRERA has ticked all the boxes—ensuring accountability towards property buyers and protecting their interests, bringing in transparency in transactions, reducing delays in project hand-over, and establishing a fast-track dispute resolution mechanism. An individual can view projects online to know the development status and the expected date of completion.

<sup>44</sup> <https://www.vantageasia.com/rera-rebuilding-trust/>

<sup>45</sup> <https://maharera.mahaonline.gov.in/searchlist/PublicViewDashboard>

<sup>46</sup> <https://maharera.mahaonline.gov.in/searchlist/PublicViewDashboard>

For instance, if you want to check the status of Godrej Properties’ project ‘The Trees’, the search result will give you the project type (in this case, residential), project status (ongoing), proposed date of completion (June 2021), whether subject to litigation (No), address of the project (Vikhroli East), proposed and sanctioned buildings, FSI details and the number of flats booked.

*Screenshot of ‘Search’ feature on MahaRERA portal for projects*

The screenshot shows the MahaRERA portal search interface. At the top, the URL is maharera.mahaonline.gov.in/SearchList/Search. The page header includes the Maharashtra Real Estate Regulatory Authority logo and name. The search section is titled 'Search Project Details' and includes filters for 'Select User Type' (Registered Projects, Registered Agents, Revoked Projects), 'Project Name', 'Promoter Name' (filled with 'godrej'), and 'MahaRERA Project / Agent Registration Number'. There are 'Advanced Search', 'Search', 'Back', and 'Reset' buttons. Below the search filters is a 'Search Result' table with 14 rows of project data.

Sr No.	Project Name	Promoter Name	Last Modified Date	View Details	View Application	View Certificate	View Extension Certificate	View on Map	Directions
1	The Trees, Residential Phase 1	Godrej Properties Limited	03/10/2020	View			NA		
2	The Trees Residential Phase 2	Godrej Properties Limited	03/10/2020	View			NA		
3	The Trees, Origins	Godrej Properties Limited	03/10/2020	View			NA		
4	Godrej Prime	Godrej Redevelopers (Mumbai) Pvt. Ltd.	01/10/2020	View			NA		
5	Godrej Emerald Thane	Godrej Greenview Housing Private Limited	01/10/2020	View			NA		
6	Godrej Anandam	Godrej Properties Limited	30/09/2020	View			NA		
7	Godrej Central	Godrej Landmark Redevelopers Private Limited	01/10/2020	View			NA		
8	Godrej Park Greens	Godrej Skyline Developers Private Limited	11/10/2020	View			NA		
9	Godrej Nurture	GODREJ SKYLINE DEVELOPERS PRIVATE LIMITED	11/10/2020	View			NA		
10	FOREST GROVE AT GODREJ PARK GREENS	GODREJ SKYLINE DEVELOPERS PRIVATE LIMITED	11/10/2020	View			NA		
11	Godrej Platinum Wing B4	Godrej & Boyce Mfg. Co. Ltd.	05/10/2020	View			NA		
12	Mamurdi MHADA North	GODREJ SKYLINE DEVELOPERS PRIVATE LIMITED	11/10/2020	View			NA		
13	Godrej Two	GODREJ GREEN HOMES PRIVATE LIMITED	03/10/2020	View			NA		
14	Godrej RKS	Godrej Projects Development Limited	09/10/2020	View			NA		

## Specific details of a project as available on the MahaRERA portal

🏠 maharera.mahaonline.gov.in/PrintPreview/PrintPreview?q=gvsqRqXqZLerwOfBHRIBW%2fHZYgyztTwLbsp1I6tYqXDkH21AxQwI2kJKFs%2fyAOSi... 🔍 ☆ 🖨️ 📄 📌

### MahaRERA Application

#### General Information

Information Type: Other Than Individual

#### Organization

Name: Godrej Properties Limited  
 Organization Type: Company  
 Description For Other Type Organization: NA  
 Do you have any Past Experience?: Yes

#### Address Details

Block Number	5th Floor	Building Name	Godrej One
Street Name	Pirojshanagar	Locality	Vikhroli East
Land mark	Off. Eastern Express Highway	State/UT	MAHARASHTRA
Division	Konkan	District	Mumbai Suburban
Taluka	Kurla	Village	Kurla
Pin Code	400079		

#### Organization Contact Details

Office Number: 02261698500  
 Website URL: www.godrejproperties.com

#### Past Experience Details

Sr.No.	Project Name	Type of Project	Others	Land Area(In Sq mtrs)	Address	CTS Number	Number of Buildings/Plot	Number of Apartments	Original Proposed Date of Completion	Actual Date of Completion
1	GODREJ ONE	Commercial	NA	13893.53	Godrej One Pirojshanagar Off Eastern Express Highway Vikhroli East Mumbai 400079 Maharashtra india	51/B part	1	39	2013-12-30	2014-08-19

#### Member Information

Member Name	Designation	Photo
Anubhav Gupta	Authorized Signatory	<a href="#">View Photo</a>
Mayank Poddar	Authorized Signatory	<a href="#">View Photo</a>
Nilesh Kushe	Authorized Signatory	<a href="#">View Photo</a>

#### Project

Project Name	The Trees, Residential Phase 1	Project Status	On-Going Project
Proposed Date of Completion	30/06/2021	Revised Proposed Date of Completion	30/12/2021
Litigations related to the project ?	No	Project Type	Residential
Are there any Promoter(Land Owner/ Investor) (as defined by MahaRERA Order) in the project ?	No		
Plot Bearing No / CTS no / Survey Number/Final Plot no.	51/B	Boundaries East	Future Development
Boundaries West	Godrej and Boyce Land	Boundaries North	Reservation Spaces - Amenity Space
Boundaries South	Godrej and Boyce Land	State/UT	MAHARASHTRA
Division	Konkan	District	Mumbai Suburban
Taluka	Kurla	Village	Kurla
Street	Pirojshanagar	Locality	Vikhroli East
Pin Code	400079	Area(In sqmts)	14067
Total Building Count	10		
Sanctioned Buildings Count	10	Proposed But Not Sanctioned Buildings Count	0
Aggregate area(In sqmts) of recreational open space	5293.28		

#### FSI Details

MahaRERA has gained a reputation for speedy settlement of complaints also due to the establishment of a conciliation forum. Learning from Maharashtra will help facilitate growth and bring new investments to the real estate market in other States which are lagging behind on the implementation.

### **Anti-discriminatory Clause**

Before the introduction of RERA, real estate developers were allowed to pass on the title of the flats or units being constructed to a specific group of people under MOFA. Nothing in MOFA permitted or barred a real estate developer from rejecting an allotment to any individual on discriminatory grounds. An aggrieved individual would be forced to approach the courts for a legal remedy, relying on the Supreme Court's inclusion of 'right to housing' within the meaning of the word 'life' under Article 21 of the Constitution, which lays out the fundamental right to life and personal liberty.

RERA was expected to take care of such prejudicial actions on the part of a developer, including discrimination. While the RERA framework deserves appreciation for the positive impact it has had on the real estate sector, especially from the home-buyer's perspective, the statute has failed to explicitly bar discrimination on the basis of religion, caste or even food habits. The absence of an express provision addressing discrimination has led to a lot of uncertainty in dealing with it.

Where RERA failed, the State of Maharashtra has succeeded by framing the required rules under the Central Act.<sup>47</sup> A number of complaints filed by home-buyers alleging discrimination by developers, prompted the State of Maharashtra to adopt counter-measures. The Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, registration of real estate agents, rates of interest and disclosures on website) Rules, 2017 (MahaRERA rules), includes an anti-discriminatory clause in the declaration to be submitted by the developer along with the application for registration of a real estate project.

'Discrimination' has not been defined in the MahaRERA rules but it has not set any restrictions either, so that the word can be interpreted without any limitation. The anti-discriminatory clause ensures a direct remedy for the aggrieved before RERA itself instead of attempting to obtain a favourable order through the courts.

The MahaRERA rules have empowered the RERA Authority to act on such complaints. Developers cannot discriminate against allottees from a specific community or based on their individual preferences. This would curtail their right to housing and, in turn, violate their right to life, a fundamental right, protected under the Constitution. However, despite several reported instances of developers

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<sup>47</sup> <https://www.vantageasia.com/rera-anti-bias-clause-will-stand-test-time/>

discriminating among allottees, the number of cases or complaints filed remains low due to ignorance regarding the MahaRERA rules. In Mumbai, the Authority has not received a single complaint.

Following the example of Maharashtra, Madhya Pradesh, Rajasthan, the National Capital Territory of Delhi, along with other UTs, have included an anti-discrimination clause in their respective rules under RERA. Karnataka, Tamil Nadu, Uttar Pradesh and West Bengal have included it in their draft rules. Though an allottee, within the meaning of RERA, is protected by the anti-discriminatory clause, this addition was provided by way of rules framed by a State government to a Central government Act. The question is whether such a clause will withstand challenge.

RERA confers on State governments the power “to make rules for carrying out the provisions” of RERA, which includes the rules to provide for a format of declaration to be submitted by a developer at the time of registering a real estate project. However, it does not confer any power to the State governments to amend, alter or add to what has already been provided by the Central Act.

Some lawyers believe that the introduction of the anti-discriminatory clause seems to be a hurried action on the part of the State government to safeguard the interests of home-buyers, which may seem a benevolent move on the face of it, but exposes it to the possibility of procedural challenges. They think it may have been better for the Central government to introduce such a clause to avoid legal challenges to its validity.<sup>48</sup> Although Maharashtra has by far the best implementation of RERA, it could still improve some aspects of the system to make it equitable.

### **Finding a Loophole**

Given that RERA is extremely strict in imposing the delivery date, some builders are finding a loophole by putting in buffers when the projects are registered with RERA.<sup>49</sup> Thus, a developer would give a buyer a certain completion date in the sale agreement, but report to RERA a date that is a year later to give himself a safety net, as it were. The MahaRERA chairman is considering making the sale agreement date as binding on developers, but this has still to be implemented.

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<sup>48</sup> <https://www.vantageasia.com/rera-anti-bias-clause-will-stand-test-time/>

<sup>49</sup> <https://accommodationtimes.com/timely-constructions-in-rera-regime/>

Under RERA, developers focus first and foremost on giving possession of the homes as per the specified date. Consequently, other deliverables like common areas, amenities, sometimes take a backseat and buyers have to move into a completed apartment but not necessarily a completed project they had opted for.

### **Misleading Information**

Some activists charge that disclosures on the MahaRERA website are deficient and have many inconsistencies and include project plans that are not approved, or agreements that are not in consonance with the law.<sup>50</sup> Though RERA states that the developers should upload any litigation details immediately, many have been found to take their own sweet time," says another activist. Several consumers complained that even when basic civic works were incomplete, many developers flaunted a completion certificate.

"Consumers certainly cannot just depend on the information given on respective State/UTs' RERA website. They must do their due diligence before purchasing a property... project details (completion, pending, etc.) mentioned on the website must reflect a true picture, else the very purpose for implementing RERA will be defeated," said Anuj Puri, chairman, Anarock Property Consultants. He added that the UP RERA has taken the step of publishing a separate list of projects and builders who have defaulted.

Industry sources say that builders who flout rules or dodge disclosures are well-known and MahaRERA can easily make an example out of them. The 'action-taken-report' remains missing and consumers and lawyers are mostly unhappy with the lack of implementation of those orders.<sup>51</sup>

**Dual Role Leads to Conflicting Interests:** The law mandates that the RERA Authority act as a regulator and also have a developmental role. This creates a conflict of interest. RERA Authorities are reluctant to prosecute or pass stringent orders against developers because they feel that developers are already struggling at the moment. Indeed, the real estate sector has witnessed difficult times in the past few years and there are times when delays may be beyond a builder's control or not his fault.

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<sup>50</sup> <https://timesofindia.indiatimes.com/city/pune/state-high-on-registration-low-on-grievance-redressal/articleshow/73022240.cms>

<sup>51</sup> <https://timesofindia.indiatimes.com/city/pune/state-high-on-registration-low-on-grievance-redressal/articleshow/73022240.cms>

## Project Delays

Almost all the complaints that MahaRERA deals with are of project delays, though a lot of developers revised their deadline just before the law came into force. The completion dates are not realistic, considering that the developers have a margin for delay. The website, in the current form, captures adequate information parameters for the project but adding analytical parameters will help consumer decision-making.

In 2019, MahaRERA instructed builders to define a fixed deadline for delivering their projects. The decision was taken, as several developers were extending the project delivery dates. The regulatory authority has stated that the possession date about an ongoing project should coincide with the actual completion of the pending work.

For years, some builders have been setting unrealistic deadlines for buyers and not handing over flats on time. Despite delays, there was no punishment for their actions. However, in May 2019, MahaRERA issued an order<sup>52</sup> in reference to a complaint filed by Gopi Eashwar Iyer, who had booked an apartment in Virar, where the date of possession specified was March 2016. Despite the OC being obtained on 14 January 2019, the builder had set a revised date for completion in its MahaRERA registration as December 2020.

MahaRERA said in its order: “The respondent should have completed the said project by May 2018. As the OC has been obtained by the respondent, during the pendency of the present complaint, the respondent shall immediately hand over the possession of the said apartment to the complainant. The respondent shall be liable to pay interest to the complainant from June 1, 2018 up to the date of receipt of the OC.”

According to RERA, developers have to clearly specify the possession date of property without causing any delays in the process. Ramesh Prabhu, founder of MahaSeWA (Maharashtra Societies Welfare Association), expressed satisfaction that the builders will become more careful before setting deadlines for their projects from now on as the new ruling has set a precedent.

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<sup>52</sup> <https://www.hindustantimes.com/mumbai-news/set-realistic-deadlines-to-hand-over-homes-maharera-tells-builders/story-8qDFVS4btR9DuVVSGAy69K.html>

**No Verification of Documents:** As of today, most State RERA Authorities (exceptions like UP RERA where they have outsourced the verification of documents to consulting firm PwC), do not verify the information put in by the real estate agents, builders, financiers, CAs, engineers, and financiers, unless a complaint is made to RERA Authority. Most States rely on self-declaration by the builders and agents. According to Gautam Chatterjee, the RERA Authority chose the disclosure route rather than government verification and a licensing system, which would lead to rent-seeking. Experienced lawyers/activists, such as Sulaiman Bhimani, suggest a simple check to verify the information provided regarding land title:

Step 1: Visit the Municipal Corporation of Greater Mumbai (MCGM) website.

Step 2: Open the tab of Citizens Charter.

Step 3: Check the plot number.

Step 4: Check the file number.

Venkatesh Panchapagesan, who heads the IIMB-Century Real Estate Research Initiative (IIMB-CRERI) at the Indian Institute of Management, Bangalore, recommends that registered projects/ registered agents should be randomly selected for auditing and detailed checks must be carried out. Those who have provided false information under self-declaration should be severely penalised. These randomised audits will create a fear in the minds of the respective builders, agents and the chances of developers and agents providing false information will be considerably lower.

**Conciliation Forum:** In keeping with the principles of transparency and disclosure of real estate transactions, which are the core objectives of RERA, MahaRERA was among the first to set up a conciliation forum. This is essentially a face-to-face forum for negotiation between aggrieved home-buyers and the developers concerned, in the presence of specially-trained RERA officers and other neutral parties who moderate the negotiations and help in arriving at a solution.

Established in February 2019 with about 15 benches across Mumbai and Pune, MahaRERA's conciliation forum has recorded a 70% success rate where cases were closed after agreement by both parties. The role of neutral moderating parties cannot be emphasised enough. MGP, as a representative of home-buyers' interests, has been one of the founding members of this process, in collaboration with MahaRERA as well as developer associations such as Confederation of Real Estate Developers' Association of India (CREDAI) and NAREDCO.



Gautam Chatterjee told us, “This Conciliation Forum format has been set up under provisions of Section 32(g) of RERA, which allows for alternate dispute redressal. Before lodging a formal complaint on the MahaRERA website, aggrieved parties are encouraged to use this method, which has a lesser cost in terms of time and money. We have seen high levels of compliance for all resolutions passed by all the benches and we now have plans to set up more such conciliation fora across Thane, Navi Mumbai, Mira Bhayander, Vasai-Virar, Palghar, Kalyan-Dombivli and Nashik.”

As per MahaRERA statistics for the conciliation forum, as on 20 February 2020, 548 cases were completed out of 600 cases filed under conciliation.

*Screenshot of statistics dashboard from MahaRERA portal as on 20 February 2020*

**MahaRERA Conciliation Forum**

Conciliation received with consent from both parties	Conciliation in Process	Conciliation Completed
600	52	548

**Leveraging the Associations of Builders**

One of the key challenges faced by MahaRERA, during the past two years, was lack of regular updates of project information by builders. Though more than 22,600 projects were registered with MahaRERA, not all of them regularly updated the status of their projects. The key reasons for this were:

**a) Lack of Awareness:** A major reason for failure to update information is lack of awareness in the builders’ community about the provisions of the Act. Many builders are not aware of their responsibilities under RERA. They believe that RERA registration is like a one-time licence valid till the end of the project. Some of them had also outsourced their RERA registration to consultants / CA / architects as a one-time activity who, after registration, ignored the project.

**b) Ingrained Behaviour:** The real estate sector has always relied on opaque practices and thrived on information asymmetry. Hence, there was resistance among a small group of builders regarding regular update of information.

In order to overcome the ignorance and resistance among builders, MahaRERA undertook extensive awareness and capacity building initiatives. MahaRERA was also clear from the start of the journey that participation of builders’ associations

is important for the success of this initiative and partnered with them to hold workshops and hand-holding sessions for stakeholders across Maharashtra.

One of the mandates provided to the associations, including CREDAI, Maharashtra Chamber of Housing Industry (MCHI) and NAREDCO, was to spread awareness among their members. They also established MahaRERA compliance teams that reached out to members and ensured that they update information on MahaRERA's portal in time. MahaRERA claims that this initiative was highly successful and members of these associations started regularly updating information of their projects on MahaRERA portal. They have also reached out to other builders who are not their members to expand reach. This had mixed results since some builders questioned their jurisdiction.

In order to overcome such resistance, MahaRERA decided to introduce the concept of SROs, which set out and enforced rules and standards relating to the conduct of their members, establishing industry standards, developing and applying codes of professional ethics and ensuring consumer confidence. SROs are a well-established mechanism internationally and nationally, but have had limited success in India. Often, the SROs have ended up as lobbying organisations or associations.

### **SROs in Real Estate Sector in Maharashtra**

MahaRERA introduced SROs in Maharashtra after holding numerous consultations with promoter associations to incorporate their suggestions. It evolved the following criteria for SROs:

#### **Eligibility Criteria**

- a. It has to be a group / association / federation of builders which is a legal entity.
- b. It should have at least 500 MahaRERA registered projects of their members.
- c. Details of membership fees, duration of membership, qualification of membership and code of conduct to be followed by the members may be decided by the respective SRO and shall be made available to their members.

#### **Functions and Obligations of SRO**

- a. The SRO shall encourage its members to comply with the provisions of the Act, applicable rules, regulations, orders or circulars issued by the MahaRERA from time to time;
- b. The SRO shall be responsible for carrying out awareness and education activities among its members;

- c. The SRO shall specify standard of conduct for its members and also shall be responsible for the implementation of the same by its members;
- d. Any information or particulars furnished to MahaRERA by the applicant shall not be false or misleading in any material respect.

### **Recognition of SRO**

Any group or association or federation of builders, which is desirous of being registered as a SRO with MahaRERA, may make an application to MahaRERA in Form A, accompanied by a fee of Rs10,000. The certificate of recognition of SRO shall be valid for a period of five years. However, MahaRERA may de-recognise any SRO if found to be in violation of RERA or rules or regulations or orders made thereunder.

### **Participation in SRO**

Going forward, each promoter applying for registration of his project in MahaRERA has to be part of any one of the registered SROs. In due course, this concept of SRO would be extended to the real estate agents too.

### **Impact**

**Self-Governance:** SROs are expected to greatly increase the enforcement and compliance with RERA's provisions by builders through minimum intervention of government. An SRO, which is a body by the builders, of the builders and for the builders, shall carry the baton of governance and monitoring of promoter behaviour.

**Greater Acceptance:** The SRO mechanism is expected to help builders internalise RERA's principles and ethical behaviour, since rules shall be based on social norms and conduct of peers rather than top-down prescriptive rules. This will instil deeper respect and acceptance of the rules, result in better promoter behaviour and avoid adversarial situations in which builders try to find exceptions to externally imposed rules.

**Increased Transparency and Consumer Confidence:** One of the key responsibilities of SROs shall be to ensure that all builders are regularly updating the MahaRERA web portal on the status of their projects. This will greatly increase transparency and consumer confidence in the real estate sector in Maharashtra.

**Faster Implementation and Reduced Regulatory Costs:** Through this initiative, MahaRERA is leveraging the extended force of promoter associations across the

State, to enhance compliance. This is a speedy and cost-effective method of increasing compliance in the sector for MahaRERA. Even from a promoter's perspective, adopting best practices is more cost-effective than paying penalties and lawyer's fees for late adoption.

**Current SROs:** CREDAI-Maharashtra, a developer body, has been recognised by MahaRERA and registration with the SRO is mandatory for developers. It works at creating awareness and ensuring that developers follow MahaRERA rules. As of December 2019, there are 589 members of CREDAI-Pune Metro, of which 399 are ordinary members and 190 associate members. Apart from CREDAI, NAREDCO, Builders Association of India (BAI) and Marathi Bandhkam Vyavsayik Association are the other SROs in Maharashtra. MahaRERA's ability to ensure compliance and redress customer complaints with help from SROs will be watched closely and could become the template for the rest of the States.

Anuj Puri said, "SROs are meant to infuse a significant measure of accountability, with the intention of ensuring higher compliance with RERA guidelines. Some home-buyer groups have expressed misgivings about SROs' effectiveness. That said, SROs are not intended to supersede RERA's regulatory authority but to add a layer of internal governance to ensure that RERA is complied with. If developers' accountability is not diluted by such bodies, they can certainly be effective."

Mr Puri added: "Self-regulation can be effective as long as the self-regulatory organisations are accountable to a larger authority. Also, as the industry is moving towards formalisation, any effort to educate all real estate stakeholders – especially developers – about the new regulatory requirements and expectations are inherently good." "We can probably expect a lot more from SROs formed in the post-RERA era. Developers now have much to lose by acting contrary to RERA's stipulations, and much to gain from complying with them. Such a self-governance mechanism can be very effective if accountability itself is not diluted," Mr Puri said.<sup>53</sup>

However, not everyone shares the same view. "As per the principles of natural justice, no man shall be the judge in his own cause. Flat-buyers seek relief against developers under RERA provisions. To have representatives of developers' bodies on the mediation panel would be unfair. Such a panel should have experts from

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<sup>53</sup> <https://www.financialexpress.com/industry/mumbai-and-pune-lead-in-rera-registered-properties/1785947/>

fields unrelated to the real estate sector,” said advocate Godfrey Pimenta, of the Watchdog Foundation.

By ensuring disclosure and compliance and a check on use of funds, MahaRERA has played an important role in bringing the real estate sector on track. Developers are able to get investors and funding, even in under-construction projects, as opposed to a few years earlier when such projects were plagued by cost and time overruns.

A stiff fine of up to 10% of the project cost in case developers renege on the delivery date registered with RERA has had a salutary effect. Now, buyers have an authority they can complain to when builders fail to meet contractual obligations. Earlier, some developers would draw up skewed documents wherein the buyers would be imposed with a heavy fine/interest in case of delay in payment, but there was no reciprocal fine to be borne by the developer in delaying possession.

**Noteworthy Judgements:** Here are some noteworthy orders/judgements that have been passed by MahaRERA.

**Redevelopment Not Covered under RERA:** MahaRERA, in December of 2017, has ruled that redevelopment of housing societies shall not be covered under RERA.<sup>54</sup> The case pertained to a housing society by the name of ‘Shanthi Nikethan’ whose members had given their housing society for redevelopment to Matrix Construction, the developer. The complaint by the housing society members was dismissed on the grounds that they were not able to point out specifically which provision of RERA was violated. The society members were directed to approach a civil court as that was the correct forum. This order has wide-reaching implications as many constructions in the city of Mumbai involve reconstructions.

**Relief for Shortfall in Carpet Area:** A buyer who complained about a shortfall in carpet area was duly compensated by MahaRERA. The builder had advertised and published a total carpet area of 806sq ft but there was a shortfall of 69sq ft. The builder was then directed to reduce the cost of the flat to compensate for the shortfall.<sup>55</sup>

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<sup>54</sup> <https://timesofindia.indiatimes.com/city/mumbai/blow-to-housing-societies-rera-wont-hear-redevelopment-disputes/articleshow/62531455.cms>

<sup>55</sup> <https://mumbaimirror.indiatimes.com/mumbai/other/builder-to-adjust-money-for-carpet-area-shortfall/articleshow/62274470.cms>

**Landowners Can Be Deemed Promoters:** Any landowner getting a share in the revenue from the project sold or marketed shall be treated as a promoter.<sup>56</sup> This is a vital judgement as it makes a clear distinction between landowners and promoters.

**Cannot Claim Same Relief Twice:** MahaRERA, in an order, dismissed a home-buyer's plea for compensation over delayed possession after it was learnt that he had already been granted relief by a civil court.<sup>57</sup> MahaRERA also directed the complainant to pay Rs10,000 as legal costs to the developer. This order is an important check against customers misusing the law to get an undue advantage.

**Formation of Society:** MahaRERA has made it mandatory for developers to form a housing society or any similar legal entity after 51% of the flats have been booked or allotted.<sup>58</sup> This is an important ruling as it allows home-buyers to oversee the developmental work in their project and seek regular updates from the developer even during construction. Earlier, a housing society or legal entity was formed only after the project was complete and CC was issued.

**Refund of Booking Amount:** In another order MahaRERA acted on a complaint and asked the Lodha group, as developers, to refund the booking amount and money spent on registering the complaint as there were discrepancies in the offer.<sup>59</sup> The buyer was assured that he would not have to pay stamp duty or equated monthly instalments (EMIs) for a year if he booked before a certain date.

The buyer had booked a 2BHK flat in July 2017 in the Lodha Amara Project on Kolshet Road in Thane, and paid a booking fee of Rs1.08 lakh. At the time of booking, he was told that he would be able to buy the flat at a discounted price of Rs1.14 crore and not have to pay any EMI till December 2018 if he booked before 2 July 2017. He also claimed that the Lodha Group had even offered to bear the stamp duty.

However, he later found certain discrepancies in the offer when he was informed that he would have to pay interest on the unpaid EMIs and the total amount was higher than earlier expected. At the time of booking, the Lodha Group had committed to

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<sup>56</sup> <https://timesofindia.indiatimes.com/city/pune/landowners-getting-share-of-revenue-named-promoters/articleshow/62006680.cms>

<sup>57</sup> <https://realty-v1-stage.economicstimes.indiatimes.com/news/regulatory/maharera-rejects-homebuyers-plea/61282311>

<sup>58</sup> <https://www.dnaindia.com/mumbai/report-maharera-order-form-society-before-possession-2562491>

<sup>59</sup> <https://indianexpress.com/article/india/lodha-group-refunds-booking-fee-after-buyer-complains-to-rera/>

a September 2019 completion date; it extended the date to December 2020 while registering with RERA.

**Office and Commercial Spaces under RERA:** MahaRERA directed a builder to execute the agreement, give possession of the offices within the stipulated time and charge the rate as per the original allotment letter.<sup>60</sup> This has extended the scope of RERA to even office and other commercial spaces.

**An Investor Is a Co-promoter under RERA:** In another significant ruling, MahaRERA dismissed a complaint on the ground that the complainant and the developer had signed an MoU (memorandum of understanding) which showed that the complainant is an investor and not an allottee; thus, in turn, he becomes a co-promoter as per the definition under RERA.<sup>61</sup> The development assumes significance as it clarifies that the authority will be protecting home-buyers and not investors in any project.

**RERA To Supersede Arbitration Proceedings:** MahaRERA clarified that it has the jurisdiction over arbitration applications as RERA was enacted after the Arbitration and Conciliation Act of 1996. The provisions of RERA have an overriding effect over provisions of Section 8 of the Arbitration and Conciliation Act, 1996.<sup>62</sup> MahaRERA ruled that it has jurisdiction to adjudicate upon disputes related to an arbitration deal.

### 12.1.2 UP RERA

Uttar Pradesh was one of the first States to promulgate the rules under RERA on 27 October 2016 and establish the regulatory authority in May 2017, when the additional chief secretary, housing and urban planning department of UP was designated as the interim regulatory authority. In January 2018, the UP government also designated the State Transport Appellate Tribunal to hear appeals from the orders of the Authority till the permanent Tribunal under RERA was established. The permanent RERA Authority was established in August 2018 with the appointment of Rajive Kumar as chairman.

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<sup>60</sup> <https://www.hindustantimes.com/mumbai-news/now-office-buyers-in-mumbai-file-complaint-against-builder-with-maharera-get-relief/story-4Ra6Mp76PowgVXCSVQDNmI.html>

<sup>61</sup> <https://economictimes.indiatimes.com/maharashtra-rera-rejects-plea-against-monarch-solitaire/articleshow/61137553.cms?from=mdr>

<sup>62</sup> <https://realtynxt.com/2018/01/05/possession-delay-maharera-overrides-arbitration-proceedings/>

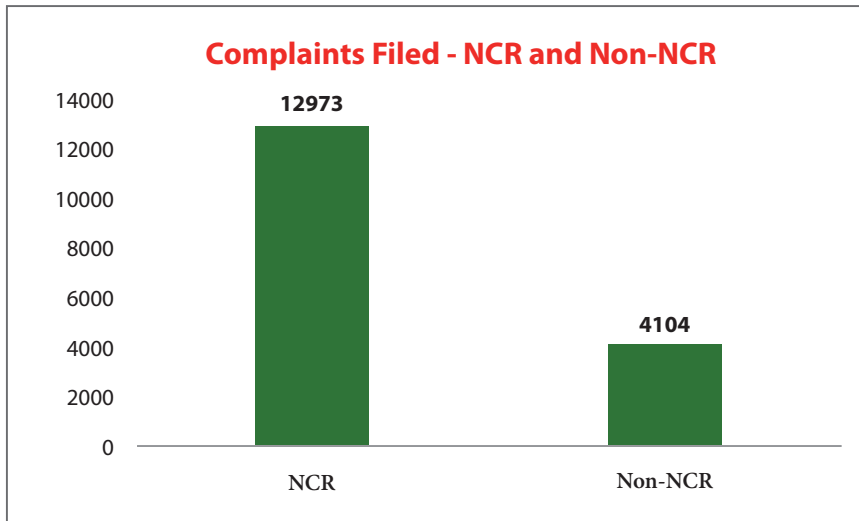
The State government notified the rules on model agreement for sale in October 2018, to address one of the major concerns of the home-buyers, that the builders either did not execute any agreement for sale or, even when executed, was done on unequal terms. These rules were drafted after extensive consultation with all the stakeholders and provide that no promoter can accept more than 10% of the unit cost from a buyer without first entering into a registered agreement for sale in the format notified by the State government. For the convenience of consumers and to facilitate quicker resolution of the high volume complaints pertaining to NCR, the government, on the recommendations of UP RERA established a regional bench at Greater NOIDA, in district Gautam Buddha Nagar.

The Appellate Tribunal was formally notified in September 2018. On 30 March 2019, the judicial member TB Singh was authorised to chair proceedings of the Tribunal. On 20 July 2019, Justice Devendra Kumar Arora was appointed as chairman, so the Appellate Tribunal became fully operational only last year. The topmost priority of UP RERA has been to provide relief to buyers, through prompt hearing, and to redress their complaints. Prior to establishment of the Authority, 2,014 complaints out of 5,139 registered complaints had been disposed by authorised officers.

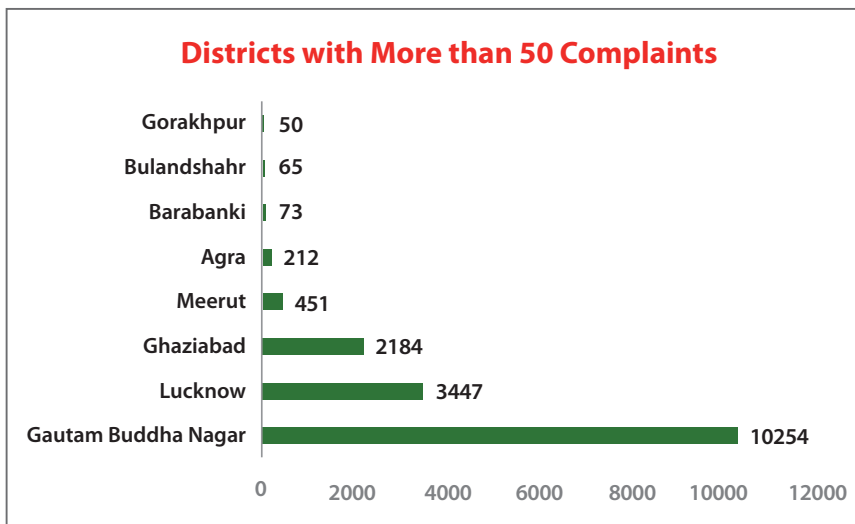
Following the establishment of UP RERA, 12,780 complaints have been filed and the Authority had decided 8,506 complaints as on 30 August 2019. It is pertinent to note that the number of registered complaints in UP and their disposal by UP RERA is the highest in the country. Rajive Kumar, chairman of UP RERA felt that the performance of developers in NCR is solely responsible for giving UP a bad name in development projects.



