

REVIEW OF KERALA REAL ESTATE (REGULATION AND DEVELOPMENT) RULE 2018

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ABSTRACT

This paper surfaces through the Kerala Real Estate (Regulation and Development) Rule passed in 2018 by Kerala Government. Real Estate (Regulation & Development) Act was passed in 2016 by Government of India. As per the Act, States has to setup Real Estate Regulatory Authority. In this paper, we are reviewing the rule passed by the Kerala Government in accordance with the RE ACT passed by the Government of India and the functioning of Kerala Real Estate Regulatory Authority.

Keywords: Real Estate, Real Estate Regulatory Authority, Kerala

1. INTRODUCTION

Real estate sector is one of the most globally recognized sectors. It consists of four divisions - housing, retail, hospitality, and commercial. The advancement of this sector is well complemented by the expansion in the corporate environment and the demand for office space as well as urban and semi-urban accommodations. Among the 14 major sectors in terms of direct, indirect and induced effects in all sectors of the economy, the construction industry ranks third. The real estate sector is the second-highest employment generator in India, after the agriculture sector. It has grown in the last few years. It is also expected that this sector will incur more non-resident Indian (NRI) investment, both in the short term and the long term. Bengaluru is expected to be the most favoured property investment destination for NRIs, followed by Ahmedabad, Pune, Chennai, Goa, Delhi and Dehradun

From the perspective of consumer protection, the sector has largely been unregulated. Regarding the available consumer protection laws, recourse available therein are only curative, but not preventive. Absence of professionalism and standardization affected the overall potential growth of this sector. So, the Government of India has introduced a law to standardize the sector.

The Real Estate (Regulation & Development) Act, 2016

The Real Estate (Regulation & Development) Act, 2016, was cleared by Parliament in March 2016 and came into effect on 01.05.2017. The core objective of this transformative legislation is to ensure regulation and promotion of real estate sector in an efficient and transparent manner and to protect the interest of home buyers. Under the act, states had to notify the realty rules and set up Real Estate Regulatory Authority (RERA). The Kerala Real Estate (Regulation and Development) Rules 2018 is now force in our state. Real estate projects need to be registered with State Real Estate Regulatory Authority. Promoters cannot book or offer these projects for sale without registering them. Real Estate Agents dealing in these projects also need to register with Real Estate Regulatory Authorities. **70%** of the collected amount from buyers must be deposited in an escrow bank account for construction of that project only and the withdrawals have to be certified by Architects, CA and Project Engineers.

Benefits under the Real Estate (Regulation and Development) Act, 2016 to consumers

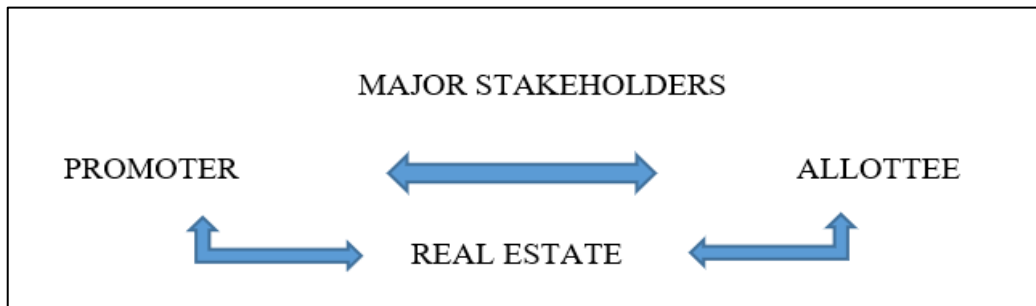
- RERA along with the Rules would ensure timely completion of projects. This is helping to achieve the vision of Hon’ble Prime Minister “HOUSING FOR ALL”. It prevents diversion of funds and protects the buyers’ interests.
- The Act helps to curb black money. It makes operations transparent – project information will be available – promoting informed choice for buyers. The Disclosure of ‘Carpet Area’ for sale curbs the unfair trade practices.
- “Agreement for Sale Rules” has ended the one-sided agreements and Buyer exploitation in the sector.
- Fast track dispute resolution mechanism through Real Estate Regulatory Authority and Appellate Tribunals across Country.
- Provision of equal rate of interest to be paid by the promoters and buyers, in case of default or delays thus bringing equity in operations.