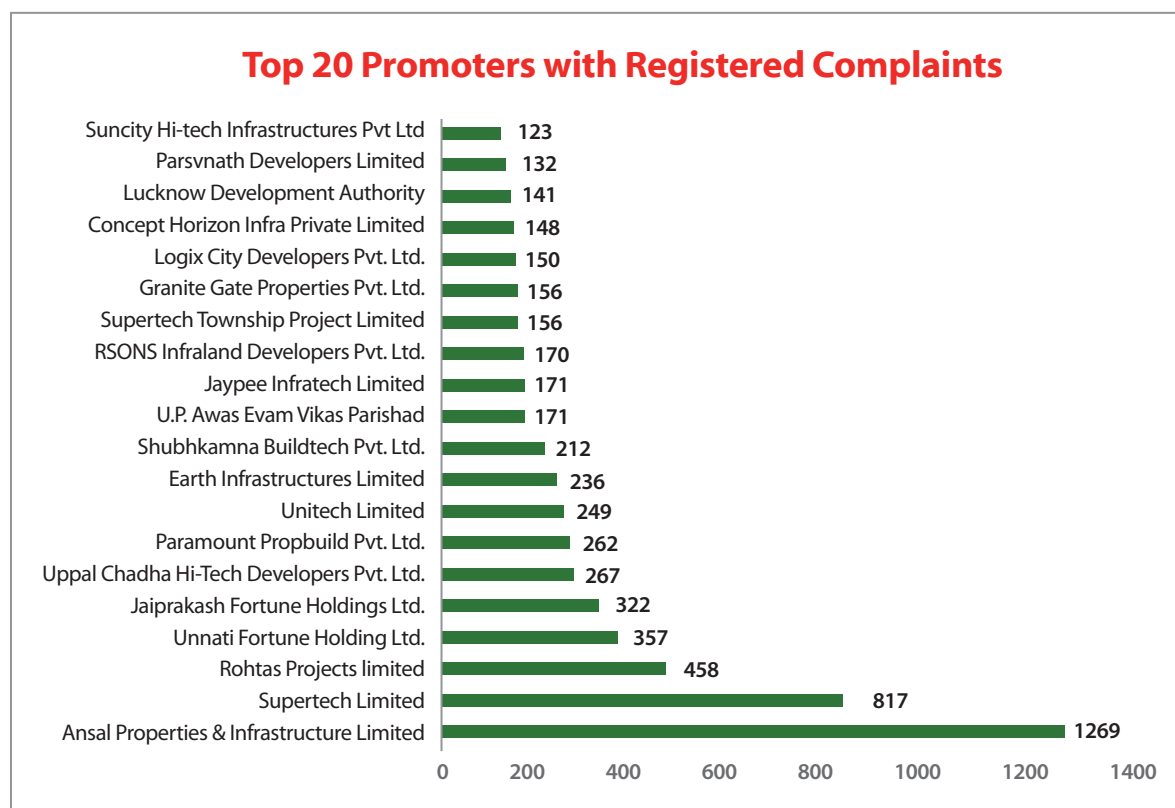
*Complaints filed - NCR and Non-NCR (as shared by UP RERA in September 2019)*



*Districts with the highest number of complaints (as shared by UP RERA in September 2019)*



*Builders with highest number of complaints (as shared by UP RERA in September 2019)*



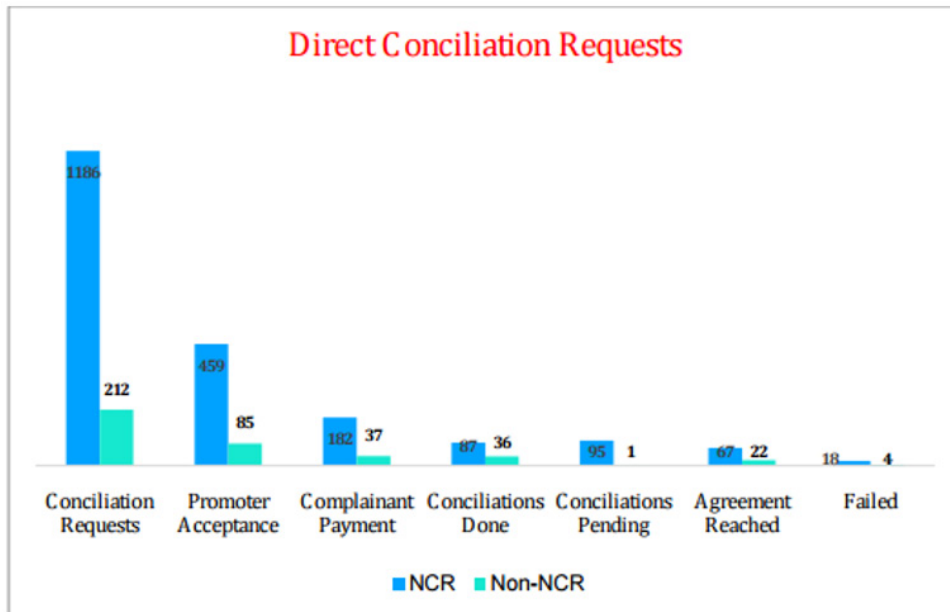
In terms of cases disposed, UP leads the chart, disposing 16,860 cases, as of 20 February 2020, accounting for 39% of the total cases disposed by RERA authorities across the country. Haryana comes second with 8,208 case disposals (19%), while Maharashtra comes a close third with 7,476 case disposals (17%). MahaRERA was at number two until a few months back and has now been relegated to number three.

UP RERA has found that approximately 25% of residential realty projects get delayed due to various factors which include diversion of funds. Mr Kumar hoped that if regulation led to 75% of such projects being completed and handed over on the promised delivery date, it would create a huge positive impact. He said that UP RERA is in the process of rolling out single-window clearance that will help all stakeholders and confirmed that they are working on a software to make it happen. Citizens and developers can get maps approved, lodge complaints and secure progress reports and obtain no-objection certificates (NOC) for projects as well as file complaints through this software solution. Home-buyers who are duped by developers or still waiting for the possession of their homes will be provided help and information about builders in addition to facilitating the filing of complaints.

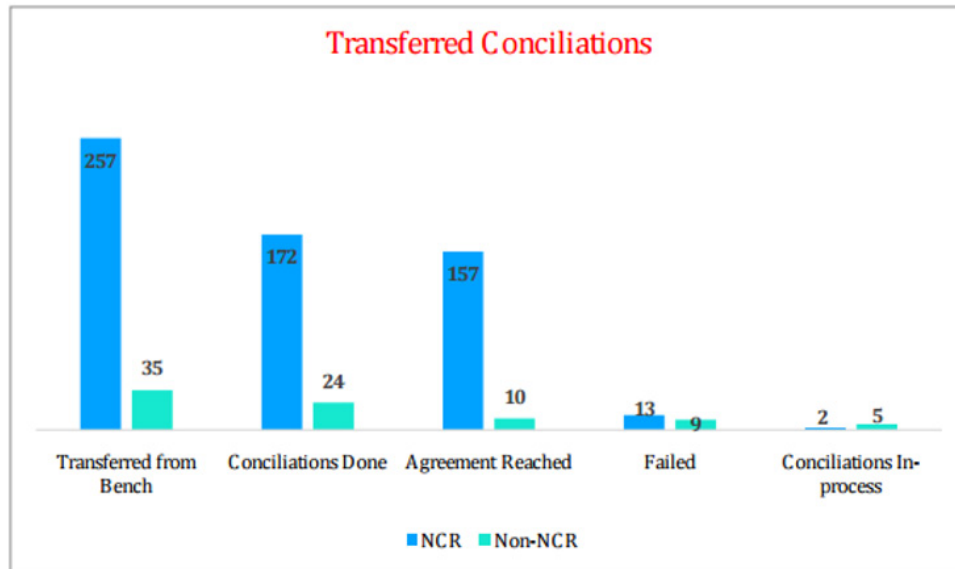
UP RERA recently identified approximately 100 ghost residential real estate projects where stalled work has caused immense suffering to home-buyers. It even requested the New Okhla Industrial Development Authority (NOIDA), Greater NOIDA and Yamuna Expressway Industrial Development Authorities (YEIDA) to bring to light more such projects. UP RERA officials say that home-buyers have paid a heavy price as the deadline to approve maps of those residential projects has expired.

UP RERA has followed MahaRERA’s example in setting up conciliation forum for disposal of complaints in an amicable environment. One conciliation consultant each has been appointed at Lucknow and Greater NOIDA. Representatives of home-buyers’ association, builders’ association, the concerned buyer and builder form the conciliation forum, facilitated by the conciliator. This initiative has been widely recognised for taking expeditious decisions and ensuring quick compliance by the stakeholders.

*UP RERA Conciliation Forum: Details of Direct Conciliation Requests up to September 2019*



### *UP RERA Conciliation Forum: Details of Transferred Conciliations up to September 2019*



UP RERA has been engaging with all the stakeholders, including bankers who are the custodians of the project accounts. A meeting of the state-level banker's committee (SLBC) was organised under the chairmanship of Rajive Kumar, chairman UP RERA, to sensitise bankers about dedicated project accounts. It has been organising awareness programmes and workshops at NOIDA, Ghaziabad, Lucknow, Kanpur, etc.

#### **Compliances and Executions**

UP RERA has a unified online module for tracking the compliance of its orders. A web-enabled notice is sent to the builders to furnish a compliance report within 15 days of the stipulated date. The information is also shared with the complainant, to update the Authority about the status of compliance by the promoter. After the expiry of the notice period, the Authority summons the builders for review meetings at its Lucknow and NCR offices.

Online applications can be filed by a complainant, in case the promoter fails to comply with its orders. If the promoter fails to provide a compliance report within 15 days of the issue of a notice for compliance (for refund or recovery), another notice imposing a penalty for non-compliance is issued.

The transfer of refunds is also done electronically through RTGS (real time gross settlement) by asking the complainant to furnish bank account details along with an affidavit, as soon as the recovered money is received from the district collector.

So far, 846 recovery certificates involving the demand for Rs296.05 crore have been issued; Rs33.39 crore has been received from the respective collectors against 154 recovery certificates. The Authority has transferred Rs27.46 crore to 110 complainants through RTGS.

Since the progress of projects and timely completion is dependent on utilisation of money collected, UP RERA has got 208 projects audited. It is also getting stressed projects inspected. A mobile app allows preparation and submission of reports online and these are uploaded on the web page of the concerned project.

The Authority has issued show-cause notice for 21 projects of NCR region and 17 projects of non-NCR region, where the promoter has not obtained the CC/ OC nor applied for extension of registration of the project, but the work is either going on or is stalled.

### **Protocol for Unregistered Projects**

All complaints about unregistered projects are examined by the technical adviser of RERA, who then informs the Authority if the project qualifies for RERA registration. Based on the technical adviser's findings, a complaint is sent to the concerned bench for further resolution.

In April 2019, UP RERA sent letters to the zonal heads of several public and private sector banks stressing the need for strict compliance with these provisions. "It has come to the notice of UP RERA that some of the promoters are not complying with the statutory provisions of the law and withdrawing the amount from the designated account without submitting the requisite certificate with the bank or sometimes withdrawing amount in excess of the work done in the project," read the letter.

Some banks, particularly the ones which have sanctioned loans to promoters, "arbitrarily adjust the entire amount deposited in the account against the outstanding loan of the promoter," instead of transferring 70% of the money collected towards construction and payment of land cost, as mandated by the law, says our source. Hence, banks were asked to issue necessary instructions to their staff to ensure compliance.

### **Key Initiatives by UP RERA**

**Switchover to E-courts:** UP RERA switched over to the e-court module from 2 March 2020 that allows online complaint registration, which are then processed to ensure

completion and saves multiple visits to the RERA office to file complaints. At present, the complainant is given a date to appear and submit the relevant documents. In future, documents will also be submitted online and the complainant will have to appear only for the final argument.

The presiding officers will have an equally interactive dashboard, comprising all the information about the complaint and necessary integration with the project-related information. The last part involves partly automating the process of order generation so that no essential information is missed in the order.

**Annual Grading of Projects /Builders:** UP RERA is developing a framework for grading the projects and the builders for the benefit of the home-buyers, builders, the sector and all stakeholders.

**Single-window System:** UP RERA is developing a framework of single-window system of clearances for real estate projects across all the related departments and agencies.

**Concurrent Audit:** UP RERA has prepared a panel of auditing firms for financial / forensic audit of the projects. The Authority is also embarking upon the verification of the separate accounts of the projects through the auditing firms on the panel of ICAI (Institute of Chartered Accountants of India).

### 12.1.3 MP RERA

The Madhya Pradesh Real Estate Regulatory Authority (MP RERA) was notified on 2 October 2016 and formally established on 1 May 2017. With the launch of an online portal and establishment of a permanent regulatory authority, the number of registrations of projects and agents under this Act increased.

As on 27 February 2020, MP RERA had 2,552 project registrations and 760 agent registrations. MP RERA had disposed 3,010 cases as on 27 February 2020 out of a total of 4,120 registered cases. MP RERA has adopted several innovative practices during the past three years that have delivered significant results in various aspects of RERA working. Most activists in other States are also exhorting their States to follow the MP model. A district judge-level officer, having powers of civil and revenue court, acts as the recovery officer.

## Key Initiatives by MP RERA

**1. Use of IT:** The judicial procedure adopted in all cases, in line with principles of natural justice, is as follows. When a complaint is received, both parties are sent a notice; a copy of the complaint is given to the respondent who has an opportunity to reply. Then the complainant can examine the reply with documents and file a counter-response if he/she so wishes. Once the respondent has an opportunity to examine the counter-response and its attached documents, the date is fixed for arguments.

However, it was observed that this was leading to delays since personal appearances were being used to present replies and counter-replies. So MP RERA has allowed parties to file responses and documents by email after the initial appearance. They need to appear before the court only for arguments, leading to a drastic reduction in time and saving on legal expenses. The software provides for sending intimations and SMS reminders to them about the dates of appearances. The result is that MP RERA was able to dispose more than 70% of the total cases filed and the average disposal time is about three months after the first appearance (which is given in less than one month from the date of filing the complaint).

**2. Circuit Courts:** MP, being a large State, MP RERA has established circuit courts at Indore (where they visit twice a month), Jabalpur and Gwalior (where they visit once a month each). The circuit courts ensure that they can dispose matters with more convenience to litigants.

**3. Orders Signed by Entire Authority:** MP RERA rules require at least two members to hear each case (chairman or member designated by him and one other member). Irrespective of when orders are passed, all final orders of MP RERA are signed by all the members. This ensures that there are no contradictory orders emanating from MP RERA and there is complete consistency in orders. It also helps in improving the quality of the orders because when one member drafts the order, all the others read it and give suggestions, if any, for modifications and only then is the order finalised.

**4. Reward Scheme for Information:** MP RERA announced a reward scheme for specific information regarding unregistered projects (which includes all details such as name of builder/ developer, his address and contact details, land details where such a project is situated and a photograph of the project site. The identity of the informant is kept confidential. If information submitted by the informant is found to be about a RERA unregistered project, then the informant is eligible for prize

money of Rs1,000. The informant's name is added to the list of participants eligible to participate in a lucky draw to be conducted at the end of the quarter. The lucky winner gets Rs10,000, in addition to the earlier reward.

*Image from MP RERA portal*

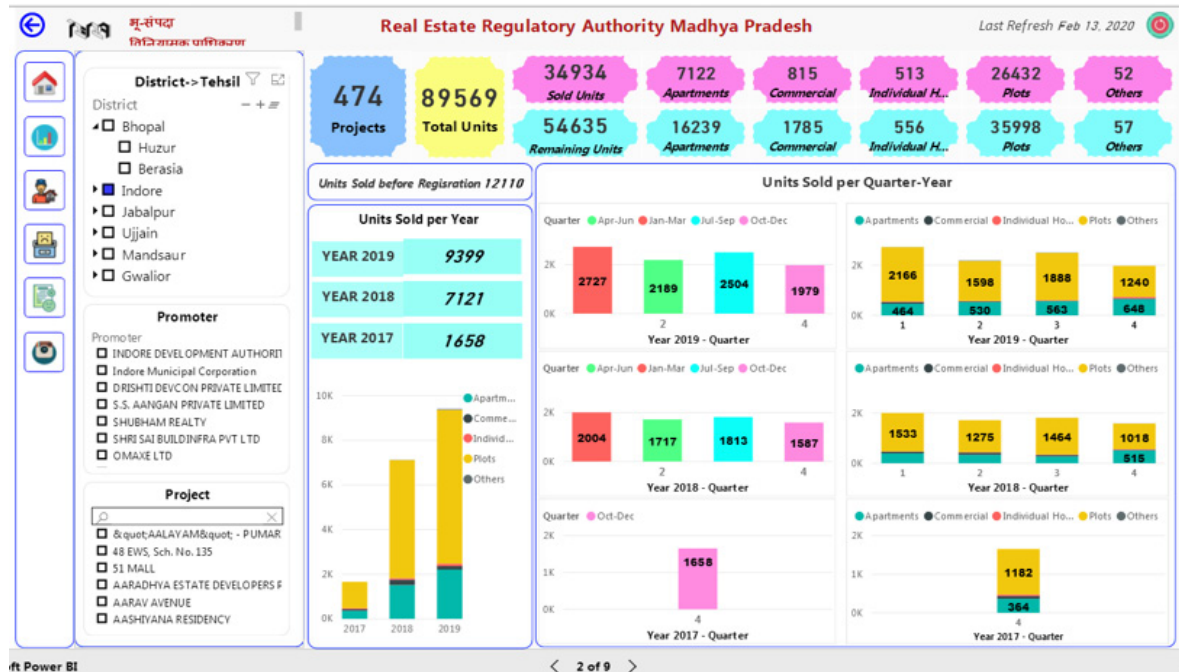
### **RERA- REWARD SCHEME**

1. This scheme has been designed with the objective of securing information about those incomplete or ongoing real estate projects which are still unregistered in the REAL ESTATE REGULATORY AUTHORITY (henceforth referred to as RERA).
2. Information regarding 'RERA- unregistered projects would be considered valid and worthy of consideration for reward if it includes such details as name of builder/developer, his address & contact details, land details where such projects is situated, along with some photograph of project-site.
3. Information regarding RERA- unregistered real estate projects can be shared with RERA through Whatsapp at number 8989880123. It can also be shared with RERA via mail at [RERA.REWARD@gmail.com](mailto:RERA.REWARD@gmail.com). It can also be sent via registered post addressed to Secretary (RERA), RERA Bhavan, Main Road No 1, Bhopal-462016.
4. Identity of the informant will be kept confidential and won't be shared with anyone.
5. The scheme is open to all Indian citizens except employees and officers of RERA. The validity of the scheme is from 1st January, 2019 to 31<sup>st</sup> March, 2019.
6. If information submitted by the participant is found to be about a RERA- unregistered project then such participant shall be eligible for prize money of one thousand rupees (Rs 1,000), and name of the participant will also be added to the list of participants eligible to participate in lucky draw to be conducted at the end of quarter. The lucky winner will get Ten thousand rupees (Rs 10,000/-) in addition to the earlier reward.
7. In case information about the same unregistered project is received from more than one source, then only the first such one shall qualify.
8. Authority reserves the right to disqualify any participant at its sole discretion, including if the participant is found to have provided any untruthful, inaccurate or misleading information.
9. In case of any dispute or objections regarding the scheme, matter will be referred to the Chairman (RERA) whose decision would be final and binding upon all concerned.

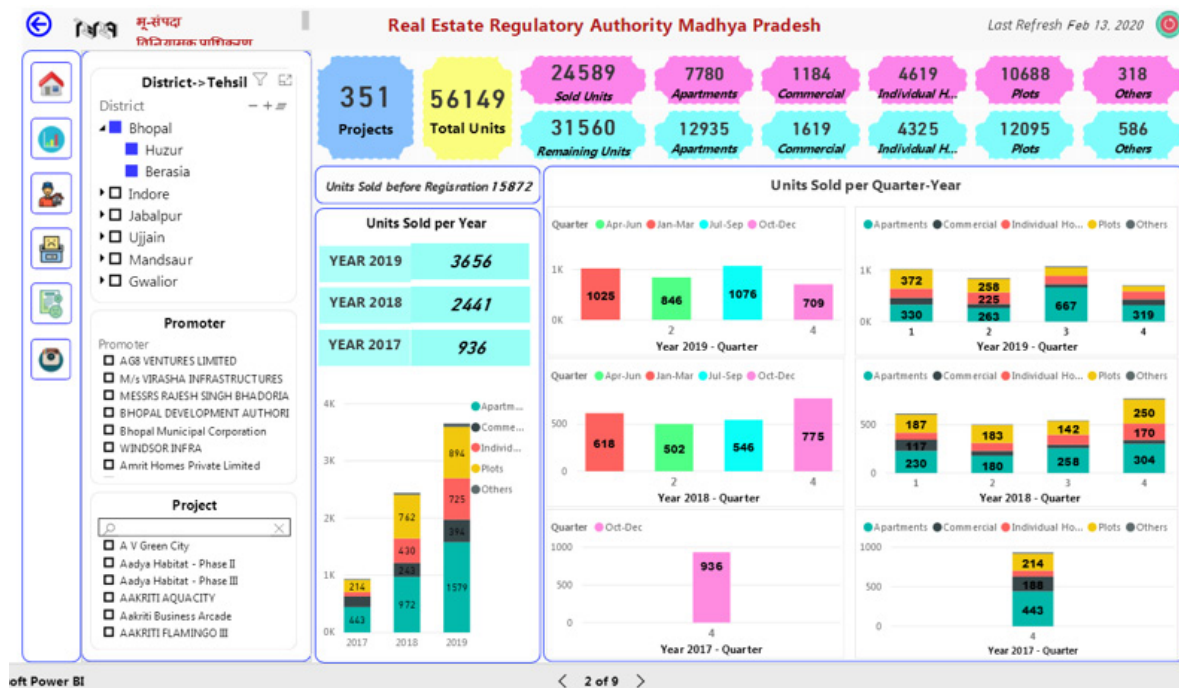
**5. Use of Business Intelligence:** MP RERA has taken innovative steps in sharing insightful business intelligence (BI) through a dashboard on its portal. This BI dashboard shares quarterly information on sales, project registrations, complaints registered, etc, across districts, cities in a transparent manner.



Screenshot from MP RERA portal BI dashboard shows quarterly data for Indore district



Screenshot from the BI dashboard on the MP RERA portal shows quarterly data for Bhopal district



**6. Creation of 'Executing Officer' Position:** In November 2019, retired district judge DN Shukla was appointed executing officer of MP RERA Authority. The government of Madhya Pradesh had earlier amended RERA State rules for the appointment and issued a gazette notification to that effect. This major change in the RERA rule will have a positive impact on the proceedings of the Authority as, in future, the order passed by the Authority will be lawfully binding on both the parties and both parties are obliged to follow the directives of the Authority.

Earlier, if MP RERA Authority passed an order and the party was unwilling to accept it, the RERA Authority moved the civil court. In such cases, the matter used to get delayed in legal procedures. As many as 3,800 complaints were received till October 2019 and MP RERA had already disposed 2,600 matters but 1,200 were still pending. As per the facts of 'disposed' cases, 88% went in favour of home-buyers, while only 12% went in favour of builders.

From November 2019, the executive officer has the powers of civil court as well as of revenue court and has to safeguard compliance of RERA orders. The MP State government made amendments in State RERA rules 27 and 28 which deal with interest recovery; penalty and compensation; orders implementation; guidelines and decisions of the Authority for the appointment of an executing officer. Anthony de Sa, chairman of MP RERA, confirms that no other State in the country has an executing officer and Madhya Pradesh is the first to do so, to ensure that its orders are complied with without any undue delay.

**7. Details on Portal:** Based on the incidents reported by allottees, MP RERA has mandated that promoters must provide allottee details along with their KYCs (know-your-customer) filings on record to the authority. These are available for public view on its portal. This has played a big role in boosting customer confidence since allottees are able to check their name on the portal.

**8. Use of ICT:** Mr De Sa says that effective use of ICT has improved the business processes in MP RERA, although it is still a 'work-in-progress' and needs to be made more flexible. As yet, integration of payment portals and providing certificate PDF format needs to be done. MP RERA is the first in the country to have developed a user-friendly, bilingual software to promote the use of ICT in RERA. It is primarily built around projects, builders, agents and allottees and is constantly being improved. MP RERA is also in the process of developing a mobile app.

Mr De Sa said that the immediate results of the use of ICT in MP RERA are mainly: generation of management information system (MIS) reports and creation of a database; improvement in its own functioning; increased business efficiency in the real estate sector; and providing transparency thereby leading to reduction in corruption.

#### **12.1.4 Haryana RERA (Gurugram)**

Government of Haryana notified the Haryana Real Estate (Regulation and Development) Rules, 2017, which came into force on 28 July 2017. Later, the government of Haryana constituted two RERA Authorities for proper implementation of RERA regulations, namely, Gurugram RERA and Panchkula RERA. Gurugram RERA has jurisdiction only for the district of Gurugram. Panchkula RERA has jurisdiction over the rest of Haryana except the district of Gurugram with a separate set of regulations. The Haryana CM launched the web portal of the Haryana Real Estate Regulatory Authority (H-RERA) in October 2018 and said that this would ensure the sector becomes a planned one.

H-RERA has resolved around 70% of the 9,496 complaints it received in the past two years. As of 6 February 2020, KK Khandelwal, chairman of H-RERA Gurugram said that the Authority has resolved 6,598 complaints. "H-RERA had around 6,000 cases lodged by home-buyers. We have disposed 2,200 cases. Another 2,000 cases are in the final stage of disposal. Around 2,000 cases are stuck in technicalities, as the Haryana government has notified some changes in the RERA rule which was challenged in the High Court and was stayed." Mr Khandelwal said most of the complaints registered with H-RERA are related to the delay in projects and refund of money from the builders.

Mr Khandelwal said that 509 penalty notices have been issued to builders who have not complied with provisions of the real estate law. A penalty of Rs40 crore has been imposed on erring builders. According to him, the delay in projects is not always the fault of developers. "The government authorities are equally responsible for the delay as they take their own time to approve projects," he said, adding that government officials and establishments should also be made answerable for the delays. Mr Khandelwal said H-RERA will take action against brokers who are selling properties without a licence in the State; around one lakh hectare area of land comes under the jurisdiction of H-RERA Gurugram and 250,000 residential units are under its supervision. "We are doing registration of builders and brokers as well; 99% brokers are registered with us but have not taken a licence. We are going to ask

them to take a licence so that they can come under the purview of law. Action will be taken against those who have not taken the licence. We will penalise them and revoke their registration as well,” he explains.

Talking about the reason behind the brokers not obtaining a licence, he said: “The brokers are charging an unrealistic commission of 6% to 10%, which is huge and unethical. RERA restricts brokers to charge only 1% as commission, half of which comes from the buyer and the other half from the seller. These property dealers are involved in malpractices. We need to regulate them. So, we are asking them to obtain a licence.”

While speaking about the challenges that RERA is facing, Mr Khandelwal said that the multiplicity of forums is creating a problem as, currently, buyers have the option to go to RERA, NCDRC or NCLT. He said that this issue needs to be resolved by the government.

### **Cracking the Whip**

In August 2018, as a part of a landmark judgement, the H-RERA - Gurugram bench had asked the town and country planning department (TCPD), Haryana, to withdraw the CC or OC issued to projects that are yet to complete the development. The Authority also asked TCPD to initiate an inquiry into how such certificates have been procured fraudulently. H-RERA observed that OCs and CCs were fraudulently secured when the projects were yet to be completed. H-RERA issued show-cause notices to such builders and reached out to vigilance for an enquiry into the matter.

This development was expected to have ramifications across other States and regions too as several developers had rushed to secure these CCs and OCs ahead of the implementation of RERA in a bid to escape its jurisdiction. It has been observed that there are many such cases where part CC, or OC, had already been issued even though the development work is not yet complete, which should be the criteria for granting these approvals.

H-RERA gave promoters of such projects a month’s time to apply for registration, failing which penal proceedings were to be initiated against them. According to experts, the Authority has taken cognisance of the trouble faced by home-buyers of such incomplete projects and builders procuring OC/CC even without completing the projects.

Abhay Upadhyay said that the order was welcome and it benefited home-buyers; he wished that other States had taken similar action instead of diluting real estate rules that favour builders. Such developers will be forced to comply with the registration requirement or face penalty up to 10% of the project cost as provided under RERA rules. According to RERA, the development scope of the project includes external work such as roads, landscaping, water supply, sewerage and drainage, electricity supply transformer, sub-station, solid-waste management and any other work as may be provided in local laws.

Internal development work means roads, footpaths, water supply, parks, tree planting, street lighting, provision for community buildings, water conservation, energy management, fire protection and safety requirements, social infrastructure such as educational, health and other public amenities as per sanctioned plans.

Mr Upadhyay reckons that in many cases, home-buyers face problems because they are being forced to take possession without the promised infrastructure in place. The CC, or OC, can only be granted after the completion of such development work as observed by the Authority. The Authority has also ruled that mere applying for CC, or OC, will not exempt any real estate project from falling under the ambit of RERA.

It has made it clear that the OC, or CC, granted prior to the commencement of the Act will be the only condition to get an exemption from RERA registration of the project. “...mere filing of application cannot be treated as completion of the project/ occupation of the project,” the order said. Mr Khandelwal said that the Authority is not just a compensation-dispensing body; it has a larger role that includes ensuring timely commencement and completion of projects, monitoring of fund diversion, possession of homes and maintenance by the developer.

In April 2019, H-RERA had directed the police commissioner to register a criminal case against three major financiers of big residential projects for alleged misappropriation of crores of rupees collected from home-buyers for completing housing projects. H-RERA said that the financiers had violated Section 4(2)(1)(D) of RERA and a show-cause notice had also been issued to Supertech Limited.

Three lenders, viz., Indiabulls Housing Finance Limited, Industrial Finance Corporation of India Limited and PNB Housing Finance Limited, came under the scanner for not adhering to an important provision in RERA.

As per Section 4(2)(l)(D) of the Act, “70% of the amount realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.” It further specifies that any amount withdrawn from this account shall be utilised only to cover project costs and has to be ‘certified’ by an engineer, an architect and a CA to the effect that the withdrawal “is in proportion to the percentage of completion of the project.”

These three lenders were alleged to have misappropriated crores of rupees deposited by allottees for completion of the Araville, Basera, Hues and Hill Town projects in Gurugram (projects being developed by Supertech Ltd). The Authority took a serious note of the fact that the lenders had fraudulently and arbitrarily withdrawn the entire amount of the receivable deposited in the RERA account, which is a flagrant violation of the Act. Mr Khandelwal said that this was a first-of-its-kind decision since the regulatory authority was constituted, where it had directed the police to initiate action against financiers of realty projects.

H-RERA has made it clear that, before builders make a provision for any purpose, 70% of the money collected from allottees must go to a designated RERA account, to be maintained for the purpose of construction of the project and meet the land cost. Developers also ‘cannot create a lien on the project’ to raise money for a purpose other than completing construction of a project. A builder can use only 30% of the amount collected from allottees for other purposes, including creating charge in favour of lending institutions to repay loans, said Mr Khandelwal. This RERA provision was introduced to address the mischief previously being committed by unscrupulous builders to divert funds collected from home-buyers to other projects or for different purposes entirely. Banks and lending institutions, typically, see their loans serviced through the escrow accounts opened by developers where all the receivables get deposited.

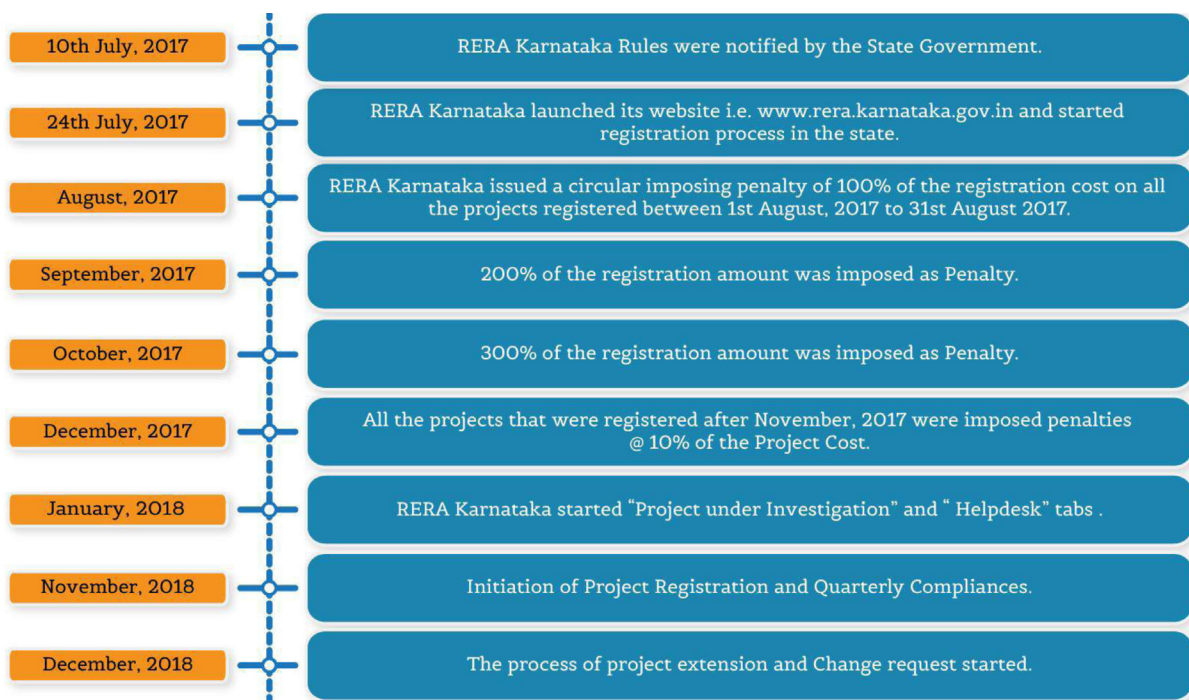
If the collection from allottees in a particular month is less than the instalment due to be paid to the lender, the entire amount in the escrow account reportedly goes to lenders. Due to this state of affairs, in the event a realty firm suffers a cash crunch, projects often end up getting stalled. Section 4(2)(l)(D) of the Act aims to clamp down on such practices.

Indiabulls Housing Finance Limited, Industrial Finance Corporation of India Limited and PNB Housing Finance Limited were directed to deposit back the excess amount withdrawn by them in violation of this provision and a show-cause notice was issued to Supertech Limited, asking it why penal proceedings should not be initiated against it for non-compliance.

### 12.1.5 Karnataka RERA

Established in July 2017, the Authority functioned without a permanent chairman for over 1.5 years. Karnataka RERA (K-RERA) Authority has had four interim chiefs since its inception. The delay in appointing a permanent chairman was in violation of RERA, which mandates the appointment of a permanent authority within a year of notifying the State RERA.

#### Timeline of K-RERA<sup>63</sup>



The online portal was developed under Section 4.3 of RERA and went live on 24 July 2017. The department of housing, government of Karnataka, is the nodal department for the implementation of RERA in the State of Karnataka. All Sections of RERA came into force with effect from 1 May 2017. Under RERA, the Karnataka Real Estate Regulation and Development Rules, 2017, were approved by the government of Karnataka and notified on 10 July 2017. In the initial phase, when there was no

<sup>63</sup> [https://www.rerafiling.com/upload/research/research\\_1468983848.pdf](https://www.rerafiling.com/upload/research/research_1468983848.pdf)

proper regulatory authority under this Act, the government of Karnataka appointed the principal secretary to the government of Karnataka, department of housing, as the interim authority authorised by Section 20 (1) of RERA, to handle the work.

After a long delay, the State government set up a permanent organisation—the Karnataka Real Estate Regulatory Authority (K-RERA). In March 2019, retired bureaucrat MR Kamble, who served as the additional chief secretary to the Karnataka government, was appointed chairman. In addition, the government appointed four permanent members—two former bureaucrats, a judicial member and a technical member.

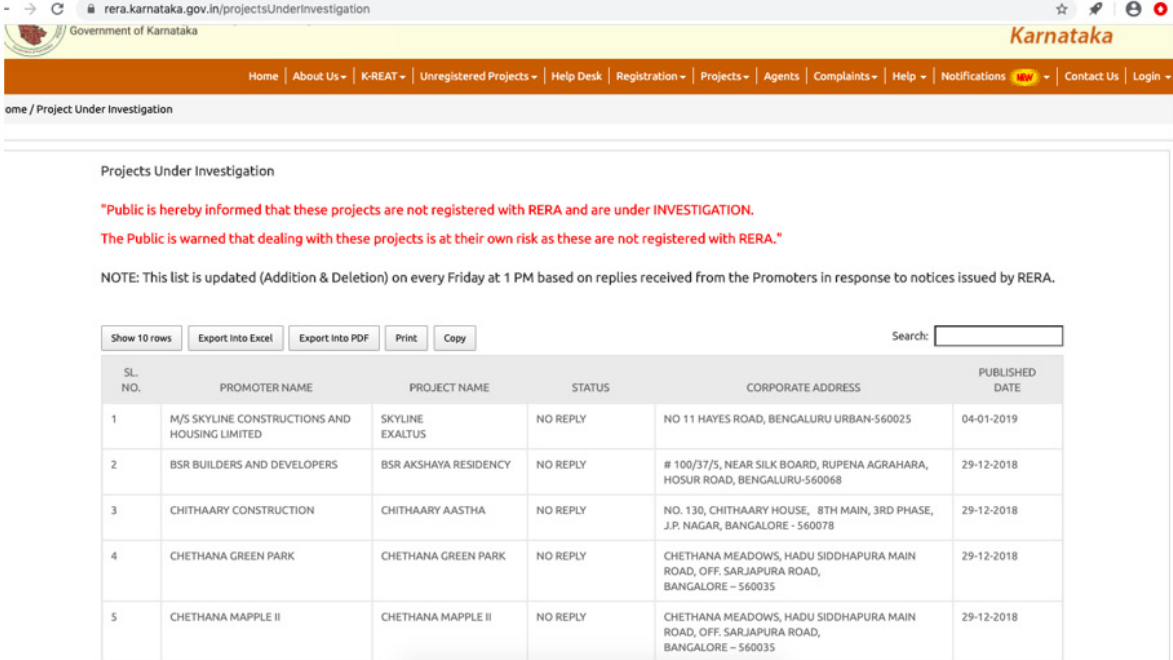
### **Key Initiatives**

K-RERA is among the few RERA Authorities to have a fully paperless and online process. All services for stakeholders are online, including: registration of real estate projects, registration of real estate agents, disclosure of information, complaints filing, judgements, project extensions, etc. Thereby ensuring zero footfalls, zero paper. It is among the top-5 States for maximum project registrations.

The time limit mandated by RERA for the registration process is 30 days. However, the average time taken by the K-RERA Authority to complete the registration process is approximately 90 days. Apart from the registration module, K-RERA Authority created two modules for change in bank details as well as for extension of projects. The K-RERA lists the description of projects (under a separate header unregistered projects) which are under investigation on a tab called 'Projects under investigation'. This can be viewed at <https://rera.karnataka.gov.in/projectsUnderInvestigation>.



### Screenshot from K-RERA portal: Projects under Investigation tab



Projects Under Investigation

**"Public is hereby informed that these projects are not registered with RERA and are under INVESTIGATION.  
The Public is warned that dealing with these projects is at their own risk as these are not registered with RERA."**

NOTE: This list is updated (Addition & Deletion) on every Friday at 1 PM based on replies received from the Promoters in response to notices issued by RERA.

Show 10 rows    Export into Excel    Export into PDF    Print    Copy    Search:

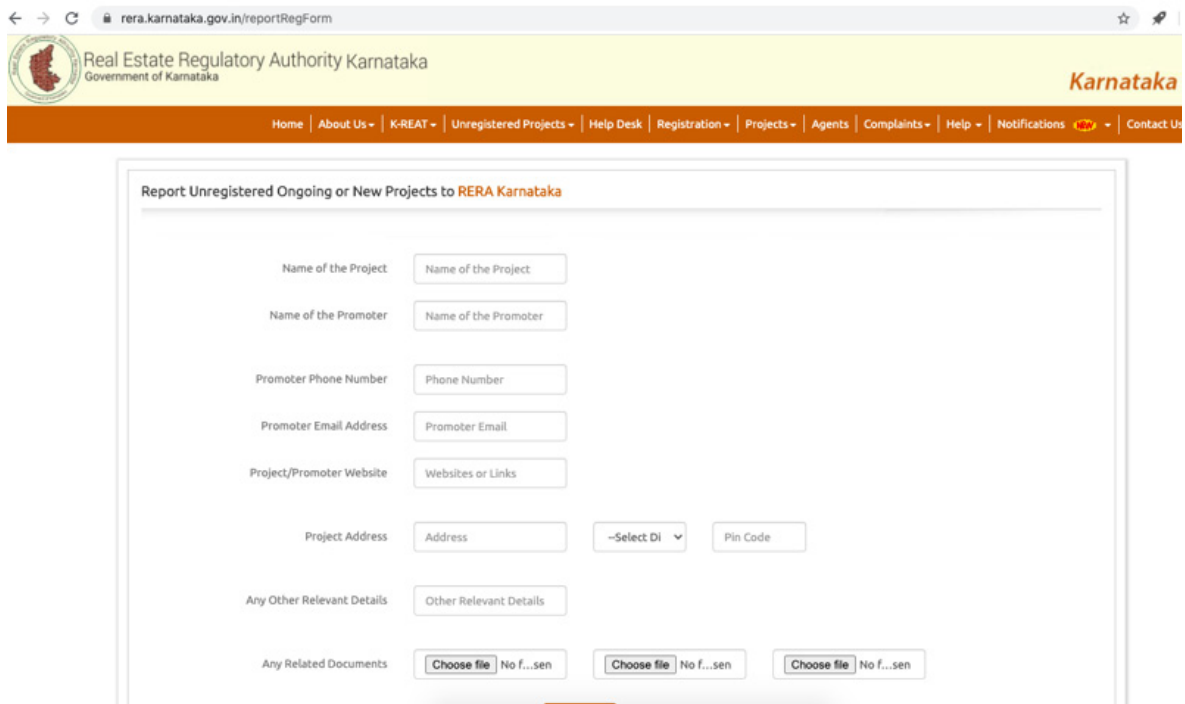
SL. NO.	PROMOTER NAME	PROJECT NAME	STATUS	CORPORATE ADDRESS	PUBLISHED DATE
1	M/S SKYLINE CONSTRUCTIONS AND HOUSING LIMITED	SKYLINE EXALTUS	NO REPLY	NO 11 HAYES ROAD, BENGALURU URBAN-560025	04-01-2019
2	BSR BUILDERS AND DEVELOPERS	BSR AKSHAYA RESIDENCY	NO REPLY	# 100/37/5, NEAR SILK BOARD, RUPENA AGRAHARA, HOSUR ROAD, BENGALURU-560068	29-12-2018
3	CHITHAARY CONSTRUCTION	CHITHAARY AASTHA	NO REPLY	NO. 130, CHITHAARY HOUSE, 8TH MAIN, 3RD PHASE, J.P. NAGAR, BANGALORE - 560078	29-12-2018
4	CHEETHANA GREEN PARK	CHEETHANA GREEN PARK	NO REPLY	CHEETHANA MEADOWS, HADU SIDDHAPURA MAIN ROAD, OFF. SARJAPURA ROAD, BANGALORE - 560035	29-12-2018
5	CHEETHANA MAPPLE II	CHEETHANA MAPPLE II	NO REPLY	CHEETHANA MEADOWS, HADU SIDDHAPURA MAIN ROAD, OFF. SARJAPURA ROAD, BANGALORE - 560035	29-12-2018

As per the data shared on 10 July 2019, there were a total of 1,068 projects under investigation. K-RERA has specifically warned the public on its official website about these projects, declaring that: "These projects are not registered with RERA and are under investigation. Therefore, deal in these projects at your own risk." This list is updated (addition & deletion) on every Friday at 1pm, based on replies received from the promoters in response to notices issued by K-RERA.

The government of Karnataka appointed the Karnataka Appellate Tribunal as interim Appellate Tribunal to hear appeals under the Act authorised by the Section 43 (4) of RERA. REAT was set up to hear appeals on the orders of the Authority and the adjudicating officer. REAT is to be headed by a sitting or retired judge of the High Court with one judicial and one administrative/technical member.

K-RERA has introduced a tab called 'Report Unregistered Projects' wherein the Authority has given opportunity to the normal public to be proactive and report unregistered projects to K-RERA so that the relevant information is available to home-buyers and they can avoid investing in those projects.

*Screenshot from K-RERA portal: Report unregistered ongoing or new projects to RERA Karnataka on its portal*



The screenshot shows a web browser window with the URL [rera.karnataka.gov.in/reportRegForm](http://rera.karnataka.gov.in/reportRegForm). The page header includes the Real Estate Regulatory Authority Karnataka logo and the text 'Real Estate Regulatory Authority Karnataka Government of Karnataka'. A navigation menu contains links for Home, About Us, K-REAT, Unregistered Projects, Help Desk, Registration, Projects, Agents, Complaints, Help, Notifications, and Contact Us. The main content area is titled 'Report Unregistered Ongoing or New Projects to RERA Karnataka' and contains the following form fields:

- Name of the Project:
- Name of the Promoter:
- Promoter Phone Number:
- Promoter Email Address:
- Project/Promoter Website:
- Project Address:
- Any Other Relevant Details:
- Any Related Documents:  No f...sen  No f...sen  No f...sen

Recently, a new tab has been incorporated on the official website of the K-RERA Authority called 'Helpdesk' wherein all the users (home-buyers, promoters and agents) can approach the Authority regarding their inquiries relating to any matter concerned with K-RERA using unique login id and password. In February 2020, the Authority has uploaded a separate user manual with all details which is available in pdf format at <https://rera.karnataka.gov.in/resources/staticpage/helpdesk%20usermanual.pdf>.

There is a separate section that forewarns the public about projects that are yet to seek an extension or are yet to be renewed. They are listed with full details and the public is informed that they will be dealing with these projects at their own risk.

Screenshot from K-RERA portal: Status of Projects applied for extension

Government of Karnataka Karnataka

Home | About Us | K-REAT | Unregistered Projects | Help Desk | Registration | Projects | Agents | Complaints | Help | Notifications **NEW** | Contact Us | Login

Home / Projects for Renewal

**Status of Projects Applied for Extension**

\*Public is hereby informed that the project registration period for the following projects have expired and are yet to be renewed.  
Public is hereby warned that dealing with these projects would be at their own risk.\*

Completion Date Expired Projects (765)    Completion Applications ( 642)    Extension Applications Approved ( 163)    Extension Applications Rejected (0)    Extension Applications under Process (243)

List of all Completion Date Expired Projects: 765

Show 10 rows    Export into Excel    Export into PDF    Search:

S.NO	REGISTRATION NO	PROMOTER	PROJECT	DISTRICT	COMPLETION DATE	APPLIED FOR EXTENSION / COMPLETION ?	CERTIFICATE
1	PRM/KA/RERA/1268/378/PR/180130/001886	SRINIVAS T	VAJAMANGALA	MYSORE	20-12-2010	NOT APPLIED	
2	PRM/KA/RERA/1249/365/PR/180208/001910	EXECUTIVE ENGINEER	CHS II PHASE GOKAK	BELAGAVI (BELGAUM)	19-12-2012	NOT APPLIED	
3	PRM/KA/RERA/1257/334/PR/171229/001712	GANESH SHETTY K (APOORVA	AKSHARA RESIDENCY	DAKSHINA KANNADA	18-03-2013	NOT APPLIED	

There is complete transparency on the K-RERA portal; even the number of complaints filed project-wise and developer-wise is shared. These details can be saved in Excel format or pdf format for easy usage to find out the most defaulting developers or the most problematic projects. For example, project-wise complaint report is available as shown below.

Screenshot from K-RERA portal: Project-wise Complaints

Government of Karnataka Karnataka

Home | About Us | K-REAT | Unregistered Projects | Help Desk | Registration | Projects | Agents | Complaints | Help | Notifications **NEW** | Contact Us | Login

Home / Project Complaint List

**Complaints on Project List**

Total Records : 4044

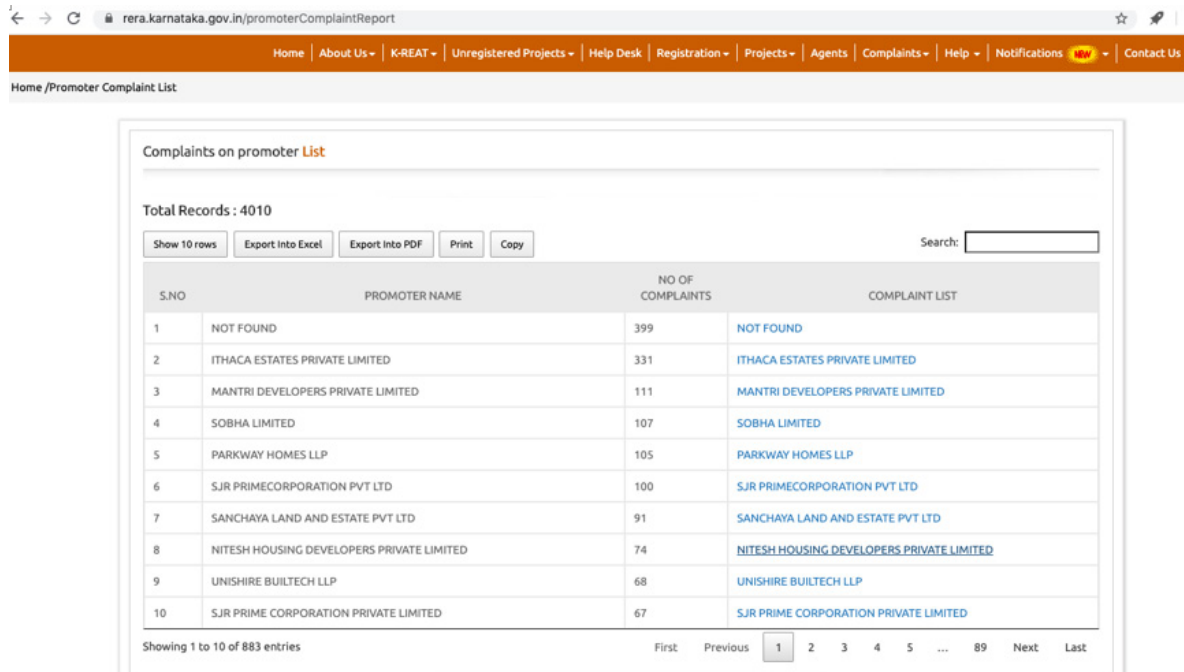
Show 10 rows    Export into Excel    Export into PDF    Print    Copy    Search:

S.NO	PROJECT NAME	NO OF COMPLAINTS	COMPLAINT LIST
1	SKYLARK ITHACA	344	<a href="#">SKYLARK ITHACA</a>
2	NOT FOUND	201	<a href="#">NOT FOUND</a>
3	PARKWAY HOMES	77	<a href="#">PARKWAY HOMES</a>
4	THE GREENS PHASE I	69	<a href="#">THE GREENS PHASE I</a>
5	UNISHIRE SPACIO	69	<a href="#">UNISHIRE SPACIO</a>
6	SJR PRIMECORPORATION PVT LTD PALAZZACITY	65	<a href="#">SJR PRIMECORPORATION PVT LTD PALAZZACITY</a>
7	GM INFINITE SILVER SPRING FIELD	64	<a href="#">GM INFINITE SILVER SPRING FIELD</a>
8	SHRIRAM GREEN FIELD PHASE 1	60	<a href="#">SHRIRAM GREEN FIELD PHASE 1</a>
9	UNISHIRE WEAVE	55	<a href="#">UNISHIRE WEAVE</a>
10	MANTRI WEBCITY2A	52	<a href="#">MANTRI WEBCITY2A</a>

Showing 1 to 10 of 1,053 entries    First    Previous    1    2    3    4    5    ...    106    Next    Last

Similarly, promoter-wise complaints report is available as under:

### *Screenshot from K-RERA portal: Promoter-wise complaints*



Complaints on promoter [List](#)

Total Records : 4010

Show 10 rows   Export Into Excel   Export Into PDF   Print   Copy   Search:

S.NO	PROMOTER NAME	NO OF COMPLAINTS	COMPLAINT LIST
1	NOT FOUND	399	<a href="#">NOT FOUND</a>
2	ITHACA ESTATES PRIVATE LIMITED	331	<a href="#">ITHACA ESTATES PRIVATE LIMITED</a>
3	MANTRI DEVELOPERS PRIVATE LIMITED	111	<a href="#">MANTRI DEVELOPERS PRIVATE LIMITED</a>
4	SOBHA LIMITED	107	<a href="#">SOBHA LIMITED</a>
5	PARKWAY HOMES LLP	105	<a href="#">PARKWAY HOMES LLP</a>
6	SJR PRIMECORPORATION PVT LTD	100	<a href="#">SJR PRIMECORPORATION PVT LTD</a>
7	SANCHAYA LAND AND ESTATE PVT LTD	91	<a href="#">SANCHAYA LAND AND ESTATE PVT LTD</a>
8	NITESH HOUSING DEVELOPERS PRIVATE LIMITED	74	<a href="#">NITESH HOUSING DEVELOPERS PRIVATE LIMITED</a>
9	UNISHIRE BUILTECH LLP	68	<a href="#">UNISHIRE BUILTECH LLP</a>
10	SJR PRIME CORPORATION PRIVATE LIMITED	67	<a href="#">SJR PRIME CORPORATION PRIVATE LIMITED</a>

Showing 1 to 10 of 883 entries   First   Previous   1   2   3   4   5   ...   89   Next   Last

### **Outreach of K-RERA**

The former chairman of K-RERA, Kapil Mohan, along with his team, was engaged in conducting seminars and outreach programmes to create awareness among the home-buyers and promoters/ developers regarding RERA in various cities like Hubli, Gulbarga, and Mysore and had shown an active interest in discussing various issues. The seminars and workshops were attended by various developers from CREDAI, NAREDCO and other associations. Mr Mohan discussed issues of developers and encouraged them to enrol with RERA. Though these workshops were really helpful for promoters, the Authority needs to conduct them on a regular and continuing basis.

### **Conciliation Forum for Dispute Resolution**

In November 2019, it was reported that Karnataka is set to establish a conciliation forum to facilitate amicable settlement of disputes between promoters of real estate firms and home-buyers, replicating Maharashtra and Uttar Pradesh.

The independent forum, consisting of representatives from home-buyer groups, promoters and RERA Authority, will sit across to hear complaints from home-buyers

and negotiate a mutually acceptable deal. K-RERA secretary, KS Latha Kumari, said: “We have observed that not all complaints that are registered with RERA need legal interventions. Many complaints can be resolved if the aggrieved party and the promoter sit across the table and arrive at a mutual agreement.”

With about 3,394 complaints registered with K-RERA until November 2019 and the RERA rules mandating disposal of cases within 60 days from the date of filing them, the initiative is expected to cut down the number of complaints that the real estate regulator gets. Section 32(g) of RERA provides for initiating measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums.

The K-RERA secretary said that the forum will have one representative each from the consumer and the promoter’s side and the RERA executive will monitor activities. “We are just adding one more layer of intervention. If the cases are not resolved at conciliation then, home-buyers can file a complaint with RERA,” she said. This alternative method is only an option for buyers. The complaint filing section on the K-RERA’s website will give an option to approach the dispute settlement forum before proceeding with their complaint, if the home-buyer wishes to.<sup>64</sup>

“Litigation will consume a lot of time and energy of complainants. The forum will be a relief to home-buyers as they will have an opportunity for case redressal before getting into legal hassles,” MS Shankar, secretary of the Forum for People’s Collective Efforts, said welcoming the move. He said home-buyers are hoping that cases can be satisfactorily resolved in two-three sittings at the conciliation forum.

CREDAI Bengaluru too has welcomed the decision. Chairman Suresh Hari said that conciliation is the first and the best option for aggrieved parties. “The experience of CREDAI’s grievance cell is that most cases arise due to ineffective communication or due to ego or technical issues. These cases can be solved through mediation,” he said.

At the end of 2019, K-RERA, in its own publication, admitted that it is yet to recover fines of more than Rs100 crore from 41 real estate companies.

### **Order on Promoter Definition**

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<sup>64</sup> <https://economictimes.indiatimes.com/wealth/real-estate/karnataka-plans-forum-to-sort-out-disputes-between-home-buyers-and-promoters/articleshow/72194363.cms>

The word 'promoter' is not properly defined in RERA. While the meaning of the words 'landowner', 'builder', 'developer' and 'promoter' are known, these were not clearly defined. The definition of the term 'promoter' was brought out through an order issued by K-RERA. In Bengaluru, many projects are joint development projects. In some cases, landowners could also be promoters of the projects. As per an order issued by the K-RERA in November 2019, those who have a revenue share in real estate projects will be treated as promoters (landowner), making them equally liable and answerable to home-buyers. The order stated that the promoter and the developer will be held liable to provide details of transactions carried out before obtaining the OC for projects. It also states that the owner or promoter will have to deposit 70% of the sale proceeds released from the allottees of landowners' share to the separate RERA account before obtaining the OC.

K-RERA officials explained that the orders were issued for owners who take a share of the built-up area and sell them individually. For example, many builders and landowners enter into agreements where the builder takes 60% of the built-up space for sale and the landowner takes 40% of the built-up area and sells it individually. But the landowner is not booked for RERA violations, as the name of the builder is different. To address this anomaly, the order has been issued.<sup>65</sup>

RERA activist Bhagylakshmi Ayyar said the move to include landowners to be held accountable for the ongoing projects may help buyers. "There are cases wherein the landowners and the builder get into an agreement to approach the court and delay the deadline to get a stay order purposefully to continue receiving interest from the investors. This order will now hold both parties responsible for the timely completion of the project," she said. After the new rules came in, 12-15 projects have been registered so far.

Vishnu Vardhan Reddy, a permanent member of the RERA board, said these kind of cheating cases were quite common and civil courts must take cognisance of these issues. "Many courts are still not aware of these issues. So we discourage them from taking up cases of litigation between landowners and builders where the project is registered under RERA," he said. A trend commonly observed was the collusion of farmers and builders, said a senior police officer. "The builders take the land of say 20 farmers. They set the layout and make it attractive for the investors. Once they

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<sup>65</sup> <https://www.newindianexpress.com/cities/bengaluru/2019/nov/21/land-owners-to-be-made-promoters-held-liable-in-cases-2064924.html>

have invested, the farmers file a petty case against the investors, forcing the work to be stopped and the perpetrators enjoy the money along with the interest,” the official said. According to the city’s crime record bureau, there might be a slight decrease in cheating cases. Moreover, while cases have reduced, there is an increase in the number of victims, senior officials said.

It has also been observed during the online registration process, especially of ongoing projects, developers enter into agreements with individuals or organisations, where the latter are entitled to a share of the total revenue generated from sale of apartments or from the total developed area. So now promoters (landowners) will have to disclose revenue and will also be liable if the buyer files a case in RERA.

This circular was issued after holding a meeting with all stakeholders and real estate agencies at K-RERA. The K-RERA officials said that since the decision has been taken after the meeting, the realtors cannot object. MS Shankar, convenor, RERA-Karnataka Chapter, said: “This was required as there are many cases where landowners take money and escape. By doing this, K-RERA will have more powers to bring the landowners to book.”

### 12.1.6 GUJARAT RERA

Gujarat is considered among the leading States that have implemented RERA. In April 2019, there were 5,317 real estate projects registered with Gujarat RERA (GujRERA) Authority, the number being the second highest in India after Maharashtra.<sup>66</sup> Project and real estate agent registrations for GujRERA increased during November 2018 to April 2019.

<b>RERA REGISTERED PROJECTS</b>	
State	Projects
Maharashtra	20,718
<b>Gujarat</b>	<b>5,317</b>
Uttar Pradesh	2,612
Karnataka	2,530
Madhya Pradesh	2,163



As of 15 February 2020, GujRERA had 6,758 projects registered, 1,112 agents registered and 1,687 cases had been disposed. Thus, GujRERA has made considerable

<sup>66</sup> <https://timesofindia.indiatimes.com/city/ahmedabad/state-second-in-number-of-works-under-rera/articleshow/69104539.cms>

progress in 2019. However, two years after it was formed, Gujarat REAT (the forum where aggrieved parties – home-buyers and builders – can challenge the decision of the GujRERA) is yet to get a full-time presiding judge and technical member. In fact, the Food and Safety Tribunal judge was presiding over the real estate Tribunal in an ‘in-charge’ capacity. Also, no technical member, as mandated by RERA, has been appointed to the Tribunal.<sup>67</sup>

A public interest litigation (PIL) was filed in this connection and the Gujarat High Court has issued notices to the State government and registrar of the Tribunal. Section 43 (3) of RERA states that “every bench of the Appellate Tribunal shall consist of at least one Judicial Member and One Administrative or Technical Member.” The absence of mandated officials can have serious ramifications. As per the judgement delivered by the Bombay High Court a verdict passed in absence of a technical member can be set aside. In one of the cases related to RERA, the Bombay HC termed illegal an order passed by a single member.<sup>68</sup> If one goes by that ruling, all orders delivered by the Tribunal in Gujarat can be set aside. In such cases, builders can take benefit, if the order has gone against them, at the cost of home-buyers. The Tribunal is supposed to dispose a case within 60 days of filing but none of the cases has been settled within this timeframe.

RERA experts believe there should be a permanent judge to ensure justice. Appointment of permanent judge and staff with technical expertise would help in speedy disposal of appeals. Fair justice is possible only if there are technical members in the Tribunal as the subject requires expertise in the real estate field.

In August 2020, the Gujarat government assured the Gujarat High Court that it will recruit full-time judicial members, staff to handle Gujarat Real Estate Appellate Tribunal and allocate separate building to house forum currently functioning out of Food Safety Tribunal.<sup>69</sup> The government assured that it is in the final stage of recruiting judicial officials and other staff members for the Tribunal. The government was responding to a public interest litigation (PIL) seeking appointment of regular judicial officials, members, and other staff.

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<sup>67</sup> <https://ahmedabadmirror.indiatimes.com/ahmedabad/cover-story/big-bang-rera-reform-fails-to-serve-purpose-in-absence-of-full-time-appellate-tribunal-judge/articleshow/73051036.cms>

<sup>68</sup> <https://mumbaimirror.indiatimes.com/mumbai/other/single-member-bench-cant-decide-rera-appeals-hc/articleshow/71471298.cms>

<sup>69</sup> <https://ahmedabadmirror.indiatimes.com/ahmedabad/cover-story/gujarats-realty-regulator-to-finally-get-its-judicial-teeth/articleshow/77642959.cms>



## IT Security and Hygiene

GujRERA had put up the following public notice on its portal:

### Public Notice

Gujarat Real Estate Regulatory Authority (GUJRERA) has been set up by the Government of Gujarat, in accordance with the provisions of **The Real Estate Regulation & Development Act 2016**. GUJRERA is working through [www.gujrera.gujarat.gov.in](http://www.gujrera.gujarat.gov.in) Portal for Project Registration, Agent Registration & Complaint filling by the consumers. The official email address of Gujarat RERA is [inforera@gujarat.gov.in](mailto:inforera@gujarat.gov.in)

Authority has received complaints from promoters that some unscrupulous elements in the market are misleading them with an intent to cheat the innocent consumers/ promoters and other concerned parties by sending emails from similar sounding emails/websites or claiming that they are associated with Gujarat RERA.

This notice assumes importance, since our research showed that many State RERAs (including chairmen of State RERA Authorities) have been using Gmail IDs and do not have official domain email IDs yet. It is high time this anomaly is taken care of and due importance is given to usage of correct technology and tools. It would take just one incident of email hacking for the general public to lose their trust in the Authority and the work they do. Some of them have official email IDs but they are so clogged that the mails bounce back and the Authority only uses Gmail IDs to communicate with everyone for official purposes. These are serious lacunae and need to be addressed forthwith.

In February 2019, cyber cell of Ahmedabad city police arrested two men in connection with a URL that was deceptively similar to that of the Gujarat Real Estate Regulatory Authority (GujRERA) website. In this case of typo-squatting, an attempt was made to dupe hundreds of gullible promoters. The operators of the fraud website congratulated promoters who inadvertently had uploaded their documents on the website.<sup>70</sup> The accused had launched [www.gujrera.in](http://www.gujrera.in). The URL of the official website is [www.gujrera.gujarat.gov.in](http://www.gujrera.gujarat.gov.in). The main operator behind the fake website communicated with promoters using the mail address [info@gujrera.in](mailto:info@gujrera.in). The email ID of the Authority is [inforera@gujarat.gov.in](mailto:inforera@gujarat.gov.in).

<sup>70</sup> <https://timesofindia.indiatimes.com/city/ahmedabad/2-held-for-rera-website-con/articleshow/68192521.cms>

GujRERA website had allegedly left one of its download URL unprotected which, in turn, exposed sensitive citizen data such as PAN cards, Aadhaar cards, passport-size photos, income-tax details, among other documents. This data leak was discovered by the French cyber-security expert Baptiste Robert (who goes by the pseudonym Elliot Alderson on Twitter) in September 2019. Elliot shared a download link ([https://gujrera.gujarat.gov.in/download?DOC\\_ID=XXX](https://gujrera.gujarat.gov.in/download?DOC_ID=XXX)) from GujRERA website which was pulling up citizen documents on replacing 'XXX' with any random three-digit number.



Multiple Twitter users replied to Elliot's tweet, confirming that they were able to access multiple PAN cards, Aadhaar cards, financial declarations by a company, income-tax details of citizens, among other documents. After the revelation, the GujRERA website was inaccessible for a few days.

## 12.2 LAGGARDS

Under RERA, every State is required to have a RERA Authority responsible for the implementation of rules and regulations, and ensuring transparency in real estate transactions. The pace of implementation has been slow in some States, including project and agent registrations. For instance, in Jharkhand, just 178 projects have been registered after nearly three years of RERA implementation. In Punjab, 827 projects are registered. In Delhi, only 21 projects are registered and only three projects have been registered in Chandigarh.

While most States have notified rules under RERA, Arunachal Pradesh, Meghalaya, Nagaland and Sikkim are yet to do so. This is mainly due to issues related to land belonging to certain communities; however, the States are in the process of notifying the rules. The pace of adoption has significantly increased in the past one year

and especially in FY19-20 which saw a lot of States adopting the Central Act and establishing State regulatory authorities, State Appellate Tribunals and creating / developing of the State RERA web portals.

There was a national-level conference of all State RERA Authorities in November 2019 in Lucknow with detailed discussions and several States made their presentations and shared their reports on how far they have come. It is possible that in the run-up to the conference most State RERA Authorities realised the importance and picked up pace to report positive metrics and present themselves in favourable light.

So far, 31 States and UTs have appointed this Authority, seven are interim bodies (Assam, Arunachal Pradesh, Manipur, Mizoram, Puducherry, Telangana and Tripura). The interim regulators' efforts fall short of the intended goal of a dedicated real estate regulator leaving consumers in the lurch.

Also, under RERA, every State has to establish a dedicated Tribunal to address grievances and offer timely redress. If a promoter has violated the terms of the agreement or has delayed handing over of projects, consumers can approach the Tribunal and lodge a complaint.

So far, nine States (Arunachal Pradesh, Assam, Himachal Pradesh, Kerala, Lakshadweep, Meghalaya, Mizoram, Nagaland and Sikkim) have not established the Appellate Tribunal, while eight States (Chhattisgarh, Goa, Gujarat, Jharkhand, Manipur, Telangana, Tripura and Uttarakhand) continue to have interim Appellate Tribunal and have not yet established a permanent Appellate Tribunal. West Bengal has enacted its own Act, namely, West Bengal Housings Industry Regulation Act, 2017; however, the State has been advised by MoHUA to notify the rules under RERA.

### **12.2.1 Kerala RERA**

It was only on 1 January 2020, that chief minister Pinarayi Vijayan inaugurated Kerala RERA and presented registration certificates to builders and developers as well as real estate agents. Mr Vijayan also released an emblem for Kerala RERA. Kerala, often described as *God's Own Country*, with highest literacy and huge investment by non-resident Indians (NRIs) in real estate, finally set up the RERA Authority in the State.

Surprisingly, Kerala was among the eight States and UTs lagging behind in setting up a real estate Appellate Tribunal and one among the six States that had failed to operationalise websites under the provision of RERA. This is despite the fact that Kerala is seen among the most progressive States with the highest literacy levels, where NRIs pour huge amounts of money every year. Kerala RERA had issued a notice in the last week of December 2019 directing that all builders and developers should not advertise, market, book, sell or offer to sell apartments, plots of buildings from 1 January 2020 without obtaining registration from Kerala RERA if the project has more than eight units or the land proposed to be developed is more than 500sq mtr.

A similar direction was issued to real estate agents that they will not enable sale or purchase of plot, apartment or building without obtaining registration from Kerala RERA under relevant Sections. RERA makes it compulsory for the State-level RERAs to design a web portal for registration and filing of complaints within one year of its formation. In Kerala, the Authority hopes to have it ready in August 2020. Until then, complaints and the registration process will be handled physically by a paper-based process. The Supreme Court order in May 2019 to demolish five apartments in Kochi for violation of coastal regulation zone (CRZ) had put the focus back on the need for a fast-tracking regulatory authority in the southern State.

Though RERA had remained a non-starter in Kerala, the RERA office, set up at Thiruvananthapuram continued to receive numerous complaints and enquiries about ongoing and upcoming housing projects. A major chunk of the complaints pertained to delayed project completion. Nevertheless, the RERA office was not able to take any steps as the Authority was not fully operational until December 2019.

The Kerala government initially set up a RERA Authority in 2016 based on State legislation and even appointed a former chief town planner as its chairman. When the Centre notified the final Act, the State's RERA could not function as new rules had to be framed. The process was progressing at a snail's pace. The Kerala HC had issued an order in September 2019 disallowing the State government from appointing PH Kurian as chairman of RERA as a petitioner had alleged that Mr Kurian had been in the selection committee for choosing chairperson and members of RERA. The government was forced to seek the advocate-general's legal opinion in the wake of the HC order. The Kerala government received the advocate-general's nod to constitute the real estate regulatory authority in the State with former revenue and housing additional chief secretary PH Kurian as chairperson. Mr Kurian was

appointed the Authority chairman in October 2019 and lawyer Preetha Menon was appointed as one of its members.

Mr Kurian said that the Authority also has the power to register a *suo moto* case and order investigation on the projects which violate the law. He stated that RERA registration is mandatory for availing loans from banks to buy flats or villas. Real estate agents also should be registered with the Authority. The condition is that only projects that are in sync with existing laws and regulations can be registered. Builders are also prevented from advertising or marketing unregistered projects. The ads should stick to project specifics submitted during the registration.

By January-end, the Authority was to appoint an adjudicating officer (retired district judge) to handle compensation claims. The Authority will also follow MahaRERA's initiative and form conciliation forums for grievance redressal through dialogue. The conciliation forum would help in speedy resolution of disputes between developers and buyers. There will also be an Appellate Tribunal for handling appeals on Kerala-RERA decisions.

RERA empowers State RERAs to grade real estate projects and builders. However, Mr Kurian said that since RERA was just starting off in Kerala, this would not happen immediately. He said: "It can be done in another five years or so, once the activities of Kerala RERA have stabilised. It is a transparent process of grading based on criteria such as timely delivery of projects."

Kerala RERA has urged potential buyers to book apartments only in RERA-registered projects and deal exclusively with RERA-registered real estate agents. When asked about RERA's insistence on carpet area while the new building rules have completely done away with the term and replaced it with built-up area, Mr Kurian said that RERA can recommend to the State government to incorporate necessary changes.

Mr Kurian said: "If needed, we can ask the State government to restore carpet area in building rules. The difference in rules may not be a constraint for the smooth functioning of RERA." He also said that Kerala RERA is planning to conduct more and more awareness sessions across the State.<sup>71</sup> In January 2020 (within a month of starting), Kerala RERA got over a 100 complaints from buyers of projects which have

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<sup>71</sup> <https://www.moneylife.in/article/kerala-with-highest-literacy-and-huge-nri-investments-at-last-get-going-with-rera/59128.html>

not received OC. While a large number of complaints pertain to delay in delivery, there are also complaints against builders for failing to deliver promised features of a project. Multiple complaints have been received against a single project itself and, in other cases, individual complaints have been received.<sup>72</sup>

Kerala RERA started scheduling hearings in February 2020 for the complainant and the respondent. Officials with Kerala RERA said complaints have been received against projects dating back to 2010 or even 2014 time-periods. As per the update on the Kerala RERA portal in April 2020, they had registered 125 projects.

There were initial hiccups and, in the initial days, when applications for new projects were received by the Authority for registration, the process could not be completed due to erroneous filing of applications or furnishing of inaccurate information.

With the frequent recurrence of inaccuracies and irregularities, Kerala RERA warned promoters that it will invoke Section 60 of RERA which stipulates that any false information given or any contravention of provision of relevant Sections by the promoter will attract a penalty which may extend up to 5% of the estimated cost of the real estate project.<sup>73</sup>

The notice issued by Kerala RERA pointed out that, in spite of several directions issued by the Authority, many applications are not being filled in the prescribed manner and that it contains many inaccuracies and irregularities. It was also found that some of the information sought in the application form was found to be missing completely and some information was false and even altered from the mandated format.

To deal with the growing number of flawed applications, Kerala RERA recently issued separate checklists for promoters of ongoing and new real estate projects. The promoters were directed to file duly filled checklist for filing application along with the application for registration.<sup>74</sup>

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<sup>72</sup> <https://realty.economicstimes.indiatimes.com/news/regulatory/kerala-rera-gets-complaints-against-100-builders/73683904>

<sup>73</sup> <https://www.thehindu.com/news/national/kerala/k-rera-to-speed-up-registration-of-projects/article30836162.ece>

<sup>74</sup> <https://timesofindia.indiatimes.com/city/kochi/rera-gets-plaints-against-100-builders/articleshow/73674824.cms>

The checklist includes a set of 27 requisite details like estimate of expenditure, nature of encumbrance, land records, plan of development works, audited balance sheet, description of land, etc.

### 12.2.2 WBHIRA

The Housing Industry Regulatory Authority is established under Section 20 of the West Bengal Housing Industry Regulatory Act, 2017 (WBHIRA), which was published in the Official Gazette of dated 17 October 2017 and came into effect on 1 June 2018. Registration of real estate projects with the HIRA Authority is compulsory under Section 3 of the WBHIRA.

Vikram Wadehra, partner of Vidhii Legal writes “The statute regulates all projects above 500sq mtr or more than eight apartments in total, and Section 3 requires them to be registered with the Authority. HIRA Authority intends to regulate and promote real estate in West Bengal in a transparent manner by protecting the interest of consumers.” From the start, it appears that the government contemplated constituting a sub-committee in the Central Advisory Council with the objective of persuading the West Bengal government to adopt the (RERA), in place of its own legislation. However, the Supreme Court recently admitted a plea challenging the constitutional validity of the HIRA and has directed the West Bengal State and the Central government to respond (*Forum for People’s Collective Efforts and Anor vs The State of West Bengal and Anor*).<sup>75</sup>

The petitioner argued that the Central government’s RERA is an exhaustive and complete code and that there is no scope for similar legislation to be enacted in a State, except in circumstances where Article 254(2) of the Constitution applies. Article 254 recognises the possibility of repugnancy arising between laws made by State and Central legislatures. In such cases, the law enacted by the Central legislature would prevail. The only exception to this is where the law enacted by the State legislature has received the assent of the president; in that case, the law enacted by the State legislature would prevail, unless parliament subsequently enacts any law with respect to the same matter. This would include any law adding to, amending, varying or repealing the law so made by the legislature of the State.

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<sup>75</sup> <https://realty.economicstimes.indiatimes.com/news/regulatory/sc-agrees-to-hear-plea-seeking-replacement-of-west-bengals-hira-with-rera/70371794>

It is argued that HIRA was neither reserved for consideration of the president nor had the assent of the president ever been obtained. Even more pertinently, RERA was in force before West Bengal enacted HIRA. It is also argued that HIRA is in direct conflict with the earlier enacted RERA. The conflict between the two statutes includes such differences as the sale of open car parking spaces as opposed to garages with walls and roofs, the compounding of offences, which courts should try such offences and the definition of *force majeure* events. Both HIRA and RERA were enacted with similar objectives, namely, to ensure better accountability to consumers and to regulate and promote the real estate sector. The question to be decided is: What happens where there is inconsistency or repugnancy.

While it may be argued that HIRA is repugnant by its very nature, repugnancy applies only when allegedly conflicting laws have been enacted under the concurrent list (*Hoechst Pharmaceuticals vs State of Bihar*). This view was upheld by the Supreme Court in the cases of *Bondu Ramaswamy vs Bangalore Development Authority and Offshore Holdings Private Limited vs Bangalore Development Authority*.

It is pertinent to emphasise that HIRA appears to have been derived from entry 24 of the State list, which deals with industries, as against RERA which was enacted under entries 6 and 7 (which deal with contracts and the transfer of property) to the concurrent list.

On the contrary, given the circumstances, it appears that the State legislature could have enacted amendments, as it did in the case of several other Central laws, instead of bringing in its own statute. The State could also have brought the law into force constitutionally, under the concurrent list, by obtaining the assent of the president under Article 254(2) of the Constitution. Even though HIRA was enacted under the ambit of the State list, while RERA was enacted under the concurrent list, HIRA may, nevertheless, not pass the test of constitutionality as laid down by the Supreme Court in the cases cited above.

At present, the future of HIRA is clouded by uncertainty because it is ineffective on many counts. However, its implementation should be upheld as it represents a significant and transformative measure. The positive impact of the enactment is readily apparent. On the other hand, with the future of HIRA uncertain with its constitutional validity in question, the objective of having a uniform code, together with the establishment of a transparent and efficient organisation governing the real



estate sector, seems to be under threat. It will be interesting to see the reasoning and approach of the Supreme Court when it reaches a decision on the constitutional validity of HIRA and its implementation in West Bengal.”<sup>76</sup>

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<sup>76</sup> Examining the Validity of West Bengal’s HIRA Act; Indian Business Law Journal <https://www.vantageasia.com/west-bengals-hira-act-validity/>

## 13. Dispute Resolution through Conciliation

Conciliation is part of alternate dispute resolution (ADR) process by which the conciliator helps both parties to come to an agreement on their own. This is then incorporated as a settlement agreement which is binding on both sides and, if any condition of the agreement is breached, a fresh complaint is filed.

ADR is a critical tool to reduce judicial pendency. In India over 330 million cases are pending in courts, according to the National Judicial Grid, with two civil cases pending even since 1951! The number of pending cases in the Supreme Court, is 58,669,<sup>77</sup> while in the United Kingdom Supreme Court, only 37 cases are pending.<sup>78</sup>

To avoid court proceedings lasting for generations, alternate methods of resolving disputes need to be developed in India. After the enactment of RERA, MahaRERA seeded the idea of conciliation in real estate disputes. It encouraged and participated in various workshops, sessions and events to enhance the awareness of conciliation among stakeholders, clearing their doubts and providing training.

In one such session, Mumbai Grahak Panchayat (MGP), a leading consumer organisation, suggested that under Section 32(g) of the Act, MahaRERA should establish a conciliation mechanism, which can resolve consumer grievances in the real estate sector in an amicable manner, thereby creating a win-win situation for home-buyers and promoters.

MGP felt that consumers often do not want to file legal complaints, as they do not want to create conflicts with promoters who are responsible for delivering their dream home. They just need a platform for developers and consumers to talk openly and honestly, express their concerns, doubts and desires to each other which, many a times, leads to resolution of issues. MahaRERA realised the importance of such a conciliatory mechanism and started working towards establishing the MahaRERA Conciliation and Dispute Resolution Forum. From the start, MahaRERA was clear that participation of associations of builders along with consumer organisations is necessary for success of the conciliation forum. Accordingly, MahaRERA reached out to associations, including CREDAI, MCHI and NAREDCO, which responded

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<sup>77</sup><https://sci.gov.in/statistics>

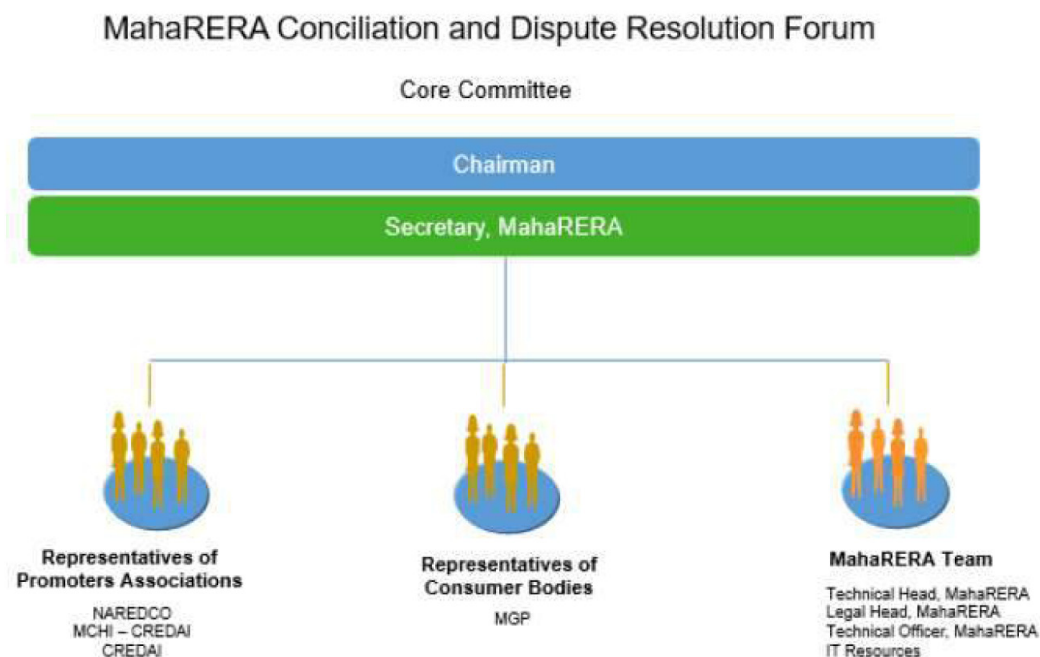
<sup>78</sup> <https://www.supremecourt.uk/current-cases/>

positively and offered their cooperation and support to translate this idea into reality.

They felt that conciliation is beneficial to promoters also as the sessions are held in private and details of grievances and mutually agreed terms for settlement are confidential. Thus, builders and their projects are not publicly maligned.

Following this, MahaRERA organised a series of meetings with all stakeholders including government of Maharashtra, builders' associations and consumer associations to finalise the solution. It was decided to establish MahaRERA Conciliation and Dispute Resolution Forum, headed by secretary, MahaRERA who is chairperson of the Forum. He is assisted by a core committee comprising representatives of consumer bodies, promoter associations and MahaRERA.<sup>79</sup>

*Composition of MahaRERA Conciliation and Dispute Resolution Forum from 'Report on best practices by RERAs - November 2019'*



### Role and Responsibilities of the Forum

The key objective of the forum is to facilitate amicable resolution of disputes, thereby saving cost and time of litigation of parties and State. The Forum's job is:

- a. Constitute / Establish panel of eminent conciliators representing consumer association and promoters' association.

<sup>79</sup> [https://up-rera.in/pdf/Best\\_Practices\\_by\\_UP-RERA.pdf](https://up-rera.in/pdf/Best_Practices_by_UP-RERA.pdf)

- b. Promote and popularise the amicable and effective settlement of disputes arising with reference to RERA, with various ADR mechanisms.
- c. Popularise conciliation as an effective dispute resolution mechanism with moderate cost (cost-effective) and speedy settlement of commercial disputes.
- d. Coordinate/Assist ADR proceedings by establishing facilities and providing administrating services. Finally, provide the best platform for ADR.

### Composition and Location of Conciliation Benches

In the beginning, in January 2018, 15 conciliation benches were established of which 10 benches were in Mumbai metropolitan region (MMR) and five benches in the Pune region. Each bench has one conciliator representing the consumer organisation and one from promoter association. Having observed the benefits of this initiative, MahaRERA received requests to set up conciliation benches in other cities also. Accordingly, MahaRERA has now established following conciliation benches:

*Location-wise number of conciliation benches of MahaRERA from 'Report on best practices by RERAs - November 2019'*

Location of Conciliation Benches	Number of Conciliation Benches
Mumbai	7
Pune	6
Nagpur	3
Nashik	2
Kalyan Dombivali	2
Virar	2
Mira Bhayander	1
Navi Mumbai	2
Palghar	1
Thane	2
<b>Total</b>	<b>28</b>

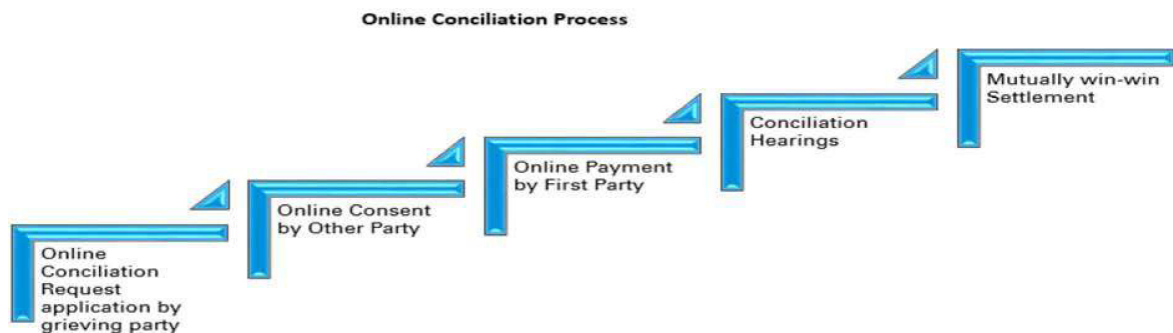
**Training and Certification of Conciliators:** Before starting the conciliation, MahaRERA Conciliation and Dispute Resolution Forum organised a special two-day training programme in January 2018, to train and guide the conciliators. The training was conducted by expert mediators and mediation trainers, who have the expertise in training mediators for mediation and conciliation project committee (MCPC) of the Supreme Court. They have also trained many judges from various courts in the process of conciliation and mediation.

Special role plays were organised during the training, bringing various scenarios to life which the conciliators would face during a conciliation hearing. This training equipped all the conciliators with knowledge and confidence to start the conciliation process. The Forum has, since then, organised several training programmes, seminars and workshops.

**Online Application and Procedure for Conciliation:** In line with MahaRERA's approach, the conciliation process was online from day one. It begins with the aggrieved party (first party) filing online application for conciliation. After submission of the application, the second party gets an email requesting for their consent to initiate conciliation. The second party can view the entire details of the grievance online and provide consent by clicking on the link. As a next step, the first party is required to pay Rs1,000 as conciliation fees. After this, the conciliation request is allocated to one of the conciliation benches on the basis of location.

The conciliation bench informs both the parties on the meeting date, time and location for the conciliation meeting. After conclusion of the conciliation proceedings, if the parties reach an agreement on settlement of the dispute, the conciliators draw up the terms of settlement which are signed by both the parties and conciliators.

*Online Conciliation Process of MahaRERA from 'Report on best practices by RERAs - November 2019'*



To spread awareness on the conciliation forum, several measures were undertaken:

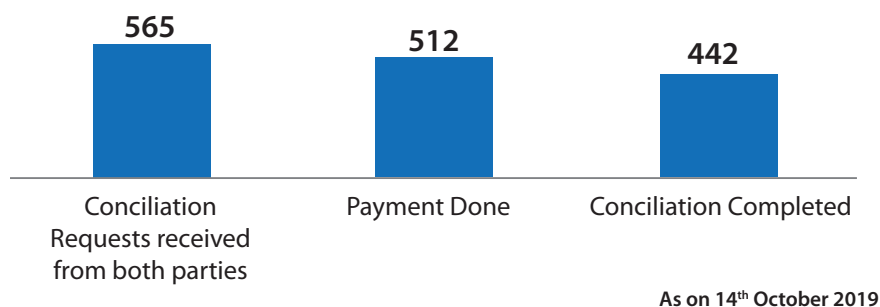
1. Seminars, press conferences and workshops were organised across the State informing stakeholders on establishment of conciliation mechanism and its benefits.
2. Different online web banners were posted on MahaRERA's website highlighting benefits of conciliation.

3. Most importantly, any person who is about to file a complaint is first prompted to consider conciliation as an option for dispute resolution.
4. MahaRERA, in another notable step, also decided that if the conciliation application does not result in an amicable settlement, the conciliation bench may decide to refer such a case to MahaRERA. The Authority, on receiving such a case, may, at its discretion, decide to treat the matter as a *suo moto* complaint at no additional cost to the applicant.

**Success Stories:** On 10 March 2018, the first set of conciliation meetings was held. A total of 10 cases were assigned, six in Mumbai and four in Pune. Out of these 10 cases, four cases of Mumbai and two cases of Pune were amicably resolved in the first hearing on the first day of conciliation. In the other four cases, both the parties requested for more time and one more hearing to resolve the issue. A post-session meeting was held which was presided over by MahaRERA chairman conveyed the success of conciliation to all. Activists consider this a landmark day for real estate sector in Maharashtra where promoters and allottees came together to bridge the trust deficit.

*Distribution of Conciliation Requests of MahaRERA from 'Report on best practices by RERAs - November 2019'*

#### Distribution of Conciliation Requests



The conciliation forum format is essentially a face-to-face negotiation between aggrieved home-buyers and the developers concerned, in the presence of specially-trained RERA officers and other neutral parties who moderate the negotiations and help in arriving at a final consensus. Established in February 2019 with about 15 benches across Mumbai and Pune, MahaRERA's conciliation benches have seen nearly 80% success rate in terms of cases closed with compliance by both parties.

Gautam Chatterjee, chairman of MahaRERA, said “This Conciliation Forum Format has been set up under provisions of Section 32(g) of RERA, which allows for alternate dispute redressal. Before lodging a formal complaint on the MahaRERA website, aggrieved parties are encouraged to use this method, which has a far lower cost in terms of time and money. We have seen high levels of compliance for all resolutions passed by all the benches and we now have plans to set up more such conciliation forum benches across Thane, Navi Mumbai, Mira Bhayander, Vasai-Virar, Palghar, Kalyan-Dombivli and Nashik.”

**Avoiding Ill-will:** MGP, a leading consumer organisation in Maharashtra, has played a pivotal role in representing the cause of aggrieved home-buyers and facilitating result-oriented dialogue between home-buyers and developers. Shirish Deshpande, chairman MGP says, “Almost two years after the implementation of RERA, it was clear to all the stakeholders that there was no room for clear communication and fair negotiation between builders and buyers.

This alternate dispute redressal mechanism in the form of conciliation forum is an effort to bridge that gap. Cases that come before us are generally closed within 3-4 hearings over a period of about 45 days in the presence of the respective parties; lawyers of either party are not entertained. The idea is to circumvent the conventional legal process, which turns out to be lengthy and costly. Because of the amicable nature of the process, parties are given closure without any bitterness or ill will which, in turn, leads to higher levels of compliance unlike conventional legal disputes where there is always room for appeal in a higher court.”

**Learning Curve:** At a testing period for residential realty in India, when many incomplete housing projects are struggling with funds crunch, conciliation acts as a way of building mutual understanding between home-buyers and developers, says Dr Niranjana Hiranandani, national president, NAREDCO, who has served as a negotiator on several occasions.

According to him, “Disputes between individuals can delay and at times, derail a project. The Conciliation Forum ensures that nobody with a genuine problem is turned away or denied response from the other side. Most problems, we have seen, are issues relating to gaps in communication or refusal to be flexible. We aim at bringing it to the logical end of project completion, which serves the larger audience. Also, each case throws up unique issues, which helps understand the law better and serves as a learning curve for all stakeholders concerned.

## 14. Issues with RERA

RERA was enacted on 1 May 2016, and all States were mandated to formulate and notify rules for the functioning of the regulator in their respective jurisdictions within six months, and set up a regulator by 1 May 2017. However, most States failed to meet both these deadlines. Many have diluted some of the provisions of the Act, while the West Bengal government has drafted its own separate real estate Act and established a housing industry regulatory authority under it.

Abhay Upadhyay, national convener 'Fight for RERA', puts it succinctly: "Given the high level of project delays and cheating cases, RERA's enactment after eight long years of wait (its first concept paper came in 2008) had raised hopes among home-buyers. But lack of seriousness and slow pace of its implementation by several States has come as a setback."

He observed that since RERA has not yet been fully implemented in all the States, no amendments in RERA should be done for now and it should be given more time for complete implementation. As things stand, there are some major issues with RERA that need to be fixed.

**1. Rehab component of redevelopment projects is excluded from the ambit of RERA:** States like Maharashtra must consider getting redevelopment of cooperative societies and tenanted buildings into the ambit of MahaRERA. Currently, the rehab component redeveloped housing societies and old tenanted (*pagdi*) buildings is not covered under MahaRERA. In December 2017, MahaRERA ruled that redevelopment of housing societies shall not be covered under RERA.<sup>80</sup> The case pertained to a housing society by the name of 'Shanthi Nikethan', which had given their housing society for redevelopment to Matrix Construction, the developer. The complaint by the housing society members was dismissed on the grounds that they were not able to point out specifically which provision of RERA was violated. The society members were directed to approach a civil court as that was the correct forum.

This order has wide-reaching implications as many constructions in the city of Mumbai involve reconstruction. In April 2018, MahaRERA reiterated that only cases

<sup>80</sup> <https://timesofindia.indiatimes.com/city/mumbai/blow-to-housing-societies-rera-wont-hear-redevelopment-disputes/articleshow/62531455.cms>



related to agreements of sale are valid under the Act. Bilateral agreements relating to alternative accommodation to be provided by the builder in case of redevelopment projects are not covered. This clarified the exact scope of MahaRERA, but left certain key issues faced by home-owners out of the Act.

In the first year after MahaRERA was set up, many cases that it heard related to disputes over alternate accommodation and led to dismissals by the Authority.<sup>81</sup> Gautam Chatterjee, chairperson MahaRERA, explained that the provisions of Section 13 of the Act are applicable only to transactions that involve an agreement for sale and not an agreement for permanent alternate accommodation. He noted that these complainants could not point out any contravention or violation of the provisions of the RERA Act, and that the Authority is not the proper forum to resolve the issues raised by them.

MahaRERA has again clarified, in a circular on 11 October 2019, that the rehabilitation component in case of redevelopment projects is excluded from the purview of RERA “as the same does not involve marketing, advertising, selling or new allotment of any apartment, plot or building and also where the promoter executes a permanent alternate accommodation agreement with existing tenants/ slum-dwellers/ members of society to rehabilitate them in the new premises in lieu of their existing premises. However, the free sale component in a redevelopment project requires registration under RERA since the Promoter will undertake marketing, advertising, selling of the new apartments, units, plots.”

When an old building enters a development agreement with a builder, the existing members are generally to be given apartments in the new building in lieu of their existing flat. However, the builder is not obliged to register the rehab component under RERA since only the saleable component is covered under RERA. Hence, the existing flat-owners/ tenants do not get protection under RERA and also may not get protection under the Consumer Act. In a city like Mumbai, that has little scope of fresh development and most of the projects in the next 10-20 years will be mostly redevelopment projects, it is vital that consumers of the rehab component are also covered under RERA.

There were reports in mid-2019, that MahaRERA rules were to be tweaked to bring rehabilitation component of redevelopment under the ambit of the authority but

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<sup>81</sup> <https://www.dnaindia.com/mumbai/report-maharera-s-identity-crisis-clears-air-on-cases-of-building-redevelopment-2603379>

there has not been any progress on this front.<sup>82</sup> The legal fraternity is, however, divided about whether amendments to MahaRERA rules alone are enough to cover the rehab component of redevelopment; some feel that amendments are also required to the Central RERA and rules.

**2. Delays and Breached Deadlines:** Abhay Upadhyay noted that the provision of limiting the extension of registration of a project to one year has been incorporated in RERA keeping in mind the home-buyers' experience of delayed projects. Even the Bombay HC dealt with the issue at length and held it to be constitutionally valid.

While quoting the example of MP RERA, he explained how at the time of registration of a project under RERA, promoters have to propose a deadline for completing the project and if the deadline is breached, the promoter has to take extension from the Authority or else the project will fall in illegal category.

RERA is expected to eliminate delays and this expectation may not be met. In March 2019, it was reported in *The Economic Times (ET)* that over a dozen real estate projects led by developers in Indore and Bhopal had sought an extension after they failed to complete projects as per the proposed deadline at the time of registration.

MP RERA chairman, Anthony de Sa, said, "There are over a dozen projects that asked for extension. Extensions were granted so that they do not become illegal projects. In case it becomes an illegal project, the project will be of no use to the allottee and the builder." The Authority gave extensions after the promoter paid a certain fee and the project remained under regular monitoring.

Mr De Sa said extensions are always given with the mandatory condition that it does not in any way affect the right of allottee and they get compensation for delay. According to RERA, extensions can be given for a maximum one year in phased manner, while under certain circumstances, considering the interest of allottees, extensions can be above a year.<sup>83</sup> Delays are not always due to builders' fault. After receiving the initial approvals for construction, builders are required to approach various authorities and local government agencies for approvals, ranging from commencement certificate for higher floors to electricity connection,

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<sup>82</sup> <https://timesofindia.indiatimes.com/city/pune/govt-yet-to-take-decision-on-maharera-proposal-to-tweak-rules-for-redevelopment/articleshow/70149952.cms>

<sup>83</sup> <https://realty.economictimes.indiatimes.com/news/industry/incomplete-projects-in-indore-bhopal-get-mp-rera-breather/68377731>

to water connection to procuring OC for a completed project. These approvals, too, are difficult to obtain in a timely manner which, in turn, adds to the delays and an increase in the project overall costs. Often, construction comes to a halt as the approvals are not received, making delays inevitable.

This becomes worse when the development involves many phases; approval has to be sought for every phase of the project. Due to the lack of a single-window clearance, progress of the project will face hindrance and will get delayed. For instance, if a project is started in Delhi, the developer is required to get 41 permissions for clearance in a span of 60 days. Section 32 of the Act says that it is the function of the RERA Authority to make a recommendation to the appropriate government of the competent authority on the creation of a single-window system to see that the project is completed on time.

**3. Implementation of RERA Orders:** Currently, this is the weakest link. Orders passed by State RERA Authorities cannot be executed unless the power to ensure implementation is provided to the Authority, it can take the assistance of the collectors to recover penalties, unpaid fees, arrears in payment of penalties or any order passed by State authorities which is converted into a recovery warrant.

Recovery warrants passed by State RERA Authorities, have to be manually sent to the collector for execution. If the collectors are provided with access to view these warrants on a real-time basis, they can enforce them properly and in a timely manner. As RERA Authority does not have any powers to provide directions to any administrative department, it becomes difficult to ensure that proper steps are taken by the relevant department or authority in this regard.

It is imperative that the RERA Authority receives feedback from the collector's office on the status of the warrant issued by them, well in time. An online interactive portal will, no doubt, provide this much-needed link to both, RERA Authority and the collector's office. A builder is given 45 days to execute an order and comply with its direction. But, in many cases, builders don't comply. In such cases, buyers have to approach the Authority again. As per Section 40, the RERA Authority has powers to get its orders executed. Clause (1) of this Section says, "If a promoter or an allottee or a real estate agent fails to pay any interest or penalty or compensation imposed on him, it shall be recoverable from such promoter or allottee or real estate agent, in such a manner as may be prescribed as arrears of land revenue." Clause (2) says that,

“If any adjudicating officer or regulatory authority or Appellate Tribunal issues any order, then in case of failure by any person to comply with such order or direction, the same shall be enforced.”

Section 63 of RERA lays down stringent provisions for non-compliance of orders. It says, “If any promoter, who fails to comply with or contravenes any of the orders or directions of the authority, shall be liable to penalty for every day during which such default continues, which may cumulatively extend up to 5% of the estimated cost of the real estate project, as determined by the Authority.” Failing to comply with the order of the RERA Appellate Tribunal is a punishable offence which can lead to imprisonment up to three years or fine which may be up to 10% of the cost of the real estate project, as per Section 64 of RERA. There are provisions in the law to punish whoever fails to comply with the RERA Authority’s orders. Despite these in-built provisions under RERA, hardly any State is using them to get orders implemented. Across all State RERA Authorities, we have observed that this non-execution of pro-buyer orders is a black spot on RERA.

Bhanu Pratap Singh, member, UP RERA said, “We have established a separate department to take on the cases related to non-execution of orders. In case a developer does not honour the RERA order, we forward the case to the concerned district magistrate to recover the dues. The district magistrate recovers the money as arrears of land revenue. Money so recovered is deposited in RERA account and, from there, it is transferred to the beneficiaries of the RERA order.”

Mr Singh accepted that many orders passed by UP RERA before September 2018 are yet to be executed. In September 2018, UP RERA started operating in Greater NOIDA with a bench of the Authority to cater to cases in the city. “We are working on all complaints related to non-execution of orders as and when they are coming to us. As far as the orders passed since January 2019 are concerned, most of them have been executed. The process of execution is now getting streamlined,” said Mr Singh.<sup>84</sup>

Balvinder Kumar, a UPRERA member, stated, “Buyers can file an execution complaint and we can then issue a recovery certificate (RC) to get it implemented by the district magistrate. Buyers can come to us in case their orders are not implemented, and

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<sup>84</sup> <https://www.livemint.com/money/personal-finance/aggrieved-buyers-face-another-rera-battle-1558449390075.html>

we will take action accordingly. We give 45 days in case of refund but it may vary, depending on the case. In some instances, RERA orders are not getting implemented where either builder has no funds to refund or other similar instances, but we have the powers to ensure that buyers get justice.”

Buyers often take the help of lawyers to send legal notice to the builder for enforcement of the RERA order, but this should be done before making an execution application to a RERA Authority. “RERA orders are getting implemented in Haryana as it has different recourse to get its order implemented. Any order, whether from Authority or adjudicating officer, has a three-way process to award interest, compensation or penalty. Under Section 40 (1), we can issue a recovery certificate and get the RERA order enforced. It is a very fast process,” explained KK Khandelwal, chairman, H-RERA (Gurugram).

Mr Khandelwal further elaborated, “Under Section 40 (2) in Haryana, RERA Authority also has the power of civil court so our orders are like a civil court decree. If within the given time-period, the promoter or allottee does not pay, a recovery certificate can be issued against the defaulting party. This is also applicable for allottees and not just builders. ”This issue can also be resolved with the appointment of district judge-level officer (retired district court judge) as executing officer with the powers of the civil court as well as revenue court. This calls for modifications in State RERA rules [Sections 27, 28, 40 (1) and 40 (2)] that deal with the recovery of interest, penalty and compensation, implementing the orders, directions, and decisions of the authority, as MP RERA has done.

In November 2019, MP government made the required amendments in the MP RERA rules, by appointing DN Shukla, a retired district court judge, as an executing officer. An allottee in favour of whom order was given by RERA against the builder (and if the builder is not accepting/acting as per the order), can approach the executing officer within 90 days. The execution fee would also be borne by builders once the order is executed and allottee needs to pay only a token sum of Rs1,000.

MP RERA chairman, Anthony de Sa confirmed that no other State in the country has an executing officer, as of now. He said, it would further strengthen the Authority and ensure that its orders are followed without fail.<sup>85</sup> Other States need to follow

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<sup>85</sup> <https://consumeradvice.in/NewsClipping.aspx?Newsid=6532>

MP RERA's example because it would ensure that the orders of RERA would be implemented more effectively. Under the present system, if an Authority passes an order and the concerned party is unwilling to accept it, the authorities take up this resolution to civil court. It is highly likely that orders passed may get entangled in legal procedures. If the Authority has an executing officer with the powers of civil and revenue court, it can settle the complaint at its level.

Going by MP RERA's statistics shared in November 2019, out of the 3,800 complaints it received, 2,600 have already been disposed, while 1,200 are pending. Of the total disposed cases, 88% went in favour of allottees, while the remaining 12% went in favour of builders. It means 2,300 went in favour of allottees while 300 in favour of builders. Of the total 2,300 orders that went against builders, there are about 400 cases in which builders are not complying with RERA's orders. The execution officer with powers of civil and revenue court would now ensure the compliance of RERA order.<sup>86</sup> According to MP RERA officials, the necessity for an executing officer has been felt in about 400 incidents. This number may not be huge; but, just to ensure that all its orders are executed in their true spirit, a correction is required in the rules.<sup>87</sup>

**4. Lack of Information on the State Portals:** Every State was supposed to launch a website within a year of establishing its RERA Authority. However, according to information compiled by Anarock Property Consultants Pvt Ltd, Manipur, Meghalaya, Mizoram, Sikkim and Nagaland are yet to notify rules under the Act. Also, Arunachal Pradesh, Assam, Tripura, Lakshadweep and Puducherry are yet to launch their websites. While a few States claim to have solved a large number of complaints filed with them, their websites still lack some important information. For instance, information about cases against developers or projects is not available on the UP RERA's website. However, in an interview, Rajive Kumar, chairman, UP RERA, said that they are working on it and such information will be made available soon.<sup>88</sup>

Launching a website was an important aspect of the Central Act to provide home-buyers information, such as names of under-construction projects, and details like

<sup>86</sup> <https://timesofindia.indiatimes.com/city/bhopal/mps-rera-gets-judicial-teeth-first-in-the-country/articleshow/72150219.cms>

<sup>87</sup> <https://www.realtyfact.com/madhya-pradesh-rera-proposes-a-modification-in-rules/>

<sup>88</sup> <https://www.livemint.com/money/personal-finance/rera-s-three-year-report-card-shows-gaps-in-implementation-1557237162103.html>

the names of developers and promoters, approvals, the number of apartments, possession date, registered agents and so on. The Act mandates that the website must enable home-buyers to file complaints online. While many States don't have a website yet, the States that do have it do not have adequate information and are of little help to the home-buyers.

People are still unaware of how to go about filing a complaint under RERA and the information on the respective State RERA website is not helpful enough. RERA Authority portals need to be user-friendly with easy access to information that home-buyers and other stakeholders are seeking. Publishing quarterly updates on the RERA website is crucial as it helps buyers to take decisions based on verifiable projects status. It will let prospective buyers know the status of projects, sold and available housing units, and help them make an informed decision.

But most RERA websites miss out on some crucial information that home-buyers have been demanding. Some States have a website that puts out the list of complaints against project proponents, copies of the complaints / orders are not available. Judgement copies and copies of the complaints are not uploaded in real-time or after a brief gap of the Authority pronouncing the judgement. This appears to be a major source of misinformation for home-buyers.

In addition, getting through the portal itself is complex. In Maharashtra, the portal gives direct access to anyone looking for information. But, even on the MahaRERA portal, it is not possible to search for the real estate agent by name or the registered firm. A search throws up zero results, said Sunil Bajaj, a real estate consultant. K-RERA's website is password- and username-protected, thereby limiting access to prospective and existing buyers, or anyone else.

**5. Patchy Roll-out and Implementation on a Pan-India Basis:** Several States are yet to establish the permanent regulatory authority, Appellate Tribunals, web portal, appoint an adjudicating officer and also conduct regular awareness programmes of RERA to ensure the implementation of RERA in letter and spirit. The leading States in RERA can show the way to other States/UTs on implementation, experiences and innovative practices and by way of cross-learning at regional level, so that other States may also perform well in implementing RERA.

**6. Need To Bring in Government as a Stakeholder:** RERA has taken into account all stakeholders. However, the government is also a stakeholder but remains outside the purview of RERA. There are no compulsions on the State and local government to clear building plans within a time-bound manner. For example, MahaRERA has had cases where a developer says the project is complete and application for OC has been submitted but there is an inordinate delay in getting OC from the respective government department. There is a need to give State RERA Authorities the power to issue directions to all stakeholders, including the government.

Another example before MahaRERA was that of DSK Developers Ltd (a builder based in Pune) where the State government had attached properties under the MPID (Maharashtra Protection of Interest of Depositors Act) and has become the owner. This hurts those who have booked flats with the builder. The situation could be resolved by bringing it under Section 7 and Section 8 of RERA, getting the respective bank and the association of allottees together and checking how much work is complete, how much work is pending and cost of the pending work. The Authority can then try to resolve issues and ensure project completion if the bank and the allottees can pitch in with the remaining money required to complete the project.

There is a need to give State RERA Authorities power to issue directions to all stakeholders including the government. Section 37 should be extended to cover all the stakeholders.

**7. Need for a Centralised Repository To Capture All Data across States:** Pankaj Kapoor says that a centralised repository having the same data fields with seamless integration of projects across different States and union territories is needed. In its absence, it becomes difficult to analyse the status of projects since States have been using different standards. A model data architect is needed and all the States need to follow the same guidelines while maintaining this Central RERA database.

A real-time centralised repository shall come handy to achieve the goals set by Union ministry. The biggest utility of such a database would be to measure the landscape of real estate in India and its contribution to the overall economy. Database would help in measuring and monitoring the production and consumption of real estate on a real-time basis and could help the government to take corrective measures.



According to Pankaj Kapoor, “Ideally, the huge quantum of data already collected by regulatory authorities across States should be analysed efficiently and made available in simple to understand formats to stakeholders—especially home-buyers—so that they are well-informed and updated about the general scenario in their State’s real estate. In some States, we see that for projects under construction, data is being collected—but not being analysed or shared with all stakeholders. Data should be analysed, numbers crunched—and the results need to be acted upon in the form of guidelines or new norms to increase the positive effects of RERA.”

We can measure the impact of policies on real estate. Besides, it can provide objective assessment of impact due to any regulatory imposition such as ban on construction. We can derive and measure the quantum of employment generated by the real estate sector. It will help measure the performance of projects and developers that could eventually be useful in extending the credit to the real estate industry. Such a database could throw up enormous opportunities for transport planning and urban planning.

**8. Ambiguity in Definitions:** Several ambiguities in RERA as well as State rules need to be removed.

**a) Allottees:** The term does not include a person to whom a building or apartment or plot has been leased out. An issue, in this connection, may arise over whether a long-term lease, say of 99 years or 999 years, can be taken as sale. Although a long-term lease is technically a lease and a lessee is not an allottee within the meaning of RERA, the long-term lease with provision for extension gives right to occupy in perpetuity and is a viable and proven form of ownership. The possibility of such a lease being taken as sale cannot be ruled out.

Earlier, in January 2018, MahaRERA had ruled that lease transactions are totally outside the purview of RERA. The order stated that the term used under RERA is ‘allottee’ and not lessee. MahaRERA was hearing a case which involved several buyers who had booked flats in the Lavasa project near Pune. Construction in the project had been halted due to an order from the ministry of environment and forests and, thus, possession has been delayed.

MahaRERA ruled in favour of the developer, the Lavasa Corporation, after examining the documents, which stated that agreements were of long-term lease for a period of 999 years and not of sale. Thus, buyers of the flats cannot be deemed as allottees

and would be termed as lessees in legal parlance. An adjudicating officer under RERA had earlier held that since the agreement was not of 'sale', they cannot seek compensation from the developer, here, the lessor.

However, in March 2018, the Maharashtra REAT set aside the January order of MahaRERA. The State's real estate regulator had dismissed a complaint by a home-buyer, who had purchased an apartment in Lavasa township, saying that it had no jurisdiction over it and ruling that RERA is not applicable to the transactions of lease. After hearing arguments by KK Ramani, counsel for home-buyer Jitendra Tulsiani, and K Talukdar, representing Lavasa Corporation, Justice (retd) KU Chandiwala, who presides over the Appellate Tribunal, set aside the January 2018 order and remanded the matter back to MahaRERA.

Mr Tulsiani had purchased/leased a flat in April 2014 in Lavasa after paying a premium of Rs43.77 lakh and lease rent of Re1 per annum. The lease period was for 999 years with a clause of renewal by a further 999 years. The promoter had agreed to hand over possession before 4 October 2016, but when Lavasa registered the township project with MahaRERA, it revised the date to 31 December 2020. KK Ramani contended that the fact that the promoter voluntarily registered the project with MahaRERA indicated that RERA provisions were applicable to the Lavasa project. He also pointed out that Lavasa itself had never made out the case that MahaRERA did not have jurisdiction to entertain the complaint.

Mr Ramani argued that, according to Section 105 of the Transfer of Property Act, a lease is a transfer of a right to enjoy immovable property for a certain time or in perpetuity. A lease of 999 years, with provision for renewal for a further period of 999 years and without any restrictive covenant, is a transfer of rights to hold and enjoy in perpetuity. Mr Ramani also said that if long leases were kept out of MahaRERA's purview, 99% of developers would sell their flats on a 999-year lease which would defeat the very objective of RERA.

While there is a common notion and understanding in the real estate sector that RERA covers only projects listed for sale (and not leases), a Bombay HC ruling suggests otherwise. In August 2018, the Bombay HC said that the provisions of the real estate regulatory law are applicable to long-term lease or 'agreement to lease' as well. Justice Shalini Phansalkar-Joshi, after analysing the salutary object of RERA, held that "merely because the legislation excluded allotment, when given on rent,

it does not exclude long term lease... That would be defeating and frustrating the object of the Act.” The judge dismissed three appeals filed by Lavasa Corporation.

The appeals were against orders passed by the Maharashtra REAT, which had held that RERA provisions were applicable for the three persons who had booked apartments through ‘agreements to lease’ at Lavasa. Their complaints could be entertained under Section 18, providing for compensation with interest for delay by a builder in giving possession in terms of ‘agreement for sale’. MahaRERA has later clarified that long-term lease will be within the purview of RERA.

MahaRERA has clarified in answer to Question No. 6 in the Additional FAQs issued by it that the wording in Section 2(d) “has been sold (whether as freehold or leasehold) or otherwise transferred by the promoter” indicates that the long-term lease falls within the ambit of the Act. However, the premises given on leave & licence basis, or on short-term lease not exceeding five years, are not covered under the Act. Hence, all long-term leases (of more than five years) and perpetual leases will be covered under the Act.

In August 2019, K Gnanadesikan, chairperson of Tamil Nadu (TN) RERA Authority, said the question of mandatory registration with TN RERA arises only in respect of sale of properties. So long as the purpose is personal use of any developer or letting the property on rent, no registration was required with RERA Authority, regardless of the area to be developed or the number of flats to be built. Many developers in Tamil Nadu are not registering claiming that the project is meant for personal use or to be given on rent. However, TN REAT has also ruled that long-term leases will be covered under TN RERA.

**b) Advertisement:** The term is not confined to advertisement in print or visual media but extends to any document including vouchers, leaflets, pamphlets containing details of the project issued for the purpose of making the project known to the public with an intent to invite them to buy the building, apartment or plot or to make advance payment or deposits for the purpose of such buying.

Section 12 of the Act places information contained in the notice, advertisement or prospectus on the same footing and provides for compensation by the promoter in the event of any person making an advance payment or deposit sustaining any loss by reason of any incorrect or false statement contained therein. ‘Prospectus’ has

been defined as any document described as a prospectus or any notice, circular or other document offering for sale or inviting any person to make advance payments or deposits for such purpose.

It is not merely the information contained in advertisement or prospectus that can be the basis of compensation but also any model apartment, plot or building, deviation from which can lead to liability for compensation. MoHUA has clarified later that any medium adopted for soliciting a sale would be covered under the said definition which will include SMS and emails; but this also needs to be done at the State level.

**c) Building:** A building need not be a self-contained independent building to form part of a real estate project. It can be a part of the total structure or erection making extension of an existing building by way of construction of additional floors, for purpose of the Act.

The use for industrial purposes is conspicuous by its absence in the definition of building. However, considering the intent and purpose of the legislation, the construction for industrial purpose appears to be within 'commercial purpose' and a building used for industrial purposes is also 'building' within the meaning of the Act.

**d) Carpet Area:** The term is significant because under clause (h) to Section 4 (2), the promoter has to provide information about the number, type and carpet area of apartments for sale in the project along with area of exclusive balcony or veranda and the exclusive open terrace areas. Since balcony, veranda and open terrace areas are excluded from the computation of 'carpet area', separate information in regard thereto is required to be furnished. While the area covered by the internal partition of walls is included within the carpet area, the term excludes the area covered by the outer walls of the apartment.

**9. Not an Escrow but a Separate Account:** As per RERA, the developer has to place 70% of the money collected from a buyer in a separate account to meet the construction cost of the project. This will keep a check on developers who divert the buyer's money to start a new project, instead of finishing the one for which money was collected and ensure that the respective project is completed in time. To some extent, maintenance of a separate account, the withdrawals from which will be tracked, leads to better fund management and, presumably, no diversion of funds.

According to Ramesh Nair, CEO & country head, JLL India, “A developer will now be forced to use the project accruals for the development of the same project and will have little room for fund manipulation.” Contrary to what is commonly known and what the initial real estate Bill talked about, RERA, as it stands today, says, “The account has to be self-maintained and is not an escrow account requiring the approval of the Authority for withdrawal.”

There is a possibility of misappropriation of money collected by the promoter from the allottees and multiplicity of RERA project bank accounts. Hence, the entire amount realised by the promoter from the allottee, ought to be held in a single account which is registered with the RERA Authority at the time of registration of the project. Any withdrawal from the specific bank account from out of the 70% of the total amount (which is to be utilised for land and construction costs) should require the assent of the project engineer, architect and CA. Banks providing loans to projects should not coerce the promoter to open a project account with them. No bank should be allowed to hold any lien or allow any lending agency to do that with the project account maintained with them.

***How an Escrow Account Could Have Helped:*** In an escrow account, the bank and the account-holder (the builder) would enter into an agreement and appoint a trustee for the account. In real estate projects, the bank itself would be the trustee. The role of the trustees would be to release the funds as per the terms and conditions of the agreement. In the absence of trustees and an arrangement of an escrow account, misuse of funds may come back to haunt the industry.

“Technically an ‘escrow account’ would have been safer from the end-user perspective. However, even in a ‘separate account’, the developer has to adhere to the RERA rules,” feels Khaitan & Co. The purpose of maintaining a separate account is to ensure that project funds are not diverted and projects are completed on time. Mr Nair says, “The developer will have to manage funds more judiciously as he will have to stick to project timelines in order to avoid the penalties involved.”

What remains to be seen is how effective is the utilisation of funds through the separate account, the withdrawals from which will not require approvals of the regulator. The auditors need to be made equally responsible if mismanagement of funds takes space. Under the aegis of MoHUA, the real estate buyers will be putting full faith on the State-level regulators. The regulators need to ensure that builders

do not take consumers for a ride anymore by keeping in place a proper tracking and monitoring mechanism for the funds.

**10. Deterrent to Joint Ventures:** While on the one hand, RERA focuses on joint ventures (JVs), on the other hand, it seems to dissuade an alliance between the landowner and developers by terming landholders as the promoters. With the paucity of funds to acquire land, developers now have to rely more on JV with landowners. However, RERA appears to dissuade JVs between developers and landowners by terming the latter as promoters. Now, many landowners would be sceptical of taking responsibility of the project and, hence, will be hesitant to tie up with developers. This will further restrict the supply of land or make it more expensive through higher upfront payments.

**11. Lack of Adequate Infrastructure / Manpower:** “Orissa RERA does not even have a working phone number to guide,” said Sarada Prasanna Das, a home-buyer from Jagatsinghpur, Odisha, who works in a non-government organisation. Mr Das booked an apartment in late-2011, which was to be delivered in 2013.<sup>89</sup> The 39-year-old, finally, had to cancel his booking in 2015 as the construction of the block in which he had booked the apartment had not even started.

After a lot of follow-up, the developer returned Rs40,000 out of about Rs5 lakh that Mr Das had paid, and provided a repayment plan to settle the remaining amount by July 2016. Mr Das, who hasn't received even a single repayment instalment after the initial payment, is now trying to get RERA Authority's help to recover his dues. But, so far, he has been unable to file a formal complaint with RERA because he doesn't know how to go about it and the information on the website is not helpful enough.

Manish Patni, 52, a Gurugram-based home-buyer, is fighting a case against a Haryana-based developer in the NCDRC seeking a refund of his payments to the developer with interest, as the project is delayed. He claims that the developer had promised a different layout in the builder-buyer agreement and the brochure at the time of booking but submitted a revised brochure for the project, with a different project layout, when getting the project registered with RERA.

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<sup>89</sup> <https://www.livemint.com/money/personal-finance/rera-s-three-year-report-card-shows-gaps-in-implementation-1557237162103.html>

“When I, along with other aggrieved home-buyers, wrote an email to RERA and town and country planning department, Haryana, providing them information about the wrongdoings of the developer, none of them acted on it. When we approached the RERA office, they said they would act if we withdraw the case from NCDRC and file a fresh formal complaint with RERA.” Mr Patni alleged that RERA had not taken any action even though they had provided it the relevant information and documents.

A real estate expert based in Gurugram, Pradeep Mishra, said that RERA is doing relatively well if we consider projects that were launched after RERA came into existence. “The Authority is checking papers before registering projects; it is also doing a ground check, taking stock of development and so on. However, it’s a toothless tiger when it comes to old projects,” said Mr Mishra.<sup>90</sup>

Besides, after RERA came into existence, the speed of construction has also improved. According to Pankaj Kapoor, founder and MD, Liases Foras, a Mumbai-based real estate rating and research firm, data for 41 cities shows that the average time taken to complete construction work up to the first floor after the launch of a project has come down to six months from 21 months, after RERA was enforced.

**12. Inconsistencies in RERA:** Section 4 of RERA provides for application for registration or re-registration of projects. Section 4(2)(1) requires a declaration, supported by an affidavit, by the promoter or an authorised person prescribing, among other things, the time within which he plans to complete the project or its phase. Section 18 onwards, there are a few provisions dealing with contingencies of default. Section 18(1) says that if the promoter fails to complete the project, or is unable to give duly complete possession of an apartment or a plot or a building in accordance with the terms of the agreement for sale by the date specified therein, he is liable to return the amount received with interest at prescribed rate and compensation as provided under the Act on demand by the allottees.

Hence, Section 4 binds the builder to the completion date declared at time of registration of the project with RERA Authority and Section 18 to the terms and conditions of the agreement for sale entered into with the home-buyer where the timeline may vary. Some other clauses within RERA clash with each other; for example: Section 43 (3) of RERA states that every bench of the Appellate Tribunal

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<sup>90</sup> <https://www.livemint.com/money/personal-finance/rera-s-three-year-report-card-shows-gaps-in-implementation-1557237162103.html>

shall consist of at least one judicial member and one administrative or technical member. So orders passed by a sole member of the Tribunal are without jurisdiction and can be set aside by a High Court.

But Section 55 of RERA can be used to counter this Section 43 (3) and used as an escape route. Section 55 of RERA states that no act or proceeding of the Appellate Tribunal shall be invalid merely because of any vacancy or any defect in constituting the Tribunal or appointment of its members. Section 55 (C) specifically says that any irregularity in the procedure of the Tribunal should not affect the merits of a case.

**13. In the Absence of Builder-Buyer Agreement, Developer Takes Undue Advantage:** RERA has many provisions to protect home-buyers from delinquent builders/developers. For example, if the builder/developer has not delivered possession of the flat within the stipulated time as per the terms and conditions of builder-buyer agreement, the home-buyer can approach RERA and file complaint against the builder/developer under Section 18 of RERA and for remedies like refund along with the interest; possession of the property along with the interest for the delayed period.

Although, home-buyers are relieved, this provision still has some unanswered issues. One pertinent question is: What if there is no builder-buyer agreement executed between the builder and buyer? There have been a number of cases where although a project is registered with RERA Authority, the builder had taken the whole or partial payment from a buyer without signing or executing any builder-buyer agreement. In the absence of builder-buyer agreement, builders/developers take undue advantage of the aggrieved home-buyers because the home-buyer lacks evidence about the understanding between the two parties.

If there is no builder-buyer agreement, how can there be a breach of terms and conditions of the agreement for the delivery of the possession and, in such cases, how should the home-buyers pursue their complaints? The issue of filing a complaint under RERA in the absence of a builder-buyer agreement needs to be further discussed keeping in view the rights of the home-buyers, since the main purpose of RERA is to safeguard the interests of the home-buyers. Furthermore, any aggrieved person may file a complaint before the RERA Authority for any of the contraventions of the Act, rules, and regulations under Section 31 of the Act. The intent of RERA is to redress the grievances of the home-buyers and protect their interests.



**14. Ambiguity in Projects of Less than 8 Flats or under 500sq Mtr Each:** Section 3 (2) of RERA excludes registration of small projects that can be developed in an area of less than 500sq mtr or less than eight flats. Many developers have used this to not register and as they have plot area below 500sq mtr, but have constructed over 20 flats. This defeats the purpose of the law and if such projects are stuck, the consumers are the ones who suffer.

In south Mumbai, there are many plots of less than 500sq mtr but with potential construction for more than eight flats/ shops. All such developers for these plots would take advantage from the MahaRERA Appellate Tribunal's judgement as described below and it would set a wrong precedent, thus, not safeguarding the respective home-buyers' interests.

An example is Maharashtra REAT's judgement regarding a Pune-based consumer's complaint where a project of Geetanjali Aman Constructions with 22 flats and nine shops was permitted because the area of the plot was less than 500sq mtr.<sup>91</sup> Setting a precedent, the project was allowed not to register under RERA. As per RERA, all projects where the developer is selling flats need to be registered. However, REAT had allowed a developer not to register it because the project is on less than 500sq mtr. The developer claims that, in 2013, he started construction of a building named Utkarsh Apartment. On commencement of RERA from 1 May 2017, he sought guidance from MahaRERA on the 'registrability' of the project via an email, since the project had an area less than 500sq mtr but the apartments were more than eight. The developer claimed that there was no written reply or response from the Authority and further claimed the officials in the Authority advised that the project is not required to be registered.

In December 2018, the developer received an email from the Authority regarding a hearing about registration of the project. The order asked the developer to register the project and he was also levied a penalty of Rs30 lakh.<sup>92</sup> The developer appealed against the order and, during the arguments, the counsel for the developer explained that a plain reading of the provision 3 (2), makes it clear that the two parameters (less than 500sq mtr and not exceeding eight apartments) for exemption to the project from registration are mutually exclusive due to the word 'or' used therein. Therefore, they are to be read and considered 'alternatively' and not 'conjunctively'.

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<sup>91</sup> <https://timesofindia.indiatimes.com/city/bhopal/mps-rera-gets-judicial-teeth-first-in-the-country/articleshow/72150219.cms>

<sup>92</sup> <https://taxguru.in/income-tax/rera-registration-project-required-area-less-500-sq-mtr-flats-8.html>

It is recommended that the word 'or' needs to be removed and be replaced by 'and' so that it would strictly be restricted to really small projects. The sanctity of the Act will not remain the same unless it is amended because developers would continue to take advantage of it.

**15. Uniform Licence Fee To Encourage Registration of Real Estate Agents:** While acknowledging RERA as a step in the right direction, realtors feel that the absence of a uniform licence fee structure is limiting the registration numbers in India. India has almost two million real estate agents but only 39,136 are registered with RERA<sup>93</sup> In August 2019, Ravi Varma, chairman, National Association of Realtors (NAR-India) told *The Times of India (ToI)*: "...compliance rate is extremely poor because the policy is not very well thought out."

He said, "While a lawyer has to pay only Rs1,000 and a chartered accountant only Rs1,700 to practise anywhere in the country, we have to individually register with every State, only to show a client around. Put together, a realtor has to shell out up to Rs2 lakh to Rs2.5 lakh only as registration charge," Mr Varma said, rooting for a 'one-nation, one-licence' policy, to encourage higher compliance. Real estate agents play a vital role in the promotion of the sector and spreading awareness among buyers and they need to be encouraged to register. For example, out of approximately 0.1 million agents in Maharashtra, only about 23,109 have been registered under RERA.

**16. Stamp Duty Continues To Be Calculated on Built-up Area:** States must consider calculating and imposing stamp duty on carpet area instead of built-up area to remove ambiguity on the methodology adopted under RERA. The sale value is calculated on the basis of carpet area and not on built-up area.

**17. Using the Term 'RERA' for 5% Extra Profit:** Pankaj Kapoor, founder of Lias Foras, a real estate research and consultancy, pointed out that some stakeholders have redefined the meaning of carpet area. They use a term 'RERA carpet'. The new definition allows developers to include the width of inner walls to the total carpet area. The changed calculation method eventually increases the size of an apartment unit by approximately 5% making flat costlier by 5% post-RERA. That is a manipulation that needs to be rectified by defining the norms across all the States.

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<sup>93</sup> <https://timesofindia.indiatimes.com/city/hyderabad/one-nation-one-licence-for-reras-success-say-realtors/articleshow/70823214.cms>

## 15. RERA, IBC & Consumer Protection Act

RERA seeks to provide uniform laws for protecting the interest of home-buyers and seeks to increase transparency in functioning of builders and reduce the chances of default or misappropriation. A good test of RERA would be to find out how consumer-friendly it is. Should home-buyers seek redress under RERA or other legislation such as Consumer Protection Act or Insolvency and Bankruptcy Code? Here is a comparison of the remedies available for home-buyers.

### Option 1: Under RERA

RERA Authority can issue an order to impose a fine, deregister the project, include the promoter in list of defaulters and direct completion of project in the manner provided, in consultation with the State government. Since home-buyers are interested mainly in completion and getting possession of their flats, the RERA Authority provides for stage-wise utilisation of money paid by them for which a separate bank account has to be maintained by the builder. In case of a default in completing a project or other non-compliances, RERA provides various measures to complete the project and empowers the Authority to take corrective action. Also, it tries to penalise builders so that they are prevented from undertaking further projects when they do not have the resources.

RERA provides for Real Estate Appellate Authorities/Tribunals to help home-buyers for expeditious redressal of complaints, breaches/contraventions by promoter / developer and real estate agents. Home-buyers can complain about:

1. Offers for sale, etc, without registration of the project by promoter / developer;
2. Acting as agent or inducing/facilitating purchase by home-buyer without registration as a real estate agent or project being registered with real estate authorities;
3. Any unfair practice being adopted by promoter/developer/real estate agent;
4. Violation of terms and conditions by promoter/developer subject to which approval granted by the competent authority;
5. Fraudulent practices by promoter/developer;
6. Violation of any provisions of RERA rules/regulations.

An actual home-buyer (whether individual or a corporate entity) can file a complaint under RERA. However, investors in a project cannot file a complaint. Consumers can

appeal against RERA Appellate Tribunal's orders in High Courts and the Supreme Court.

### **Option 2: Consumer Protection Act, 1986 (CPA)**

CPA was enacted to provide speedy redress mechanism to consumers at the district, State and national levels and applies when the consumer alleges unfair trade practice or deficiency with respect to goods or services. A consumer forum has the power to execute its own orders. Each of the terms is well- and broadly-defined under the Act. The definition of goods applies only to goods covered under the Sale of Goods Act, 1930 (movable goods). Hence, real estate products would find place in the services sector in the form of construction services. Home-buyers were also included within the purview of the Act by interpreting the word 'Services' under the Act to include construction, since construction is also a service.

'Complaint' means any allegation made in writing by a complainant that the services hired or availed or agreed to be hired or availed by him suffer from deficiency in any respect. Depending on the value of goods/services a complaint of a deficiency can be made in district forums (value of up to Rs1 crore), State forums (value up to Rs10 crore) or NCDRC (value more than Rs10 crore). This is as per the new CPA 2019 which came into effect from 20 July 2020 (after amendments in the CPA, 1986).

A 'consumer' is someone who satisfies the requirement under Section 2(d) of CPA. Thereby, only a person, typically an individual who enters into agreement for purchase of property, can file a complaint when he has purchased it for his individual use. Under a ruling of NCDRC, RWAs can also file a consumer complaint against builders. If individual home-buyers file a joint complaint, they can even invoke the jurisdiction of the NCDRC, rather than fighting their cases individually at the lower consumer forums.

### **Some Finer Points about Reliefs under RERA and CPA**

- 1. When consumer courts are a better option:** If the complainant is a consumer, then a consumer forum is a better option, especially if the developer is financially sound. The complainant may simultaneously complain to RERA Authority to blacklist a developer and get other reliefs (but subject to point 2 below).
- 2. Either RERA or consumer forum for the same relief:** Under Section 71(1) of RERA, a person can avail only one of the two remedies – either file a complaint with RERA Authority or go before appropriate consumer forum. One cannot

pursue both for the same relief. This is because Article 20(2) of the Indian Constitution provides “that nobody can be prosecuted and punished for the same offence twice or more times.

3. **RERA and consumer forum for different reliefs:** Where different reliefs are to be sought from RERA Authority and consumer forum, different complaints in both the institutions are maintainable. However, RERA can provide only two remedies, apart from slightly more expeditious disposal of cases which the consumer forums are not competent of. These are:
  - i. Power to issue directions for completion of project in consultation with State government by appointment of suitable agency;
  - ii. Power to include builder/developer in the list of defaulter and/or to prohibit it from undertaking new projects.
4. **Conveyance issue:** Also, proviso to Section 17(2) of RERA provides for handing over possession within 30 days of obtaining the OC and execution of conveyance within three months of obtaining OC. However, it does not provide for deemed conveyance unlike MOFA. MOFA and the Maharashtra Apartment Ownership Act, 1972 (MAOA) have not been repealed and continue to be in force.
5. **Limitations of RERA:** Under Section 17, read with Section 34 and Section 38 of RERA, one cannot seek directions to be issued to developer/builder for complying with conditions for granting OC. Even in case of failure of developer/builder to hand over possession or grant conveyance, RERA can only impose a monetary penalty and relief in the nature of monetary interest. This is because RERA is an administrative ‘Authority’ formed for limited purpose, though it may perform quasi-judicial or quasi-legislative functions.
6. **Power of consumer forums:** They have the power to issue directions to the developer to provide the OC, hand over possession and grant conveyance in favour of ultimate entity formed of flat/apartment purchasers. Since Section 14(1) (e) of CPA provides power to consumer forums to issue directions ‘to remove the defects or deficiencies in the services in question’, the words ‘removal of deficiency in service’ would also include power to grant reliefs as aforesaid, as stated previously, since construction is also ‘service’ within the meaning of CPA.
7. **Supreme Court on redress:** In August 2020, the Supreme Court said that flat-buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfil the representations made to them in connection with the provision of amenities.<sup>94</sup> This judgement came in a matter

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<sup>94</sup> <https://www.moneylife.in/article/flat-buyers-entitled-to-compensation-for-delayed-possession-sc/61304.html>

where the NCDRC declined to entertain a consumer complaint by 339 flat-buyers, and accepted the defence of DLF Southern Homes Pvt Ltd and Annabel Builders and Developers Pvt Ltd that there was no deficiency of service on their part in complying with their contractual obligations and that, despite a delay in handing over the possession of the residential flats, the purchasers were not entitled to compensation in excess of what was stipulated in the apartment buyers' agreement.

The SC noted that it cannot be oblivious to the one-sided nature of agreements drafted to protect the interest of the developer. A bench comprising Justices DY Chandrachud and KM Joseph said a failure of the developer to comply with the contractual obligation to provide the flat within a contractually stipulated period amounts to a deficiency. The bench noted that the flat purchasers suffer agony and harassment, as a result of the default of the developer. "Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer, as in the present case, is guilty of a delay of years in the fulfilment of a contractual obligation," it said.

### **Option 3: Insolvency and Bankruptcy Code, 2016 (IBC)**

IBC provides a uniform code for corporate insolvency resolution. By virtue of an amendment in August 2018, the allottees of a housing project are considered and are deemed to be financial creditors within the meaning of the Act. Hence, they are entitled to maintain insolvency application and are entitled to participate and vote in the meeting of committee of creditors (CoC) that is usually constituted.

In December 2019, the government had passed an ordinance to amend the Code, with the result that a threshold of minimum 100 home-buyers or 10% of total home-buyers in a project, whichever is less, is required to take the builder to an insolvency court. Several consumer activists and lawyers claimed that this was against the interests of home-buyers as it puts unreasonable conditions on them, destroys the level-playing field which currently exists and makes the law lopsided in favour of real estate developers. They decried that the amendment was being brought under influence of builders and that it is not only illogical and illegal but also regressive. However, these thresholds would help prevent admission of unnecessary cases to the insolvency court.

Any person, whether an individual or corporate entity, can file an insolvency application under Section 7 of IBC. Also an allottee who is competent to file an application can be both a purchaser under redevelopment or an existing tenant/ owner/ occupant of property. This is the least beneficial option because IBC is a forum for handling bankruptcies and serious financial defaults. Once the project has reached that stage, home-buyers have a low chance of getting back their money or the flat. The home-buyer can always initiate criminal proceedings against the developer for fraud or other criminal offences or acts committed by it.

### **Reality on the Ground**

While it is all very well to cite the laws and remedies that the consumer can avail, the reality on the ground is complex. Consumer cases often drag on for years. Also, if proceedings are going on under IBC, no remedies are possible under RERA.

According to Anil Harish, partner, DM Harish & Co Advocates, while a flat-buyer can seek certain remedies under each of these laws and, to some extent, therefore, they overlap, there are situations where there is no effective remedy in spite of having three laws. He narrated a case where a developer, who was a proprietor of his concern, entered into an agreement to sell before RERA came into force. The agreement was stamped and registered and practically the full payment was made. However, he did not complete the construction and has not handed over delivery. Even when RERA was introduced, he did not register under RERA as he did not need to market any more flats and had already entered into agreements to sell flats.

When the purchaser made a complaint to the RERA Authority, it rejected it on the ground that they did not have jurisdiction over the developer since the project was not registered. In this case, the IBC does not apply as the developer is not a corporate body. The flat-purchaser had, ultimately, to file before the consumer forum but several years have passed and there has been no effective hearing. The developer then gave cheques on account of his delay in delivery but those were dishonoured and complaints have been filed under Section 138 of the Negotiable Instruments Act. There has been no effective hearing, although it is nearly one and a half years since this happened.

### **IBC Prevails over RERA, Creates Problems**

In another case narrated by Mr Harish, the developer has entered into agreements to sell around 200 flats and has received substantial amounts as advance payments. The

developer has also taken large loans, siphoned off the money and has not completed the project. The matter is before the NCLT (National Company Law Tribunal). While the flat-purchasers can be classified as creditors, they want the flats. Even if they were willing to accept the money, they would probably get less than what they had invested, in view of the large number of financial creditors. Also, with the IBC proceedings going on, no other remedy is presently available. Therefore, even though the buyers have filed before RERA, these proceedings are kept in abeyance on account of the IBC proceedings.

Mr Harish points out that under RERA, the Authority has the power to appoint another person to carry out the development. However, in the present case, that is not being done because of the ongoing IBC proceedings. The flat-buyers, therefore, have tried everything but cannot get the flats because of the IBC proceedings which are going on and because RERA and consumer forum proceedings are stayed, while the IBC proceedings are pending.

Mr Harish points out that, even though RERA and IBC are generally effective, there are certain situations where even these did not come to the rescue of a flat-purchaser, as set out above. He suggests, something more, therefore, is needed so that cases do not slip between the cracks and so that the flat-buyers are not unnecessarily troubled as the ones in the above-mentioned cases have been.

According to him, perhaps the remedy would be that all these laws have to be amended to provide that if several laws apply to real estate transactions and, therefore, decisions are not being taken, the High Court of the State should be able to centralise all such proceedings before itself. But this would be difficult in practice and, in many cases, the High Courts are already overburdened.

Another aspect to consider, points out Mr Harish, is that while RERA is effective in cases where agreements were entered into after the date RERA came into force, the difficulty arises in respect of past cases (ongoing projects). So, if a developer had already entered into an agreement, say in 2015, and contracted to give possession in 2018 and then enters into an agreement under which he contracts to give possession in 2021, the buyer does not have an effective remedy under RERA. The reason is that his earlier agreement was not under the RERA regime.



The overlapping jurisdictions of various laws to protect the consumer – the home-buyer – in effect make it too complex and time-consuming for ordinary people. To that extent, RERA remains ineffective.

## 16. Online Survey on RERA: Results and Analysis

Moneylife Foundation had designed and conducted an online survey to understand whether homeowners have made use of RERA for dispute resolution, whether they were satisfied with the resolution offered and whether their respective State RERA Authority offered an effective redress mechanism for those who had bought/ booked homes. This survey was promoted through mailers and social media platforms (Twitter, WhatsApp, Telegram, Facebook). A total of 1,543 individuals (randomised sampling) took the survey.

The survey was designed in a targeted manner to restrict responses to only those respondents who were homeowners or those who had booked a home in an under-construction project and who had made use of RERA for dispute resolution. Accordingly, 1,294 of the respondents were recorded to be homeowners or those who had booked a home and 334 (25.8%) of them had registered a complaint with their respective State RERA Authority.

We also heard from many people who were unable to proceed with the survey since they had not made use of RERA for dispute resolution because RERA was not an option for them. Most of them were from buildings (both housing societies and *pagdi* / tenanted), which were going for or were under redevelopment.

Some were stuck at some stage of construction where the developer had stopped payment of rent and they had to fend for themselves with very few options of legal recourse. Rehab component of redevelopment projects is not covered under RERA and this was the biggest grouse of people who emailed us separately or wrote back to us on social media (since they were excluded from the survey after question 3).

A vast majority of complaints - 185 (55.6%) – had been registered with MahaRERA, followed by Karnataka – 59 (17.7%) and Uttar Pradesh – 34 (10.2%). This is because construction has been concentrated in Bengaluru, Greater Mumbai/Pune and NOIDA / Greater NOIDA area of UP. This is because Maharashtra has the highest number of registered projects and MahaRERA has played a more active role in regulating real estate and creating awareness with their outreach. MahaRERA was also the first RERA Authority to be set up (2017), frame rules and get off the ground.

The survey also revealed that amongst the 334 complaints filed by the respondents, a large number of them (78.3%) were still pending and remain unresolved, indicating either an overall backlog of complaints received by the Authorities or that the time taken to reach a resolution for a dispute was unusually long.

Among the small number of complaints (60) that were resolved, 25 (9.0%) were resolved in under six months, but as many as 15 complaints (5.4%) took more than a year to reach a resolution. Although the data from the survey is very limited, when considering the disputes that were resolved, it was observed that exactly 50% of the resolved disputes achieved resolution through an order given by the RERA Tribunal, while 26.7% of the respondents had to resort to other court systems to resolve their dispute.

The ADR mechanisms were the least used methods among the 60 successfully resolved disputes, with 2.9% and 2.2% choosing these respectively. However, it is important to note that amongst the respondents in this survey, only a small number of cases have actually been resolved; so no conclusions can be drawn from this particular set of data.

For many new homeowners, who are not aware of the process to approach RERA for dispute resolution or even the rights available to them, the website of the State RERA Authority is the first place they visit. When the aggrieved respondents were asked how useful they found the website of their State's RERA Authority, only 16 (5.9%) found it to be 'extremely useful', while 64 (23.1%) responded by saying 'not at all useful'. This shows that a particular State's RERA Authority is failing to achieve one of its primary functions – of guiding and helping people to register their complaint and get their complaints resolved effectively.

We noticed a large number of people were visiting the MahaRERA office because they were unable to get information from the web portal and there was no functional phone number, etc, given on the portal to answer their questions. This lack of adequate information was a big grouse with most people.

In the survey, those respondents who had filed a dispute with their respective State's RERA Authority were asked to rate their satisfaction on the resolution offered on a scale of 1-10, with 1 being the least satisfied and 10 being the most. The results indicate that a vast majority of the respondents – 153 (55.2%) – responded as

being least satisfied while only 8 (2.8%) were extremely satisfied with the way their conflict was resolved. Of course, the data here is slightly biased by the fact that most respondents are still awaiting resolution of their complaint.

Our survey ended with two open-ended questions that asked the respondents for suggestions on how RERA could be improved and whether they were more confident in approaching other means for resolution than RERA. Many of the responses recorded in these questions have criticised RERA for delayed judgements, opaque adjudication process, poor execution of orders or lack of powers in enforcing the orders.

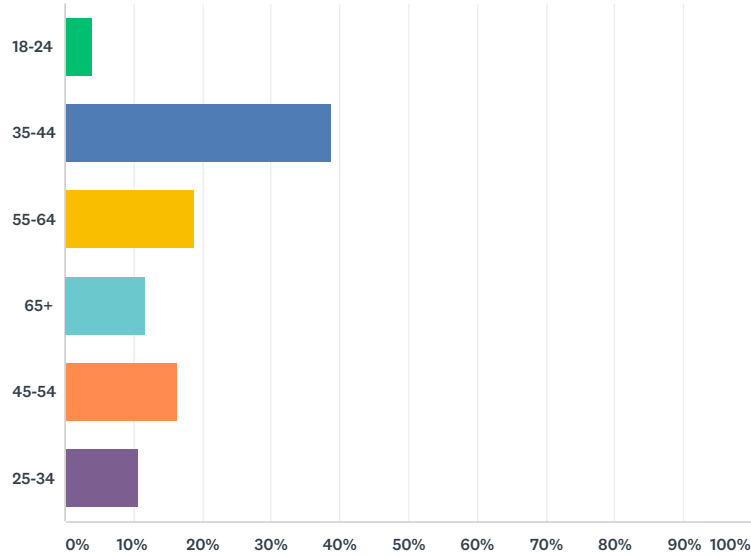
As one respondent says, “execution of orders is not happening; deemed possession of owned flats does not happen when builders do not work.” Some respondents have also pointed out a flaw in the orders given out by the RERA Tribunal with respect to penalties claiming that often the builder has no money or resources to pay the penalty and “a mere order is not a solution.” Respondents have also been vociferous about RERA’s ineffectiveness when addressing issues of transparency in the matter of booking and delivery of flats, as well as lack of audits to check quality of construction.

In fact, some of the respondents have reportedly approached consumer or civil courts to get justice as they were not satisfied with the response received from RERA. Among the reasons given for individuals opting to resort to other legal channels for justice, were that builders were unwilling or unable to follow through on or comply with orders given by the RERA Authority and that RERA Authority was seemingly powerless to implement their orders.

## Moneylife Foundation Survey Results

### Q1 What is your age group?

Answered: 1,541 Skipped: 0

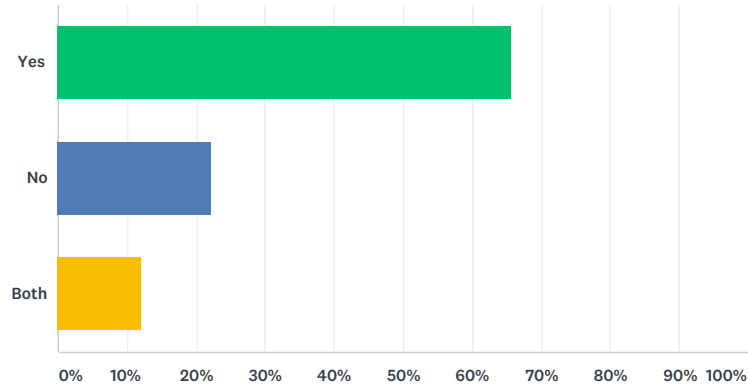


ANSWER CHOICES	RESPONSES	
18-24	3.89%	60
35-44	38.81%	598
55-64	18.82%	290
65+	11.68%	180
45-54	16.22%	250
25-34	10.58%	163
TOTAL		1,541

**Finding:** A very high number of the respondents – 85.53% – was above the age of 35 years and 46.72% of the respondents were above 45.

### Q2 Are you a homeowner, or have booked a flat in an under construction project?

Answered: 1,473 Skipped: 68

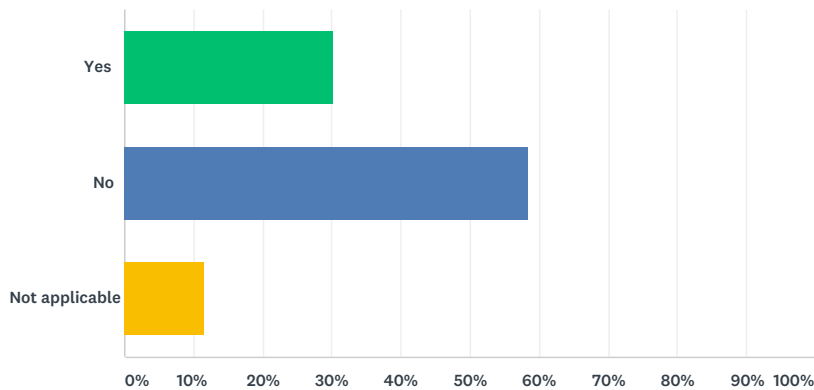


ANSWER CHOICES	RESPONSES	
Yes	65.72%	968
No	22.13%	326
Both	12.15%	179
TOTAL		1,473

**Finding:** More than 65% of the respondents had booked a flat which was under construction.

### Q3 Have you had a complaint registered in your State's RERA?

Answered: 1,111 Skipped: 430

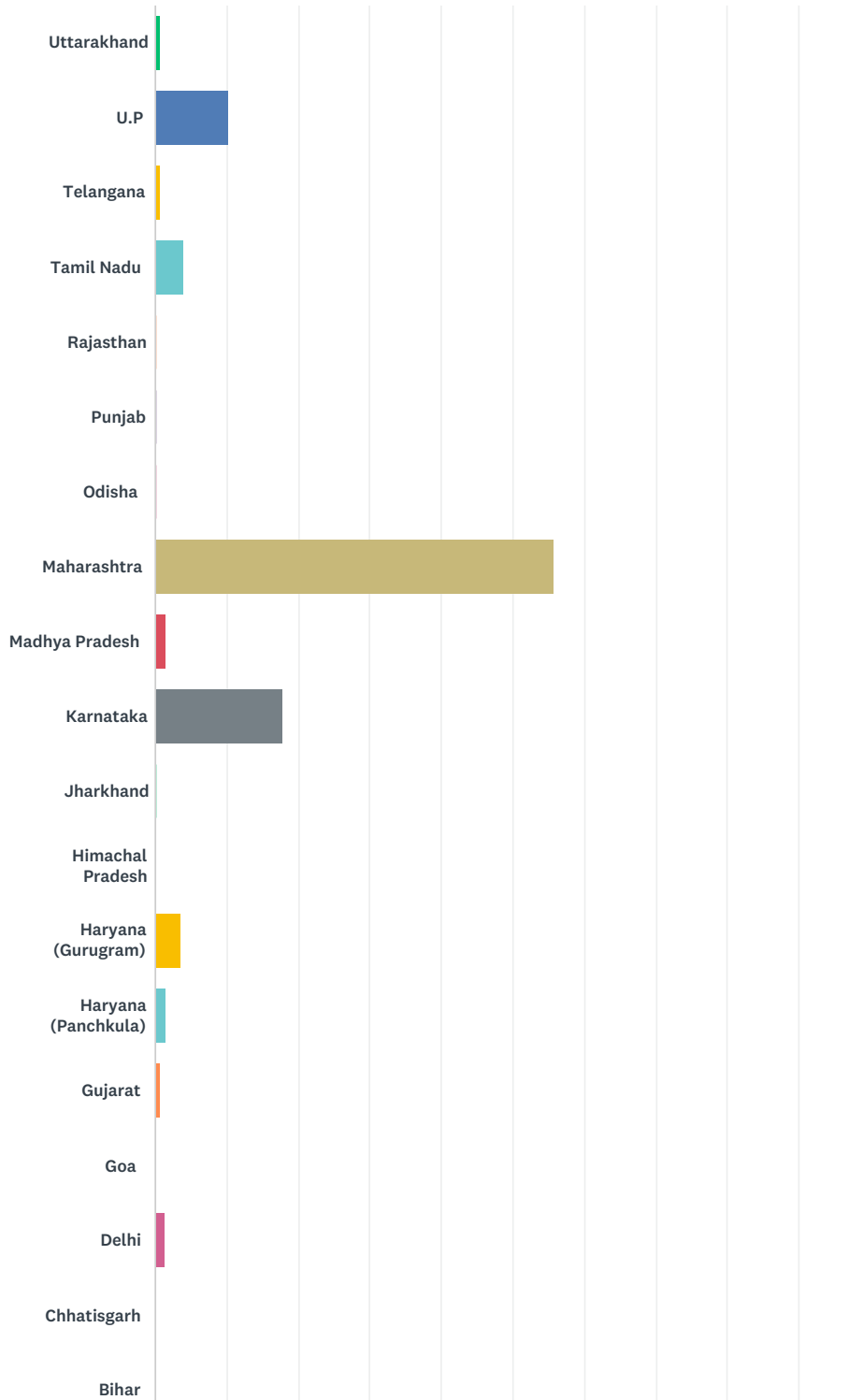


ANSWER CHOICES	RESPONSES	
Yes	30.06%	334
No	58.42%	649
Not applicable	11.52%	128
TOTAL		1,111

**Finding:** More than 30% of respondents had registered a complaint with RERA.

### Q4 Which State's RERA did you use?

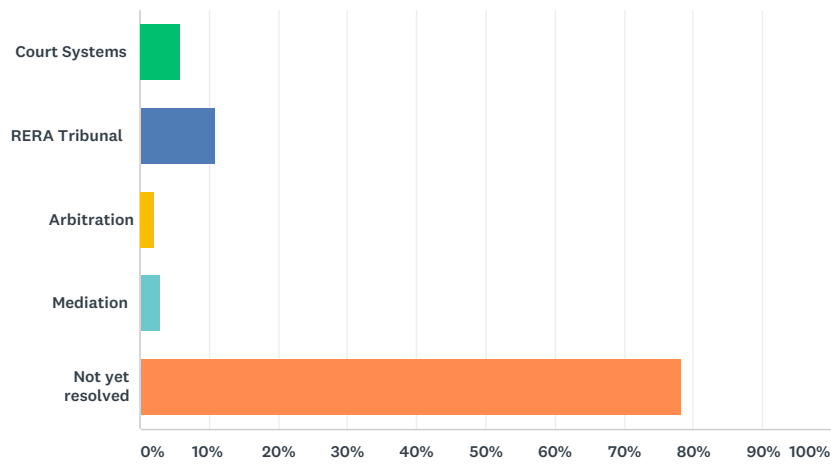
Answered: 333 Skipped: 1,208



**Finding:** Most respondents had used the MahaRERA and some used Karnataka (for Bengaluru), Tamil Nadu (Chennai), UP (for NOIDA) and Haryana (Gurugram).

### Q6 How was it resolved?

Answered: 277 Skipped: 1,264



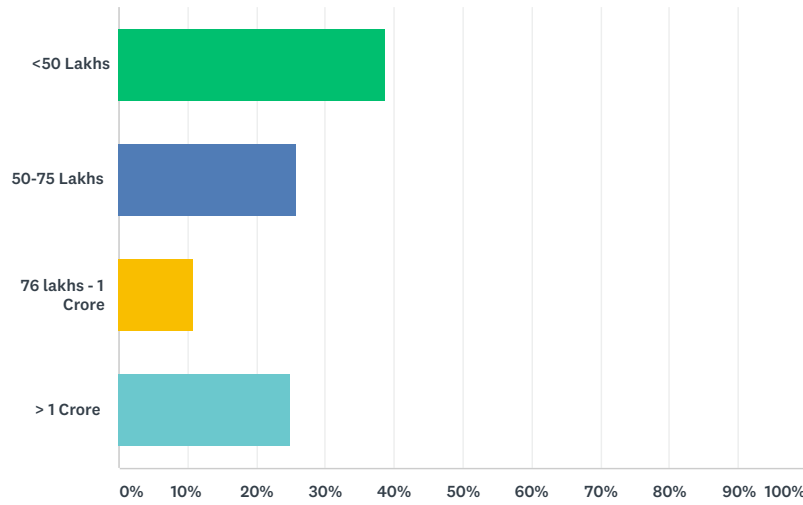
ANSWER CHOICES	RESPONSES	
Court Systems	5.78%	16
RERA Tribunal	10.83%	30
Arbitration	2.17%	6
Mediation	2.89%	8
Not yet resolved	78.34%	217
TOTAL		277

**Finding:** A huge 78% of the complaints remained unresolved.



### Q7 What was the value of the disputed property?

Answered: 277 Skipped: 1,264

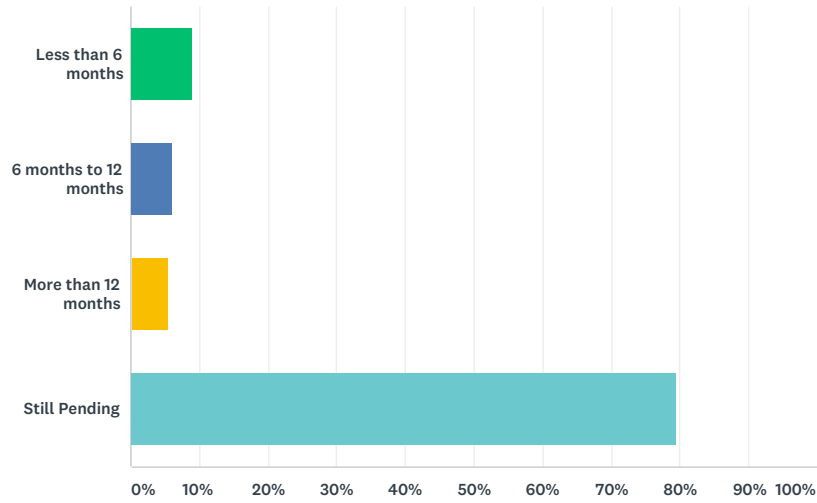


ANSWER CHOICES	RESPONSES	
<50 Lakhs	38.63%	107
50-75 Lakhs	25.63%	71
76 lakhs - 1 Crore	10.83%	30
> 1 Crore	24.91%	69
TOTAL		277

**Finding:** Thirty-eight per cent of the respondents said that the value of their disputed property was less than Rs50 lakh. Around 25% of the respondents said that the value of their disputed property was more than Rs1 crore, while another 25% said value was between Rs50 lakh and Rs75 lakh.

### Q8 How quickly was your issue resolved?

Answered: 277 Skipped: 1,264

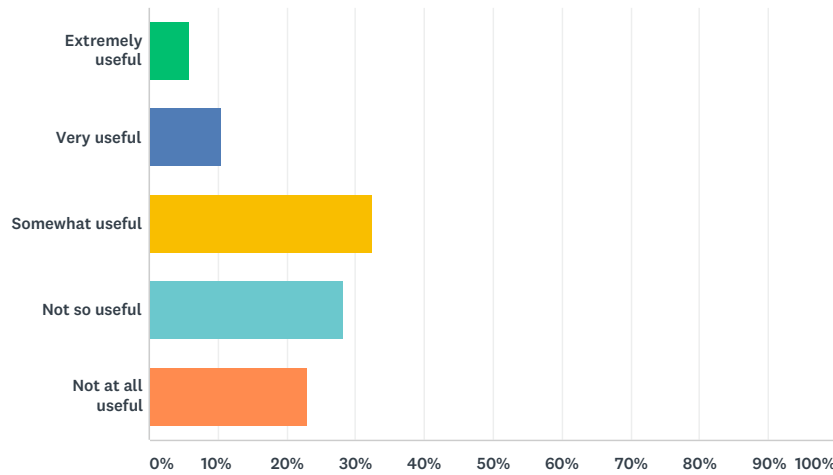


ANSWER CHOICES	RESPONSES	
Less than 6 months	9.03%	25
6 months to 12 months	6.14%	17
More than 12 months	5.42%	15
Still Pending	79.42%	220
TOTAL		277

**Note:** Since only a small number of cases were resolved, this question is not very relevant.

### Q9 How useful was the information on your State RERA's website?

Answered: 277 Skipped: 1,264

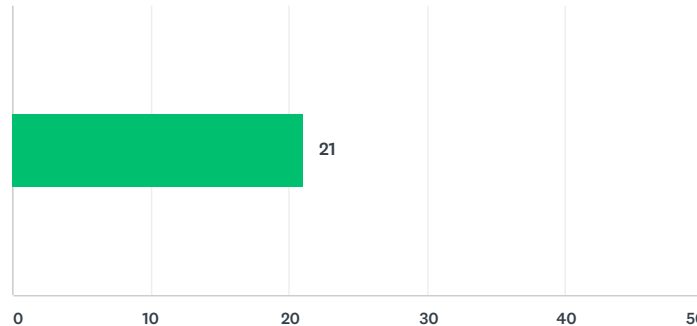


ANSWER CHOICES	RESPONSES	
Extremely useful	5.78%	16
Very useful	10.47%	29
Somewhat useful	32.49%	90
Not so useful	28.16%	78
Not at all useful	23.10%	64
TOTAL		277

**Finding:** Only over 16% of respondents found the RERA site useful. As many as 51% of respondents did not find the site useful.

**Q10 Overall, how satisfied are you with the complaint resolution, on a scale of 1-10?**

Answered: 277 Skipped: 1,264



ANSWER CHOICES	AVERAGE NUMBER	TOTAL NUMBER	RESPONSES	
	21	5,827	277	
Total Respondents: 277				
BASIC STATISTICS				
MINIMUM	MAXIMUM	MEDIAN	MEAN	STANDARD DEVIATION
0.00	100.00	5.00	21.04	27.22

**Finding:** Respondents who had filed a dispute with their respective State’s RERA Authority were asked to rate their satisfaction on the resolution offered on a scale of 1-10, with 1 being the least satisfied and 10 being the most. The results indicate that a vast majority of the respondents – 153 (55.2%) – responded as being least satisfied, while only 8 (2.8%) were extremely satisfied with the way their conflict was resolved. The data here would be biased by the fact that most respondents are still awaiting resolution of their complaint and would be keen to express reasons for dissatisfaction.

**Q11: How could RERA improve, according to you?**

**Answered: 227 Skipped: 1,264**

Here are some edited answers that are of relevance:

- RERA must do a third-party check on all aspects of a complaint file before giving appearance date. This will bring more transparency and efficiency. In my case, the builder didn’t provide us with amenities and services which he promised while purchasing flat; there is also defective possession from builder’s end which is not yet resolved by RERA.
- RERA must cover tenants along with new buyers in order to protect them from exploitation in case of redevelopment projects, which are necessary for cities.

There are several thousand buildings with these issues in Maharashtra and especially in Pune, Mumbai metros.

- The execution of part of RERA orders is very weak, especially orders issued by MahaRERA Authority. MahaRERA appellate authorities have better powers (imprisonment), if the builder fails to comply with their order.
- Builders are bringing in innovative clauses not addressed by RERA.
- Tenants and flatowners of buildings that are being redeveloped should be covered by RERA to ensure they are paid the contracted rent and given possession of completed flats and amenities in time.
- The initial case in RERA and order for execution must be combined for faster resolution. Today, after the initial order, you have to apply for execution after 90 days. This is a waste of time, since nobody wants an order, they want relief through execution of orders. As such, both may be combined to give relief to buyers.
- I have two cases in MahaRERA. Both were heard quickly but the member, in both cases, instead of giving a decision, asked the builder to submit an undertaking regarding the issue. On the face of it, justice appears to have been delivered; but, to me; it is a convenient way to help the builder as undertaking provided by the builder is either not in line with agreement during hearing or is never followed by the builder. A second hearing is not provided. So, essentially undertaking is of no value. Also, there is active pressure on buyer from MahaRERA to accept undertaking. In case the undertaking is accepted by buyer, it is not enclosed with the order of MahaRERA; without it one cannot approach a Tribunal.
- Builder must be forced to pay interest for delays. Also, builders force buyers to waive interest, etc, by threatening delay or withdrawal of registration, facilities in building. Buyer should be allowed to take action under RERA after registration, if he has been forced to sign off that no dues or issues are pending if he can prove there was an issue.
- I am an existing homeowner who has not been provided the promised amenities (club house, swimming pool, fire protection systems for high rise apartments, etc), have not been given conveyance, completion certificate for floors higher than 5<sup>th</sup> (because fire prevention norms have not been met) and our society registration is being opposed by the builder in courts. We paid for and were forced to take possession of the flats without these amenities by the builder at Wanowrie, Pune. Three of the members filed a complaint, paying Rs5,000 each, requesting MahaRERA to register this project as an ongoing project and ensure that the builder provides these before he is allowed any other projects. Chairman RERA

sympathised with our plight but quoted practical problems for not acceding to our request, allowing the builder to go scot-free. (Too many complaints of this nature was the reason for his stand).

- RERA has issued an order against a builder, whereas he is in the jail, and banks are following up with the owners for money. RERA decision is only useful as a proof that owners are not defaulters. That's all. It should also hold banks accountable, since they gave full amount to builder without confirmation. This is a fraud and employees of banks would be getting their share for doing this.
- RERA must have powers to execute orders passed. Otherwise, it is of no use to home-buyers.
- Very disappointed as I filed case in February 2018 (CC0050000000111151) and, finally, one month back, got output as no resolution till further notice.
- Once delay by the developer is established, penalties should be imposed RERA authorities should monitor to ensure all obligations of builder to complainant are met. This is important as builder can harass allottee by delaying registration, not completing pending work, such as kitchen, or works for which payments are made but are not related to construction.

**Q 12. If you have another issue to be resolved, and you are not using RERA, what is holding you back?**

**Answered: 220    Skipped: 1,321**

Some of the answers received are reproduced here after editing.

- My earlier issue got resolved out of court through mediation. RERA is good only if possession is delayed. Not good for anything else like construction defects, cheating, etc.
- We are a 475-member association of HDIL Majestic Tower project. We feel the reluctance on part of MahaRERA to take quick action on HDIL by invoking Section 7 of MahaRERA has cost us dearly. Now HDIL is in IBC and we middle-class customers stand to lose our hard-earned money.
- MahaRERA asks only for undertaking on which builder never acts so it is useless to approach MahaRERA.
- RERA is not registering my complaint because our building is occupied but the developer has violated all statutory requirements and is refusing to redress the issues like getting OC and conveyance of land.
- Delayed judgements and opaque adjudicating process in RERA.

- RERA judges often say one thing all through the hearing and then say another thing during final hearings.
- Application closed twice even after I submitted with all evidence. After 60 days wait, complaint is showing IT error.
- We have a building of 90 people. Two of us lodged a complaint to check whether going to RERA will be of any use to us. Unfortunately, the builder managed to get the decision in his favour although the hearing seemed to be going in our favour until the end.
- Execution of orders is not happening. Deemed possession of own flat (does not happen) when builder doesn't work.
- Recovery certificate isn't very effective method of enforcing orders against defaults.
- Multiple hearings even for simple matters; no time-bound result; no compensation for mental stress except the penalty under Section 18; lack of powers for enforcing the orders; erratic orders sometimes favouring the builders rather than safeguarding individual home-buyer.
- I want to go to consumer court but I have to give an undertaking to RERA that I have not approached other authority to resolve the issue. This holds me back.
- Will approach consumer dispute forum as opposed to RERA. Too much focus on developers' problems to ensure project completion. They give me a feeling that their job is just to resolve projects that are stuck in under construction.
- Land is disputed and the bank is holding some share in it. RERA is useless in such situation.
- No other option but to use RERA due to logistic problems as State consumer court located at Lucknow and civil courts take a long time to dispose cases.
- Lack of powers of RERA to implement their own orders.
- Used RERA and found it ineffective. Even though there is a RERA ruling by another member that non-provision of common amenities makes a project incomplete and requires registration, the chairman, who took up our case, deferred and did not allow us (to go by) the precedence of this order. We don't have the money power to go on appeal endlessly against a builder who has all the resources to fight the case in higher courts.

## 17. ADDENDUM

While we had finished our data collection and interviewing of domain experts by the first week of March 2020 and had put together the entire report, the nationwide lock-down due to COVID-19 meant that the final submission/release of this report was pushed forward by three to four months. Hence, this report mainly covers the pre-lock-down scenario. It took a considerable amount of time to check State-wise details (for all States), rules, loopholes, issues and to find out best practices and key initiatives rolled out across States. There are a few significant developments that took place after 21 March 2020 when the lock-down was announced and before the report got published. We are highlighting them in this note.

**1. Force Majeure Notification:** On 13 May 2020, minister of finance & corporate affairs announced that MoHUA will issue an advisory to States and UTs and their regulatory authorities to extend the registration and completion date *suo moto* by six months for all registered projects expiring on or after 25 March 2020 without individual applications.

MoHUA accordingly advised States/UTs and their regulatory authorities to the following effect:

- Treat COVID-19 as an event of *force majeure* under RERA.
- Regulatory authorities may extend this for another period of up to three months, if needed.
- Issue fresh 'project registration certificates' automatically with revised timelines.
- Extend timelines for various statutory compliances under RERA concurrently.

The government said that these measures will de-stress real estate developers and ensure completion of projects so that the home-buyers are able to get delivery of their booked houses with new timelines.

The outbreak of COVID-19 should be treated as an 'act of God' and a *force majeure* event under the Real Estate Regulatory Authority (RERA) Act, MoHUA said in the advisory issued on 13 May 2020. Acting on the Centre's advisory asking real-estate regulators in States and UTs to extend by at least six months the deadline for completion of projects in the face of the coronavirus outbreak, MahaRERA and Gujarat RERA Authorities have extended the completion deadlines for real estate projects in their respective States by six months.



The pandemic and nationwide lock-down had triggered a reverse migration of labourers to their home States, breaking the supply chain of construction materials, and impacting construction activity across the country. An emergency web meeting of the CAC was held on 29<sup>th</sup> April. The Council recommended an extension of registration of real estate projects and the concurrent extension of timelines for all statutory compliance. On 18 May 2020, MahaRERA decided to extend the validity for registration by another three months. MahaRERA had earlier extended all project and registration timelines by three months from 15<sup>th</sup> March to 30<sup>th</sup> June.

The MahaRERA order, issued on 18<sup>th</sup> May, states that for further extension “beyond the aforesaid 6 months, for adversely affected projects, concerned promoters will have to apply in accordance with provisions of Section 6. MahaRERA may at its discretion waive the fee for such extension due to *force majeure* in accordance with rule 7 of Maharashtra Real Estate Registration Rules, 2017.” MahaRERA has declared COVID-19-impacted period from 15<sup>th</sup> March to 14 September 2020 as *force majeure* under the provisions of RERA. *Force majeure* is a clause that provides temporary reprieve to a party from performing its obligations under a contract. Under RERA provisions, the clause covers natural calamities or acts of God but not a pandemic.

The final order invoking *force majeure* for COVID-19 was promulgated by MahaRERA secretary Vasant Prabhu in line with the advisory issued by the MoHUA. The advisory was part of the Centre’s stimulus package. With 25,000 real estate projects, MahaRERA has the highest number of real estate ventures registered with it in the country. The *force majeure* period will be treated as a ‘moratorium period’ for the purpose of calculating interest under Section 12, 18 19(4) and 19(7) of the Act, the MahaRERA order said.

It noted that the work of registration of sale documents has been adversely affected due to non-functioning of the offices of the sub-registrar. Therefore, any registration of agreement for sale, which becomes due during the *force majeure* period under Section 13 of the Act, can be registered in a period extending till the expiry of *force majeure* period, the order said. “The dates of possession mentioned in already registered agreements for sale, shall be deemed to be extended by the *force majeure* period,” it said.

Due to non-functioning of the concerned offices, the work of transfer of title and conveyance has been adversely affected. Therefore, any compliance under Section

17 that becomes due during the *force majeure* period is allowed to be completed in a period extending till the expiry of the *force majeure* period, the MahaRERA order said.

GujRERA has also extended the completion deadline for real estate projects in the State by six months. “The completion date or extended completion date is hereby automatically (without application) extended by 6 months due to outbreak of COVID-19 (coronavirus), which is a calamity caused by nature and is adversely affecting regular development of real estate projects, by invoking *force majeure* clause,” the GujRERA order said.

Promoters of these projects will be able to download fresh ‘project registration certificates’ with extended project completion date from their log-in on GujRERA portal and the same will also be available in public view section of registered project on Gujarat RERA portal in due course of time, it said. According to the order, the cut-off date for the relief announced on 13<sup>th</sup> April has now been revised from 31 March 2021 to 30 September 2021. The order noted that the extension will also be applied to all buyer-seller agreements entered into prior to 25 March 2020 for which the project completion date is on or after 25<sup>th</sup> March. All State RERA Authorities have come out with similar notifications with varying time period extensions.

Rajasthan RERA has issued an order and given extension of one year. RERA (Rajasthan chairman) NC Goel said, “On the ground of *force majeure*, extension of 12 months has been granted to the real estate projects expiring on or after 19<sup>th</sup> March. As lock-down in the State was imposed two days before the Centre announced such a lock-down, we have fixed the above date.”<sup>95</sup>

MahaRERA has gone a step ahead and imposed a moratorium on interest payable by a promoter on any refund or compensation payable to a home-buyer during the *force majeure* period. Additionally, MahaRERA has extended the compliance requirements of the promoter with respect to registration of sale documents, transfer of title, or statutory periodic filings with the Authority for the duration of the *force majeure* period. Although, the developers have got a reprieve due to this advisory, not much respite was given to the home-buyers as regards their payment of instalment obligation under the agreement of sale. Considering that home-buyers

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<sup>95</sup> <https://timesofindia.indiatimes.com/city/jaipur/developers-get-1-year-rera-lifeline-to-complete-projects/articleshow/75726820.cms>

do not benefit much from the timeline extension of real estate projects under RERA, it is advisable for them to request developers for revision of their agreements and sale deeds.

### **Consumer Groups Unhappy and Disappointed**

However, several consumer groups and lawyers were dismayed and pointed out problem areas. Shirish Deshpande, chairperson MGP, raised concerns about the development. “It is debatable if the benefit of such moratorium can be given to builders of such projects which are already delayed and stuck for a long period,” Mr Deshpande said. “Even after the lock-down, the developer is unable to give possession in near future. In such cases, home-buyers cannot be denied interest for lock-down period.”

He said MahaRERA should ensure that builders do not take undue advantage of the lock-down situation. “Home-buyers continue to suffer if they are paying EMIs to their banks or financial institutions. What protection or relief will the RERA offer to them? Similarly, taking undue advantage of the lock-down, many builders have stopped paying rent to the rehabilitation members. MahaRERA must clarify and direct all the developers that there’s no immunity or moratorium on their obligation to pay rent to rehab members,” Mr Deshpande said. Nilesh Gala, a real estate lawyer, questioned how the *force majeure* provisions can be applicable to Section 12 of RERA. The Section pertains to obligations of promoters regarding the veracity of their advertisement or prospectus and asks the developer to refund the entire investment made on the basis of false information.

Naheed Carrimjee, a real estate lawyer, said invoking *force majeure* in the real estate sector was in the interest of both developers and home-buyers. “That does not mean that developer should delay rents to tenants in redevelopment projects,” Mr Carrimjee said.<sup>96</sup> The national lobbying arm of home-buyers, FPCE, even approached prime minister Narendra Modi stating that the additional extensions without penalties given to builders on completion dates of projects are against RERA.

FPCE wrote a letter to the prime minister’s office (PMO) on 1<sup>st</sup> June in which its general secretary, Abhay Upadhyay said that MoHUA convened an emergency meeting of CAC on 29<sup>th</sup> April to provide a blanket extension to all real estate projects across the

<sup>96</sup> <https://mumbaimirror.indiatimes.com/coronavirus/news/maharera-invokes-force majeure-to-provide-relief-till-september-15/articleshow/75835683.cms>

country for six to nine months, over and above the one year already provided under Section 6 of RERA. “FPCE had opposed the decision, as it is in violation of the Act,” he added.

CAC is constituted under RERA. It is managed by MoHUA. Mr Upadhyay told *MoneyLife*, “The CPC before 29<sup>th</sup> April has met only once and that is on 14 May 2018. It has only met twice in the past three years that it was created. Our views were ignored.” Mr Upadhyay, who is also a member of CAC of RERA, said that officials should first ensure that Section 6 of RERA is exhausted and only then go for additional extensions as builders, in any case, use the Section for buying more time.

The ministry’s advisory had said that an additional extension of three months can be given by Authorities at their own discretion. The ministry is of the view that COVID-19 is caused by nature and is adversely affecting the regular development of real estate projects by invoking *force majeure* clause.

In the letter, Mr Upadhyay said: “However, ignoring reviews, that the proposed extension is illegal and beyond the powers under the law, and that the one year already provided under Section 6 should be exhausted first, MoHUA issued an advisory to all States to carry out this illegal blanket extension.” FPCE urged the prime minister to direct MoHUA to modify its advisory on *force majeure* due to COVID-19 to be in line with Section 6 of RERA, and that too only for the actual period of lock-down when construction was not permitted.

FPCE also requested the PM to direct MoHUA to hold regular CAC meetings to address the issues faced by all stakeholders and not to convene only emergency meetings for builders’ interests.

In June 2020, a flat-buyer filed a petition in the Bombay HC, challenging the 18<sup>th</sup> May order of MahaRERA in which it had extended the validity of all registered projects by six months, whose completion, revised completion or extended completion dates expired on or after 15<sup>th</sup> March. The petitioner claimed that MahaRERA’s decision favoured certain defaulting promoters at the cost of thousands of flat-purchasers.<sup>97</sup>

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<sup>97</sup> <https://www.hindustantimes.com/mumbai-news/buyer-challenges-maharera-circular-allowing-6-month-extension-to-developers/story-DDWdAIpRNzVP9u5Xf1cCII.html>

The petitioner, Sagar Sarjerao Nikam, had purchased a flat on 12 January 2017, for which he had paid around 95% of the total amount to the promoter. In his petition, filed through advocates Manish and Nilesh Gala, Mr Nikam has stated that the promoter had promised to deliver the possession by December 2017, but failed to do so as an OC for the flat was rejected due to a default. The petitioner and his family have been staying on leave-and-licence basis, paying rent, due to which he has been suffering financial difficulties.

Mr Nikam's petition has further stated that on 2 April 2020, MahaRERA had extended the registration validity of projects by three months. The Authority further extended the validity by three more months on 18<sup>th</sup> May by invoking the *force majeure* clause, stating that the COVID-19 outbreak is a calamity which is adversely affecting the regular development of real estate projects.

The petition added that MahaRERA's order has also exempted errant developers from paying compensation in case of failure to deliver the property under the law, even for those cases that had lapsed before 15<sup>th</sup> March. The plea said that the decision was taken arbitrarily and would lead to hardships and losses to allottees who have invested in real estate projects and have been waiting for years together to get possession. Mr Nikam has claimed that the decision illegally granted extensions and relaxations to errant promoters, depriving purchasers of rights of being heard. In view of this, the plea sought direction from the court to declare MahaRERA's decision to invoke *force majeure* and to treat it as a 'moratorium period' to calculate the interest under RERA law, as illegal and be quashed. The plea also submitted that the decision was completely arbitrary and violative of the mandate of RERA.

### **Ministry Counters**

In mid-June, Durga Shanker Mishra, secretary, MoHUA said: "Till date, 23 States' Real Estate Regulatory Authorities have extended registration of projects by six months and one by nine months in view of the situation created by COVID-19." As advised by the ministry, this has been done *suo moto* to cut down unnecessary paperwork and delay.

"Some citizens have raised concerns on social media against extension given to real estate developers through the ministry's advisory to States/RERA to complete the projects. This has been done as an essential measure to safeguard the interests of home-buyers," said Mr Mishra. He further said that due to COVID-19, works of

ongoing real estate projects have halted. Large-scale reverse migration of labour and huge disruption in supply chain of materials has adversely impacted construction works. Labour is least likely to return before the festival season in October- November gets over.

“In such circumstances, real estate projects will take quite some time to resume work fully. Surely, this will delay completion leading to a lot of litigations for non-compliance of commitments on time and make projects fail/ get stressed,” added Mr Mishra. Hence, to safeguard the interests of all stakeholders, especially home-buyers, and to ensure delivery of houses/flats to them, the ministry advised States/ RERA to invoke the *force majeure* clause under the law.

RBI has recently allowed moratorium of six months till 31 August 2020 to home-buyers for payment of dues in view of COVID-19. Hence, borrowers effectively get nine months to put their accounts in order without becoming non-performing assets (NPAs). “These measures have been taken to ensure that projects do not get stalled due to disruptions caused by COVID-19 pandemic & flats/ homes get delivered to the home-buyers albeit with some delay. I would reiterate that home-buyers with lifetime savings invested in dream home project are interested in flats/homes and not litigations or making the developers appear as failures,” said Mr Mishra.

## **2. The New Consumer Protection Act, 2019 – How It Affects Home-buyers**

The new Consumer Protection Act, 2019, came into effect on 20 July 2020. It has changed the jurisdiction of the NCDRC to matters exceeding Rs10 crore from Rs1 crore earlier. This means that only home-buyers who have paid an amount in excess of Rs10 crore can file a case with the Commission. Other cases up to Rs1 crore can be filed with the district forum and those between Rs1 crore to Rs10 crore with the State commissions.

Home-buyers pointed out that instead of directly approaching NCDRC as earlier, they would now have to go through several layers of the judicial process which would not only delay justice but also lead to incremental litigation costs. This also means that home-buyers who may have paid a total amount of Rs10 crore in a project to a builder can come together through an association or as a class to file a case with the NCDRC directly. Given the huge number of cases currently pending before district forums across the country, the slow rate at which these are disposed and the inadequate infrastructure of these forums, this will only add to the burden

of these forums. This would also go against the main objective of the CPA which is to provide quick relief to consumers, say legal experts.

Real estate developers, represented by NAREDCO and CREDAI, had earlier suggested examining the difficulties faced in giving effect to provisions of RERA, to bar the jurisdiction of consumer forum as currently done for civil courts under Section 79 under RERA to avoid conflicts with judgements of RERA Authorities and consumer forums both of which are currently forums for RERA disputes.<sup>98</sup>

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<sup>98</sup> <https://www.moneycontrol.com/news/business/real-estate/consumer-protection-act-2019-impact-ncdrc-to-hear-only-homebuyers-who-have-paid-over-rs-10-crore-5572421.html>

## 18. 1. Annexure- 1

### *Moneylife* Interview with Gautam Chatterjee<sup>99</sup>

**“I tell people to not use the RERA Act to walk out of the project. RERA Act is there to give you a home. A completed home.” - Gautam Chatterjee, MahaRERA chairman**

Maharashtra has been at the forefront in implementing the Real Estate (Regulation and Development) Act (RERA) and MahaRERA has seen the maximum registration of housing projects across the country. In an effort to understand the challenges faced by MahaRERA officials and also understand whether implementation of the act has helped consumers, *Moneylife* interviewed MahaRERA’s chairman Gautam Chatterjee.

**ML: Could you tell us a little bit about how MahaRERA was set up in Mumbai and Maharashtra? After all, this is one of the most complex cities in India? What were your thoughts about how to make it work?**

**Gautam Chatterjee (GC):** Well, the advantage we had was that Maharashtra had the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (MOFA), although it was not very effective due to problems in implementation. There were several amendments to the Act, including the concept of ‘deemed conveyance’, which was brought in to deal with the delay in effecting conveyance; it needed to be sorted out with better implementation. I had dealt with these issues because of my association with this sector in various capacities in those times. When we are dealing with this subject in the state, the Central government too was toying with the idea of bringing in a Central regulation to deal with this sector. Maharashtra had already taken strides in having this legislation to regulate the sector, the subject being in the concurrent list.

If you go back to the fine print of that state legislation, you will see it was almost similar to the new Central RERA legislation. However, Maharashtra had kept out public sector entities, like the Maharashtra Housing and Area Development Authority (MHADA) and the City and Industrial Development Corporation of Maharashtra (CIDCO) out of the ambit, because we felt that if there were issues related to these entities, they could be dealt with by the state.

However, if you look at the other ingredients of what is there in the new RERA legislation, and the Maharashtra Housing Regulation Act of 2011-12 and MOFA of 1963, you will see there is 80%-90% commonality. The Maharashtra Housing Regulation Act was on the verge of receiving Presidential assent, but since the Central RERA legislation was brought in, it was decided to repeal the state Act.

I had the advantage of being part of the thinking process of bringing in a regulation for this

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<sup>99</sup> Published on 19 September 2019.



unregulated and very problematic sector. So we had the clarity on what we are trying to achieve through the legislation. In sum, it was to address all the problems faced by stakeholders and find a solution to them.

**So, what were the main problems?**

The first was information asymmetry. Any home-buyer faced the problem of having no access to information while buying a home. If you go back to the fine print of MOFA, we were clear that I must know what I was buying into and have every single detail, when I am putting my life savings into it. That was simply not available. How did we tackle this? MOFA merely said that developers should give all information, indicate completion date, sign the agreement in a certain manner, etc. But we had no answer about what to do if the developer did not comply.

By the time we came to RERA and MahaRERA, we had the benefit of information & communication technology (ICT). It told us how to use ICT to put out information in the public domain. So transparency through 'mandatory disclosures' was adopted, putting the onus on the developer to put all mandatory details in the public domain. A developer could be held for non-compliance for failing to comply with what is 'mandatory'. The Securities Exchange Board of India (SEBI) had already adopted disclosure-based regulation. So we opted for transparency through adequate and complete disclosure, to tackle information asymmetry.

The second problem was that getting my house/flat was a never-ending process and I, as a buyer, had no certainty about when it would be constructed and delivered to me. So the aspect of registration was brought in to bring it under the ambit of this Authority. The main objective of registration was to ensure completion. We brought this aspect to the attention of all the promoters—we said, it will not be a 'licence' that you are seeking when you are applying for registration, so that I use every restrictive parameter to decide whether you are eligible for a registration and thereafter use the same to punish you for not abiding with the so called conditions of the 'licence'. I am doing it in your interest as well, because once a project is registered, the regulator is also part of the process of looking at how it will be completed. The regulator will assist in tackling every obstacle in your path and all stakeholders who try to delay or play spoilsport will be dealt with.

Since we had this thinking and clarity, we have over 21,500 projects registered in Maharashtra alone, against 19,000 projects registered across the country. This happened because we do not waste time in sending out piecemeal queries questioning developers who have applied for registration of their project, which has necessary building plan approvals from the competent planning authority. We ensure through our robust software that mandatory disclosures, required as part of the online registration process, are put out in the public domain through the registration web-page of the registered project—without it, the software would not allow the application to be filled in. So the software ensures that all fields are completed, but the onus is on the developer to ensure correct and complete disclosures. Once that is done, the information is available in the public domain for all and sundry to see and raise questions, through online complaints, if there is incomplete or false information.

We have had complaints about these as well and we have also passed orders on such complaints. That was, in fact, the objective. We were also able to convince developers that all ongoing projects, which are incomplete, should be brought under the ambit of MahaRERA to see what are the obstacles there and how do we remove them and complete the project. So, out of over 21,500 registered projects of MahaRERA (which translate to 2.15 million homes) as many as 13,000 projects are of the past – legacy projects which should have been completed but had not. There was a time over-run in as many as 8,000 projects. Both the parliament and the Hon'ble Bombay High Court wanted these incomplete projects to be brought under the legislation, since 'incompleteness' is something we are trying to tackle by ensuring project completion. Interestingly, a majority of such projects were included only in Maharashtra. Getting a large number of projects registered is good, but it is also a major challenge how to ensure that these projects are completed in the next three years. I will come to that later.

A third challenge is the huge trust deficit between a buyer and seller. When you are buying a home, with your life savings, it is a very uncomfortable situation that you don't have full and accurate information and are uncertain about when it will be delivered and I tremendously mistrust the person from whom I am buying. How do we deal with this? We decided that when complaints come to us, the first effort must be to make the two sides sit face to face and talk transparently and find a way out. I'm happy, that of the 8,000-odd complaints that have come to us, a majority have been cases where the two sides did talk and understood one another's perspective and said, 'give us time we will resolve things ourselves'. I think this is the correct way to go about. About 60% of the complaints were resolved through dialogue and 10% were not happy with our decisions and are in the Appellate Tribunal.

We are in the process of setting up a self-regulatory organisation (SRO) of developers because developers and promoters need to be professional in their approach as well as compliant with the provisions of RERA, unlike in the past when anyone could become a developer overnight. We felt that industry organisations like National Real Estate Development Council (NAREDCO) and Confederation of Real Estate Developers Association of India (CREDAI) and others would have to work beyond what they were doing until now, which was largely to lobby the government for concessions. We said, you now need to focus on how all the players in the sector behave in a professional and compliant matter.

We created a conciliation forum, which was enabled under the Act. The Act provides for the developers' forum and the consumers forum could come together to form a conciliation forum to resolve disputes. We have the Mumbai Grahak Panchayat (MGP) which was very active, and agreed to participate in the conciliation process. Today, over 1,000 people have taken the conciliation route to resolve their issues. In Pune, the success rate of the conciliation forum is 90%. So I would say, it is a matter of time the entire industry becomes cleaner and more professional and ethical. The worst period is now; it is the effort of getting a large and unregulated sector, which has a big contribution to the GDP to become professional. That is a very painful transition and I am suffering from the challenge of achieving this.

**ML: Do you think there's an added pain today because the realty industry got a lot of money after 2008 (the global crisis) which allowed them to hold on to projects and keep prices high? It is probably why projects such as Amrapali, Jaypee, Unitech and DS Kulkarni and many others are in serious financial trouble.**

**GC:** Financial problems are a different matter. Suppose the project has run into rough weather, there is a time overrun and debt servicing makes the cost shoot up, making all calculations go haywire. In this situation, if you have a regulator in place who says that you must deliver all projects in time and at the same time the Act allows you to walk out of the project with interest and compensation especially when prices have fallen, then it creates different challenges. People, sometimes are advised to adopt this route and walk out, in the hope they may even be able to buy back the same apartment in the project later, at a lower price.

In fact, there are multiple challenges today. For instance, if 50% of the buyers have committed to a higher price and the cost of the remaining 50% is likely to drop due to the market situation, then those, who are already in, may wonder why should they pay more. They may want to encash and go and buy a cheaper flat somewhere else, or maybe in the same project. If half the number of unsold apartments in the project are mortgaged to a financial institution, it has other challenges since the financier will wonder what happens if prices fall even more. Here too, the challenge for the developer is to find ways to complete the project and raise funds to ensure it. Today, there is a serious problem of liquidity and, with 48%-50% of unsold units, the situation is just not sustainable. Unless these stocks are sold out, money will not come in and the situation won't improve. It is a huge challenge we are facing.

**ML: Sir, many states have been given the power to dilute the RERA Act. Do you feel this is wrong? Do you feel this is happening in various states?**

**GC:** The Act has not been diluted. The states have the power to enact subordinate legislation; but the rules and regulations under that legislation have to be in line with the parent Act, they cannot go beyond it. If it has happened and some states have gone beyond the parent Act, then that needs to be challenged in court or by going to the state. In some states where an ongoing project has been defined, there was some apprehension about whether to include it or not. There has to be clarity on this and if you explain this to every developer, why will they not want to be a part of the legislation. It is not in anyone's interest to keep projects out of the ambit of RERA.

**ML: Could you give us some examples of how MahaRERA has helped in completion of projects?**

**GC:** We have had a case where a person has come to us and said my project is complete, I have applied for the occupation certificate (OC), but I am not getting it. My colleague, member of MahaRERA, issued a notice to the concerned officer, who was supposed to issue the OC; on the day of the hearing, the person came and handed over the OC.

The Act has restricted our powers to issue directions only to builders, real estate agents and home-buyers. We have told the ministry that we should also be given the power to issue directions to all stakeholders by extending Section 37 to cover all stakeholders. The Act has given us powers under

the civil code to summon anybody and that is what we use. Like the case above, we issued a summons asking the official to come and explain why the OC was not issued and he acted. In another case that I handled, the officer was sitting on clearances in the Vasai-Virar area and was not taking a decision. We asked him to come and explain. He came and explained the issue. It turned out that a larger player who was the developer of the larger layout was involved. We called him also. I am happy to say that in the past three months, the OCs have started being issued.

But these are relatively simple. A major problem that is coming up is how to resolve projects that have become stalled, stressed and sick. In this case, provisions of many other Acts are conflicting with RERA and making a solution difficult. In the DS Kulkarni case, we were dealing with the issue when the state government, under the Maharashtra Protection of Interest of Depositors (MPID) Act, attached all the properties of DS Kulkarni (DSK).

Now RERA is a brilliant Act and, under Sections 7 and 8, there are provisions where we could bring various stakeholders, including banks/financiers together to find a solution. We were in the process of doing that. We looked at the DSK project and it was 80% complete, we found out the cost of completing the remaining 20%. Suppose it is Rs15 crore-Rs20 crore and, out of this, existing buyers are expected to bring in another Rs7 crore (their remaining payment). Now suppose the unsold flats are mortgaged to say, ICICI Bank. We talked to the Bank and told them, you put in Rs13 crore and let us work towards completion of the project. An unfinished flat is of zero value. A finished flat has value for all stakeholders.

Even if there was a gap, say of Rs1 crore, people agreed to pay, because eventually the project was getting completed and the extra cost incurred will remain as a charge on the original developer. So our effort is to get the project completed, by bringing in liquidity.

**ML: So, what is happening with issues like the conflict with MPID?**

**GC:** I have written to the chief minister. I have said, DSK has more than 250 properties, of which 20 are registered with MahaRERA. Take the 20 out of the purview of Economic Offences Wing (EOW), and allow us to deal with them, because MahaRERA is the regulator. So this is about MPID, then you have the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) and Insolvency and Bankruptcy Code (IBC) Acts, which also conflict with RERA.

I personally feel that when you have created an Act, specifically for the realty sector, you should allow it to deal with it. There is the stand that SEBI has taken. In a matter, which has gone to the IBC, SEBI has gone to the Supreme Court saying that I am the specific authority for financial matters and if it is a financial issue, I alone must deal with it.

**ML: So, are you doing this as well?**

**GC:** I have apprised the state government. MahaRERA is not a national body like SEBI; we are only a state regulator.

**ML: In a conflict between SARFAESI and NCLT, how would you personally like to handle it? Would you like to decide it first?**

**GC:** I had once suggested to the member of NCLT, Mumbai that if anyone approaches NCLT, and if you admit it, Section 14 moratorium applies. Before you admit the matter, please find out if it is related to a RERA-registered project. If yes, I think you should refer it to RERA and take his view on it. Is he dealing with complaints in that project; has he already made strides in completing the project; therefore, give him some reasonable time to deal with it. If he is able to find a solution and come back to you with a specific proposal, then allow it to be resolved by MahaRERA.

Our resolution is not liquidation, but how to activate things so that the same home-buyers get their home. The IBC regulation treats a home-buyer as a creditor, so he might have to take a sharp haircut. As a home-buyer, if I have paid Rs60 lakh, but as a creditor I get only 40% like a financial institution then imagine the plight. Also, once the project is liquidated or acquired, I will again have to deal with a new developer, who may charge me Rs2 crore for the same flat for which I have already paid Rs60 lakh. That is not a correct solution. I believe it should be done in this matter, but can be handled in the manner I have suggested.

But the SARFAESI Act has other issues and banks were (until the recent change in the RBI circular) compelled to initiate action. I strongly feel that having created a real estate regulator, let him treat that registered project as his child, and ask him to sort out the problems that the child has.

**ML: So at least in Maharashtra you are taking it up and are probably watching what is happening in the Supreme Court (with Aamrapali, Jaypee, Unitech, etc). They have been treated as operational creditors, but a solution is still elusive. How would you help those buyers, if it was left to you?**

**GC:** Ultimately, the point there is that many of the large developers have collected money from home-buyers and financiers and diverted it. So there is a big mismatch between the amount required to complete the project, and the amount coming in from stakeholders. Someone will have to chip in to fill that gap. If there is a huge misappropriation, or diversion of funds, the gap is huge. Fortunately, since we had the MOFA in Maharashtra, it is only in very rare cases that you will have such a large gap.

Even in case of DS Kulkarni, if I go into the 20-odd projects registered with me, there is no such great mismatch. The amount of money the home-buyers have paid is commensurate with the work done on site. Those who have gone to MPID are investors, who invested in fixed deposits of the company and have not got their money. When it comes to home-buyers, the construction is commensurate with the money they have paid and in most cases we think the projects can be completed with the money that buyers are to put in and by selling the remaining flats.

**ML: Would you tell us what role RERA will play in affordable housing, which was a very important mention in the Budget this time.**

**GC:** RERA is playing the role of regulator in the sector, by telling anyone who is taking a project that you have to make commitments upfront and abide by them. Failure to comply has serious

consequences. They must design and offer products for which there are takers. Most new projects today are one/two bedroom-hall-kitchen (BHK) projects. In fact, of the 7,500 to 8,000 new projects that are registered under RERA, 70% of them are 1BHK apartments.

There is a dovetailing of the types of homes being built and that can be linked with the Pradhan Mantri Awas Yojana (PMAY), and some interest subvention might be provided. But, the fact remains that there is no clear cut matching of the number of persons in a particular location who are eligible for the PMAY scheme, to ensure that only that many apartments get constructed in the projects, which are commensurate to the demand in the said location. I feel there are too many new launches and there is mismatch even in the affordable sector.

The question is: At what stage should a developer know that his launch of a new project is moving in the right direction? I believe it is best when the promoter gets 30% booking within three months of the launch, 50% as soon as the plinth is completed and by the time the superstructure is in place, bookings have reached a healthy 75%. That is the best scenario and you will be able to complete the project with the money you have raised from your home-buyers, without requiring any bridge finance.

If that doesn't happen, you need bridge finance, especially when buyers feel they would rather wait until the project is completed or has progressed substantially. But it is not always so; when RERA is part of the project, it will get built in time because there is regulatory oversight. Unfortunately, unsold inventory in the state still remains very high and needs to come down. The cost of institutional finance is also too much. If you take institutional money and complete the project, it does not help.

**ML: With the whole NBFC panic, and liquidity crisis, how do you see that being resolved?**

**GC:** I sincerely feel and would like that it should be resolved soon. Sixty per cent of the money in home loan and construction loans was coming from NBFCs and the banks were happily giving money to the NBFCs. The NBFCs are today not getting the money, so sanctioned home loans are not getting disbursed. It is a major problem. So if the NBFCs are not in a position to disburse, RBI may need to ask the banks to disburse home/construction loans directly. Money has to be given to under construction projects, because if you have a situation where the home-buyer is delaying his buying decision, the problem of huge amount of unsold inventory in under construction projects will never get resolved. If you don't have the bridge finance coming, how do projects get completed?

**ML: Before we go to the next section, do you have the infrastructure to deal with all the cases that are coming up before MahaRERA? Or do you feel you need bigger infrastructure?**

**GC:** The most problematic cases that are coming up now are under Sections 7 & 8. Here, the process under Section 7/8 gets initiated when the association of allottees feel that the developer does not seem to be the right person to take the project towards completion. We have issued detailed orders/instructions on this which are available on our MahaRERA website. We have also tried to use the conciliation forum as our extended arm.

Out of the 15 conciliation benches we have, we have shortlisted four or five, who would deal with Section 7/8 matters and help the association of allottees to arrive at a blueprint on how the project can get completed. We are now at the threshold of this process. Over the coming six months to one year, we would also learn how it is progressing. But, in the middle of this, if someone goes to MPID, SARFAESI or IBC, the project completion under the provisions of RERA will get stalled and may not take us to the logical conclusion.

**ML: When it comes to conciliation, we have seen some instances where terms agreed to under conciliation are not complied with. What happens then?**

**GC:** If the terms are not complied with, the aggrieved party files online complaint with MahaRERA. When the matter comes before us, we call both parties and find out what went wrong and then pass a reasoned order, taking due cognisance of the non-compliance.

But, though we ensure protection of the interest of the consumers, we are not a consumer court when dealing with individual complaints. The problem is that the representative who appears on behalf of the home-buyer complainant believes that the redressal of the grievance means that this MahaRERA forum must award getting money in the form of interest/compensation to be given out of the project fund – either he should be allowed to walk out of the project with interest and compensation or if wishes to continue in the unfinished project and there is a delay, give interest for delay.

If you look upon MahaRERA as an ATM machine, then I'm afraid, you are not understanding the Act. We created this Act and brought unfinished projects under its ambit in order to ensure project completion, so that home-buyers get their completed apartments. The Act itself allowed extension of the completion timelines for ongoing projects and creation of a ring-fenced fund (RERA account) and monitoring of the fund to ensure project completion; that is what is the essence of this Act.

Suppose you have a housing project and two people are not satisfied with it and wants to walk out, where will the money come from in stressed times? It can only come from the ring-fenced fund, which is meant to complete the project. So should the money go to the two dissatisfied persons who want to walk out or the 200 people who have invested their life savings and are waiting for the project to be completed? This is a point I continuously keep on debating and explaining to aggrieved home-buyers; most of the times they do understand.

**ML: So what happens in these cases?**

**GC:** Well, over 200 of MahaRERA orders have remained unexecuted! And the media is after me saying, "Oh! Toothless MahaRERA!" But these 200 are out of the 5,000 orders that MahaRERA has passed. If I have to put the interests of these 200 who want to walk out of a project, against the interest of the 4,000 who want projects to be completed, I will say let the latter, i.e., the association of allottees decide the correct course of action.

In a case referred to the Collector for non-execution of MahaRERA orders, the Collector wanted to implement MahaRERA order for non-execution through the Maharashtra Land Revenue Code – do

you know what happened? It became like a Jet Airways crisis situation. The tehsildar put a lock on the project. 200 workers who were working on the project were now out of work, another 200 home-buyers who were hoping to get homes after the project was completed do not know what will be their fate and who will now complete the project.

Only a handful of vocal people who wanted to walk out of the project, got orders of MahaRERA awarding them their refund with compensation and interest, and when did not get their orders executed they went to the media and called us toothless. I am afraid, only their voices are being heard by the media, not the voices of the other 200 who are in greater distress and want their homes completed.

I will tell you what happened thereafter. The 200 affected home-buyers came to us and asked why the project was stopped. We asked them to prevail upon this smaller group of home-buyers and make them agree to remain associated with the project and enable restart of the project construction work. It is in the interest of all the buyers that the project gets completed. If you don't want to continue with the apartment, first get your home completed and then sell it off. At this juncture, if the project goes into insolvency and is auctioned off, there is no value that incomplete homes will fetch. It will only be a haircut for all the home-buyers. This clarity has to be brought in.

**ML: Completion is the primary aim of the Act?**

**GC:** Absolutely. I am very clear there that any case that I take up, I must check whether the decision MahaRERA takes would adversely affect the project. There I am sometimes criticised that I am pro-builder, but I am very clear and I know that I am actually pro-project-completion. I am doing it in the interest of all the buyers in the project. Anyone who comes here with a complaint feels that I am a consumer, and I must get an order in my favour. When that doesn't happen, they have every reason to complain and often they vent their ire in the media or social media. But this is the reality of this realty sector that I am dealing with and the pain that I have to go through, practically daily.

**ML: Suppose there are cases where there is a structural flaw in the building that a developer is hiding, or there is a problem with construction quality, then wouldn't they be justified in wanting to walk out and safeguard their interest? Completion may not be relevant to them.**

**GC:** Without casting any aspersion on the person who wants to walk out, I would say, if he has booked a flat when its cost was Rs10 crore and wants to walk out today when it has come down to say Rs7 crore, I would first assume that he/she is looking for some reason or excuse to walk out.

Having said that, if the reasons cited are genuine, we will go to the root of the problem and resolve it; the Act provides for it, the developer cannot get away. It provides for an architect/ structural engineer to actually say that everything is in accordance with the approvals and after completion, for a competent planning authority to issue an OC saying everything is as per plan. Additionally, there is a five-year defect liability period covering structural defects, workmanship defects and defect in services, from the date of taking possession. Compensation can be sought for violations in the defect liability period. If, in spite of all this, you ignore all of it, I may have doubts about your real reason



for walking out of the project.

**ML: We noticed that no state RERA has a requirement for a quality of construction certificate. Why would this be? Websites, such as Magicbricks, however, have created a rating system on the basis of material used. Can MahaRERA do this?**

**GC:** MahaRERA has. You may not be up-to-date. All projects registered after 1 December 2018, onwards, are supposed to file form 2A, every quarter. An engineer has to certify whether various input materials conform to the industry standards or not. This is specific to MahaRERA only and it has been made applicable prospectively.

I cannot have a star rating system like that. Who will decide what is 4-star or 5-star? In the Act, there is an enabling provision of grading of projects. But that will happen only later, in due course. Today, all I can do is ensure that projects registered with MahaRERA use quality material and someone should be held accountable for that. That's what we have done. A skilling initiative to train all workmen associated with MahaRERA registered projects has also been initiated, which will add to the quality of work.

So all the projects registered from 1 December 2018, are quarterly filing Form 2A for quality. This would ensure that in future when some complaint regarding defect in quality comes up, we can hold the site engineer/structural engineer accountable. After all, accountability is one of the pillars of RERA.

**ML: Does MahaRERA intend to verify the quality of projects constructed?**

**GC:** Again, it is an issue of perspective and understanding what RERA is about. The whole idea of RERA is not to do micromanagement. If you want RERA to be implemented like that, I'm afraid that you will only create another mammoth body which will then be prone to rent-seeking behaviour. Please be very clear what you want. This whole sector is known for rent-seeking behaviour. So if you create this body consisting of a large number of personnel, who will go into verification and certification and micro-management, that is precisely what may happen.

**ML: Do you have a lot of complaints about agreements that are not in consonance with the model agreement prescribed by RERA? For instance, additional clauses being introduced by builders that are against the consumers' interest?**

**GC:** Not many. There have been a few such cases, and we have passed orders in this regard too and we have asked for such clauses to be deleted or disregarded. We have also found several instances where agents have filed wrong information inadvertently, or sometimes deliberately. When this comes to our notice, we correct it, and/or punish them. We have passed orders when people have not disclosed litigation or put incorrect information.

MahaRERA usually does not take *suo moto* action. Though in some serious cases, we have taken up matters *suo moto*, because the Act provides for it. If we use the *suo moto* option as the default option, that will require us to change from a 40-person organisation to a 400-person organisation. But,

MahaRERA wanted minimum government, maximum governance. The whole idea was to put all information in the public domain, remove information asymmetry, so that anyone who is aggrieved can file an online complaint and MahaRERA shall then take action.

**ML: Do you believe that the increased number of members would also help?**

**GC:** It may not. The present composition of a chairman, two members and three adjudicating officers are effectively dealing with the complaints filed with MahaRERA.

**ML: What would be your method of conveying this to people? I've seen a lot of advocates appearing before you who probably need to understand that the larger public interest must be first.**

**GC:** They are understanding this the hard way. Earlier, when I told advocates, don't look the resolution of the complaint through the prism of your client only, but from the perspective of the project completion, they said, "My client doesn't want to listen." In one case I had to say, I want to talk to the client directly and explain the project perspective. This is not a court; it is a quasi-judicial body, so I can do this. In a few cases, I could convince the complainants by explaining to them.

MahaRERA, today has over 200 unexecuted orders, where the persons who wanted to walk out are left in the lurch – they are not accepted in the association of allottees who are attempting completion of the project under provisions of Section 7/8 of the Act, and the money owed to them by the developer only sits as a charge on the developer, who probably is not in a position to pay them immediately. So they are left in the lurch. I tell people to not use the RERA Act to walk out of the project. RERA Act is there to give you a home. A completed home.

If the developer is not completing the project, we have powers under Section 7, 8, 7(3), where we can bring in the association of allottees into the decision-making process and find a way to complete unfinished projects. MahaRERA will stand with the buyers, help them put in place a blueprint to ensure that the project is completed. Now, we are attempting that. I hope that in the next one year it happens. Certainly, it will.

**ML: Stamp duty is still on built-up area, while RERA requires everything on carpet area.**

**GC:** I am the wrong person to ask this. As far as RERA is concerned, everything is on carpet area. It is up to the state government to do this and convert the calculation of duty on carpet area. It is as simple as that. Today, there is no question of built-up and super built-up, everything is on carpet area – so duty should also be on the same basis. It is as simple as that.

**ML: What are the issues that still need to be addressed in the realty industry?**

**GC:** The state government has to address the cleanliness of the land records. There is a land titles Bill in the offing; it needs to happen. You see, no insurance can tackle that problem if there are risks involved in the land title itself. The government, which is a land record holder, cannot say that they keep a record of presumptive title. It must say, it is a definitive title and certify this on the digital land record, along with charges on it.

**ML: Apart from land titles, is there anything else that you think the government needs to do to make the sector clean?**

**GC:** Other thing is that as cities grow old, we have issues of redevelopment. New homes are not the only homes coming up. New homes also come up through brownfield projects. So we have a large number of slum redevelopment, cessed building redevelopment, society redevelopment, MHADA's 105 old colonies that are being redeveloped. Now, whenever redevelopment has taken place, Maharashtra has said that it would take place with a certain amount of cross-subsidy of extra FSI.

The Act requires the sale portion of the project being the only part to be mandatorily registered. I believe that there are many redevelopment projects in the city that are languishing; people have given up their properties and have been moved out, but have stopped getting rent from the developer after the building has been demolished. This is a problem and I have told the government, that the rehabilitation portion of the project should also be part of RERA. I have talked to the government about this.

**ML: Tell us how.**

**GC:** The Maharashtra government has defined, in its rules, what should be a phase in which you should register a project. It has also defined what is a redevelopment project. The Act and the rules allow phase-wise development—a phase can be a few floors or a separate wing. These phases can also get a part OC, even as the remaining construction goes on. So, the Act and rules allows breaking a project into phases. However, we have suggested that in redevelopment projects, as defined in the rules, a phase should include both rehab and free sale. This itself will make a big difference.

## 18.2 Annexure 2

### Activists' Long Struggle To Bring About RERA

**Note from Abhay Upadhyay (President FPCE and Member Central Advisory Council, RERA) and MS Shankar (General Secretary, FPCE)**

**A. Evolution of FPCE – Founding of ‘Fight For RERA’, a pan-India home-buyers’ movement for enactment of RERA**

**A.1. Real Estate (Regulation and Development) Bill, 2013**

1. Home-buyers across India were waiting endlessly for the Real Estate (Regulation and Development) Bill, 2013 to be enacted since unscrupulous builders were constantly subjecting home-buyers to enormous mental trauma, financial burden and there was no sectoral regulatory law to address all issues for the protection of home-buyers, in spite of decades since Independence.

2. Though the Real Estate Bill, 2013, was introduced in the Rajya Sabha in 2013, during UPA-II, it was a diluted version, despite many years of deliberations. The Bill neither covered ‘ongoing projects’ nor covered ‘commercial real estate’. Various other pro-consumer / buyer provisions, which found mention in the final Act of 2016, were missing in the 2013 Bill.

**A.2. Select Committee of Rajya Sabha**

3. On the formation of the new government – NDA-1 in 2014, draft amendments were prepared basis the standing committee’s report and feedback from stakeholders taken by the new Government. However, the Bill was not seeing the light of day and got referred to a select committee of parliament (Rajya Sabha) for further review. This select committee met all stakeholders across India, including home-buyers, by travelling to various regions of the country -- east (Kolkata), south (Bengaluru), west (Mumbai), and north (Delhi and Himachal Pradesh).

4. Home-buyers gave valuable inputs in the stakeholder meetings at all these locations and many suggestions protecting home-buyers interest found mention in the final Bill – Real Estate (Regulation and Development) Bill, 2015, which was annexed to the Report of the Select Committee. The report of the Select Committee, along with the Real Estate Bill, 2015, was laid on the table of Rajya Sabha on 30 July 2015. This exercise by the parliament had raised a lot of expectations amongst home-buyers across the country, giving comfort to millions that, sooner rather than later, their life savings would be forever protected and their dream homes given timely possession.

5. Sadly, the Union Cabinet sat over the Select Committee’s Report for months on end without taking a decision. This was making the home-buyers across the country agitated, nervous and jittery. This dilly-dallying was difficult to understand, especially since the commendable Report and the Real Estate Bill, 2015, prepared by the Select Committee, was headed by Anil Madhav Dave, a BJP member

of parliament.

6. In view of this prolonged delay for no logical reason, it was felt that without the requisite public awareness and public pressure, at a pan-India level, perhaps the Bill will never see the light of the day. Subsequently, on the initiative of Abhay Upadhyay and his team, who were leading a fight against a real estate developer of a delayed project at Kolkata, a strategy was formulated to visit major cities of India to connect with home-buyers, activists, RWAs and NGOs for collective action, with the singular objective to compel the Central government to enact the Real Estate Bill, 2015 in the ensuing winter session of parliament, on top priority basis.

7. The core team, comprising Abhay Upadhyay (president, Kolkata West International City Buyer's Welfare Association - KWICBWA), Om Prakash Bangur (vice-president, KWIBWA) and others from Kolkata, travelled across the country, namely, to Mumbai, New Delhi & NCR, Kolkata, Chennai, Hyderabad, Bengaluru, Ahmedabad, Pune to engage and integrate with home-buyers, activist, RWAs and NGOs from the north, south, east and west regions.

### **A.3. Formation of 'Fight for RERA' / Journey to the Enactment of RERA**

8. Having established contact with home-buyers of Delhi / NCR, the first meeting was organised at New Delhi on 13 September 2015. This meeting was very encouraging wherein 16 RWAs and home-buyers associations from NCR region, Kolkata, Mumbai, Bengaluru (over phone) participated. A clarion call for a people's movement was made, and it was decided to name this movement as 'Fight for RERA' (FFR) with Abhay Upadhyay as the national convenor.

9. FFR was racing against time; thus, it got into a mission mode and made its forceful impact during the winter session of parliament in 2015 itself. Members representing Delhi-NCR, Hyderabad, Bengaluru, Mumbai and Kolkata region, met political leaders cutting across party lines at New Delhi, including Union ministers and leaders of Opposition in both houses of parliament to convince them to get RERA passed. The then housing minister, Hon'ble Venkaiah Naidu conveyed to us in a meeting with him that his government was fully in favour of RERA but expressed his helplessness that Opposition parties were not letting any Bills pass in Rajya Sabha where RERA was pending since 2013.

10. The collective effort of FFR was the single-most reason because of which the Union Cabinet finally approved the Real Estate Bill, 2015 (as reported by the Select Committee of Rajya Sabha), on 9 December 2015, after more than four months since the report of the Select Committee was tabled in the House on 30 July 2015.

11. The team had a very cordial meeting with Digvijay Singh (general secretary, Indian National Congress) who, in support of the Bill, unequivocally requested the prime minister, vide a letter and media interview, to immediately enact the Real Estate Bill, on a priority basis in the then ongoing winter (2015) session of parliament. He also requested the prime minister to accord a personal hearing to the members of FFR.

12. We were relieved when the Bill was finally listed for passing in the Rajya Sabha. However, in spite of all our efforts and the Bill being listed back-to-back on 22<sup>nd</sup> and 23<sup>rd</sup> of December in the list of business for Rajya Sabha, it could not be passed in that session. Resultantly, it was felt that there was a need to re-work on our strategies, for the next session of parliament, i.e., the Budget session in 2016.

13. We contacted the office of Rahul Gandhi, pursuant to which we got an appointment with Ajay Maken on 8 February 2016. He expressed his Party's complete support for the Bill, with the promise that during the Budget 2016 session, he would also take us to Rahul Gandhi. It is pertinent to mention here that FFR team was repetitively trying to meet Rahul Gandhi since the winter session but, somehow, the meeting could not take place.

14. In the meantime, Mallikarjun Kharge (leader of Opposition, Lok Sabha) made a statement in the parliament that the Congress will not let any contentious Bills be passed in the current session. This was contrary to what Ajay Maken told us when we met him on 8 February 2016.

15. In view of this adverse statement by Mallikarjun Kharge, 'Fight for RERA' called for a protest on 5 March 2016 against the Congress Party, against its stand, and to demand from the Congress Party to reconsider their decision in the interest of harrowed home-buyers across the country.

16. On 3 March 2016, our national convenor, Abhay Upadhyay received a call from the office of Rahul Gandhi and he was invited to meet Rahul Gandhi along with his team on the same day. It was during this meeting that Mr Gandhi conveyed to 'Fight for RERA' team that he is in support of the Bill and is ready to take a public stand to that effect. Towards this, he posted three tweets, from his handle, supporting the Real Estate Bill and urging the government to bring this Bill to the parliament at the earliest for enactment.

17. On 4 March 2016, FFR team met with Ajay Maken at his North Avenue office. The team brought to his notice that, pursuant to the tweets of Mr Gandhi, it would be useful to write a letter to the prime minister and the housing minister, expressing his Party's unequivocal support for the Bill. Heeding our request Mr Maken, on 5 March 2016, wrote the letters, which were widely covered in the media. The planned protest was called off after his letters.

18. This expression of support and the commitment of the Congress Party was one of the major achievements for 'Fight for RERA' movement, which helped remove all obstacles for a smooth passage of the Real Estate Bill in Rajya Sabha. Subsequently, after consistent prodding, the government finally listed the Real Estate Bill for passing in the Rajya Sabha on 10 March 2016, and in the Lok Sabha on 15 March 2016, which was unanimously passed.

19. It is important to know that during his reply on the Bill in Lok Sabha, Hon'ble housing minister, Venkaiah Naidu, acknowledged the contribution of the pan-India movement of home-buyers and also mentioned the letter of support received from Mr Maken, which was written at the behest of 'Fight for RERA'.

20. The successful passage of this Bill by parliament reinforces the strength of the people and the vibrancy of our democratic system, wherein the desire of the public cannot be ignored. The entire episode has established beyond doubt that, when the citizens of this great country unite together, they have the power to achieve the unachievable and extract their due rights under the most adverse circumstances.

#### **A.4. 'General' Rules and 'Agreement for Sale' Rules for UT's without Legislature**

21. After the passage of RERA, the ministry of housing and urban poverty alleviation notified draft Real Estate Rules for Union Territories without legislatures on 24 June 2016. The draft Rules were not up to expectations and the 'Fight for RERA' team, once again, got active keeping in mind that the final rules would become a template for other states to follow.

22. Considering this, a detailed suggestion on draft (General) Rules was submitted to ministry and, once again, 'Fight for RERA' team from all over India met Hon'ble minister Venkaiah Naidu and minister of state Rao Inderjit Singh under the leadership of a member of parliament Rajeev Chandrasekhar, to convince them to incorporate changes in the draft rules as suggested by 'Fight for RERA'. We were also actively involved with the ministry in drafting of the Model Agreement for Sale Rules (AFS).

23. In this regard, FFR team also met Rajeev Ranjan Mishra (additional secretary, ministry of housing) and Nagendra Goel (legal advisor, ministry of housing) who appreciated our suggestions and were highly supportive. It was only because of the then dispensation at the ministry of housing including Smt Nandita Chatterjee (secretary, ministry of housing) that our suggestions were seriously considered and the final Real Estate Rules (General) and the Agreement for Sale Rules were notified by the ministry on 30 October 2017, which incorporated almost all our suggested changes in the draft rules.

24. This thrilled the entire team and it was expected that all states would copy and notify their Real Estate Rules on the same lines; but, sadly either most states did not frame the rules on time, and many, who did frame the rules, diluted it in favour of builders.

#### **A.5. Formation of Forum for People's Collective Efforts (FPCE)**

25. Subsequently, the lead representatives of 'Fight for RERA' movement, representing the 'north-south-east-west' region of the country, registered a not-for-profit entity by the name 'Forum for People's Collective Efforts' (FPCE). Such a need arose, when developers challenged the constitutional validity of RERA in various High Courts across the country. The matter reached the Supreme Court which directed the High Court of Bombay to hear the cases filed before it and complete the hearing within a stipulated time frame. FPCE impleaded in the matter for which the hearing went on for nine continuous days. Since then, FPCE is continuing to espouse the cause of home-buyers in particular and middle-class citizens, in general, by raising several issues concerning them.

## 18.3 Annexure 3

### RERA – Issues, Concerns & Suggestions

#### Edited Suggestions of Abhay Upadhyay, President FPCE and Member Central Advisory Council, RERA, and MS Shankar, General Secretary, FPCE

##### 1. Project Information / Updates, etc:

1.1. One of the greatest mischief resorted to by the builders in the real estate sector has been the absence of project information. We are all aware of a buyer being devoid of project updates, same unit being sold multiple times, absence of approvals, project plans being blatantly violated, etc. This was all aimed to be addressed through a standardised format for updates through the website of the state RERA Authority for each project thereby infusing transparency in the sector. This does not seem to be happening uniformly. Updates are also not being adhered to as per law.

**Suggestion:** It is desired that a comprehensive web portal is created by the Centre linking all state RERA Authority web-portals which should provide all details relating to projects on one platform. There should be a single web-link to get details about all states' RERA sites.

##### 2. Regulatory Excesses – Denial of Refund

Unwritten rules have been made by some regulatory authorities that if a project is 50% (or more) complete, then no refund will be granted to a home-buyer. This is highly arbitrary and a biased decision and not in conformity with the letter and spirit of the Act. It is also against the interests of home-buyers. Whatever may be the reason or logic, complaints for refund should be governed as per the provisions of RERA and not on the basis of whims and fancies of RERA Authorities.

**Appellate Relief:** The Maharashtra Real Estate Appellate Tribunal, in two recent statutory appeals (*Ratul Lahiri vs Tata Housing Development Co Ltd and Rekha Navani vs Omkar Ventures Pvt Ltd*), set aside the order denying refund by MahaRERA and ordered refunds to the home-buyers. We hope that these orders from the Tribunal will compel the regulatory authorities to rethink their stand on denying refunds.

##### 3. Absence of Composite Hearing by Authority and Adjudicating Officer

It has also come to our notice that complainants are asked to file separate applications for claiming interest and / or compensation, after the Authority has passed an order for refund / possession, with the adjudicating officer. This is adding to unnecessary regulatory burden on the home-buyers.

**Suggestion:** The whole process needs to be integrated and streamlined in such a way that the complainant can get a composite decision from the Authority and the adjudicating officer on one single complaint.



#### 4. Indiscriminate Extension

It has come to our notice that provisions of Section 6 for getting extension are being misused. The provision is very clear that extension may be granted only for *force majeure* circumstances and for any other reasonable circumstances without default on the part of the builder. However, we have noticed that extension is being granted under the Section as a matter of right rather than as an exception, which was not the objective of the Act. This has increased the sufferings of home-buyers as they are paying rent and EMI, and facing family hardship. Sadly, home-buyers are not being made part of such decision-making, though they are the ultimate sufferers.

**Suggestion:** Extension under any circumstances other than *force majeure* should be given only in consultations with home-buyers and with compensation payable monthly to all allottees of the project as per Section 18. This will act as a big deterrent for builders to not seek extension and compel them to complete projects on time which will be a big factor contributing towards restoration of faith in the sector.

#### 5. Project Advertisement

Advertisement in newspapers for real estate projects still carry a note which says that 'facilities, amenities, sanctioned plan and layout depicted here are subject to change'. This is in gross violation of RERA provisions, i.e., of Section 12 and 14. Also, facilities and amenities (F&A) mentioned in the advertisement are not showing on the web portal of RERA Authorities.

**Suggestion:** Authorities should initiate *suo moto* action against such projects and ensure that such practice be stopped forthwith. It needs to be ensured that all such F&A are properly disclosed and displayed on the RERA Authority web portal by the builder; advertisements are in consonance with information provided by the builder on web portal and no change should be allowed, going forward.

#### 6. Specific Provisions with Regard to Redevelopment

Redevelopment is a unique business model being followed in large scale in the real estate sector especially in the western part of the country. The Act mentions 'redevelopment' only in the definition of 'development' under Section 2(s), saying development included redevelopment, and nowhere else. Since redevelopment is a different business model, it needs specific focus and provisions in the Act. The aspect of rehabilitation for existing occupiers needs to be especially addressed and registration of such projects should be mandatory, even though no new sales may take place.

**Suggestion:** We suggest that specific provisions be inserted in the Act after in-depth consultations with home-buyers who have been left in the lurch.

## 19. List of Abbreviations

ADR - Alternate Dispute Resolution  
 ASSOCHAM - The Associated Chambers of Commerce of India  
 BAI- Builder's Association of India  
 BI - Business Intelligence  
 CA - Chartered Accountant  
 CAC- Central Advisory Council of RERA  
 CC- Completion Certificate  
 CIRP - Corporate Insolvency Resolution Process  
 COSL - Committee on Subordinate Legislation  
 CPA- Consumer Protection Act  
 CREDAI- Confederation of Real Estate Developers' Association of India  
 CRZ - Coastal Regulation Zone  
 DC- Deputy Commissioner  
 DTCP - Department of Town and Country Planning  
 EMI - Equated Monthly Instalments  
 FDI- Foreign Direct Investment  
 FFR - Fight for RERA  
 FPCE - Forum for People's Collective Efforts  
 FSI - Floor Space Index  
 GDP- Gross Domestic Product  
 GNOIDA- Greater NOIDA  
 GST - Goods and Services Tax  
 HC- High Court  
 HDFC- Housing Development Finance Corporation  
 IA- Interim Administrator  
 IBC - Insolvency and Bankruptcy Code, 2016  
 ICAI - Institute of Chartered Accountants of India  
 ICT - Information & Communication Technology  
 MahaSeWA - Maharashtra Societies Welfare Association  
 MCGM - Municipal Corporation of Greater Mumbai  
 MCHI - Maharashtra Chamber of Housing Industry  
 MCPC - Mediation and Conciliation Project Committee  
 MGP - Mumbai Grahak Panchayat  
 MHADA - Maharashtra Housing and Area Development Authority  
 MMR - Mumbai Metropolitan Region  
 MOFA - Maharashtra Ownership Flats Act, 1963  
 MoHUA - Ministry of Housing and Urban Affairs  
 MoU - Memorandum of Understanding

MPID - Maharashtra Protection of Interest of Depositors Act  
NAR - National Association of Realtors  
NAREDCO - National Real Estate Development Council  
NCDRC - National Consumer Disputes Redressal Commission  
NCLAT - National Company Law Appellate Tribunal  
NCLT -National Company Law Tribunal  
NCR - National Capital Region  
NOIDA -New Okhla Industrial Development Authority  
NPAs - Non Performing Assets  
NRIs- Nonresident Indians  
OC- Occupation Certificate  
PMR - Pune Metropolitan Region  
PwC- PricewaterhouseCoopers  
RC - Recovery Certificate  
REAT - Real Estate Appellate Tribunal  
RERA- Real Estate Regulation and Development Act, 2016  
RERA- Real Estate Regulatory Authority  
RTGS - Real-Time Gross Settlement  
RTI - Right to Information  
RWA Resident Welfare Association  
SBI - State Bank of India  
SEBI- Securities Exchange Board of India  
SLBC - State-Level Banker's Committee  
SROs - Self-Regulatory Organisations  
TCPD - Town and Country Planning Department  
TSIIC- Telangana State Industrial Infrastructure Corporation Ltd  
UDA- Urban Development Authority  
UTs -Union Territories  
WBHIRA - West Bengal Housing & Industry Regulation Act  
YEIDA - Yamuna Expressway Industrial Development Authority

## About Moneylife Foundation

Moneylife Foundation, launched on 6 February 2010, is a non-profit organisation registered with the Charity Commissioner of Mumbai. The Foundation is engaged in spreading financial literacy, consumer awareness and advocacy for safe and fair market practices. To this end, it organises workshops, round table meetings and awareness campaigns for grievance redressal. It undertakes research and publishes white papers. It also has regular counselling sessions on consumer protection and also files petitions on public interest cases. It is one of the fastest growing and foremost NGOs for consumers and investors. As a recognition of its efforts, it was awarded the 10<sup>th</sup> MR Pai Memorial Award in September 2014 for outstanding work.

The Foundation's mission is to make savers & investors financially aware, empower consumers to fight for their rights and citizens to think and act responsibly. It represents the voice to those of us who work hard, earn and save but do not have a say in the decisions that affect us. The Foundation's specific objectives are:

- To create interest in financial markets and enhance financial literacy.
- To protect investors and consumers of insurance, banking and other financial services through information, counselling and grievance redressal.
- To hold regular workshops and expert talks on financial issues.
- To provide a forum of networking among organisations involved in similar work and also support voluntary organisations working in this area.
- To collaborate with /assist/support organisations/ NGOs/ civil society groups that engage in public intervention to create a just, fair and a corruption-free society.
- To educate the public of their legal rights in areas of investor protection financial programmes.
- To help prevent corruption and malpractices at all levels of the financial markets.
- To undertake qualitative and quantitative research and analysis in areas of finance, economics, politics, public policies, environmental, business and all other allied fields.
- To provide a forum for committed volunteers and experts to involve themselves in a meaningful way for improvement in financial literacy and consumer protection.

- To create and promote enlightened public opinion on various issues affecting citizens, investors and consumers.
- To encourage, support and assist research and studies in financial, economic, social and related areas that affect individuals.
- To litigate and take any other lawful measures to safeguard the rights and interests of the investors and consumers.

**Moneylife Foundation's work encompasses the following areas:**

**1. Awareness Sessions:** Spreading financial literacy and awareness about the rights of consumers and citizens through workshops, lectures, articles and awareness campaigns. Sessions have been conducted on banking, Aadhaar, real estate, consumer awareness, right to information, food & health, senior citizens' issues, taxation and documentation, and many others.

**2. Daily Counselling Sessions:** As direct solutions to the problems that savers, consumers and citizens face, guidance is provided to them through one-on-one counselling.

**3. Helplines:** The Foundation runs two free helplines with the help of our voluntary advisers and experts. The Legal Helpline offers guidance on vast variety of legal issues and real estate matters especially those pertaining to cooperative housing societies; the Credit Helpline guides people in financial distress on dealing with loan defaults, credit scores and so on.

**4. RTI Centre:** A Right to Information Centre was launched in September 2017 to create awareness on the Right to Information Act. With the RTI Centre, the Foundation undertakes various activities with the aim to promote transparency through the RTI Act.

**5. Research Projects:** Looking to influence policy changes through in-depth research and recommendations, specific issues that affect a large number of people have been an area of focus for the Foundation. Research studies have been undertaken and their recommendations have been published for the benefit of a large section of people whose voice does not reach the policy-makers. The Foundation has published research reports on '*Retirement Homes in India*' and on '*Reverse Mortgage Loans in India*'.

**6. Representations:** The Foundation does advocacy for safe and fair market practices through workshops, round table meetings, research and presenting memorandums to regulators and policy-makers.

**7. Legal Action:** At times, the Foundation has also filed public interest litigations (PILs) on matters that have affected our members and has taken up the issues with the Supreme Court. Recent PILs have been on LIC's Jeevan Saral and egregious bank charges that consumers are paying.

The Foundation has set up Moneylife Knowledge Centre, a lecture hall and reading room with more than a thousand books on business, economics and finance. Although among the smallest, *Moneylife* is the only media company to have started such a non-profit initiative.