Benefits under the Real Estate (Regulation and Development) Act, 2016 to consumers

- The Act eliminates fly-by-night operators from the sector promoting genuine developers. It infuses credibility by making the sector mature and transparent.
- Channelize investment into the sector.
- Act/Rules would restore investment sentiment of consumers.
- Regulatory mechanism will increase the confidence of the financial institutions in real estate sector.
- Proper regulatory mechanism of the Act will increase foreign investment (FDI, ECB) in the real estate sector.

Major Stakeholders of Real Estate

Figure 1: Major Stakeholders of Real Estate



Source: RERA Act and Rules

1. Promoter:

Promoter constructs/causes to be constructed building containing apartments or converts building/part into apartment for selling apartments to others.

- Promoter is the one who develops land into a project for selling to others.
- Any public body in respect of allottees
- Apex state level cooperative housing finance society, Primary housing cooperative society who constructs buildings/apartments for its members
- Who acts as a builder/colonizer/developer/claim to be acting as holder of the power of attorney from the owner?
- Who constructs building or apartment for sale to general public?

2. Allottee

- Person to whom a plot/ apartment/ building has been allotted, sold (freehold/leasehold) or otherwise transferred by a promoter.

- Person who subsequently acquires the allotment through sale, transfer or otherwise.
 - DOESNOT INCLUDE: A person to whom plot/apartment/building is given on rent
3. Real Estate Agent
- Person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building in a real estate project, by way of sale, with another person for transfer of plot, apartment or building, of any other person to him and
 - receives remuneration or fees or any other charges for his services whether as commission or otherwise and
 - includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen etc.

Other Stakeholders

1. Architect
 - registered as architect under the provisions of the Architects Act, 1972;
2. Engineer
 - Possessing bachelor's degree or equivalent from an institution recognized by the All-India Council of Technical Education or any University or any institution recognized under a law or is registered as an engineer under any law for the time being in force;
3. Advertisement
 - Any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.

Kerala Real Estate Regulatory Authority

RERA Kerala was constituted by the Government of Kerala under the aegis of the Real Estate (Regulation and Development) Act 2016 to usher in greater accountability and deliver value through regulatory compliance, furthering a sense of conduct and public confidence in the real estate sector while also fostering a healthy and competitive sector.

The Kerala Real Estate (Regulation and Development) Act 2016 is landmark legislation designed to regulate and promote the real estate sector. Backed by the overarching mandate, RERA Kerala aims to be an influential advocate of the real estate segment ensuring accountability, citizen-centric measures, and enhanced financial discipline safeguarding the interests of the consumer.

Some of the salient features of the RERA Act are:

1. Establishment of Real Estate Regulatory Authority

The Act calls for the state government to establish a Real Estate Regulatory Authority for the oversight of real estate transactions;

The authority shall also establish an adjudicating mechanism for speedy dispute redressal regarding registered real estate projects including delay in project delivery, quality of construction, non-provision of promised amenities, diversion of land for purposes other than those mentioned in the layout plan, etc.

2. Financial discipline & Transparency

The Act attempts to ensure financial discipline and transparency through provisions such as:

- Project information disclosure.

- Adherence to approved plans and project specifications as approved by competent authorities.
- Obligations regarding the veracity of the advertisement or prospectus.
- Rectification of structural defects within two years of possession.
- Refund of money in cases of default.
- Compulsorily deposit 70 percent (or such lesser percent as notified by the Appropriate Government) of the amounts realized for the real estate project from the allottees in a separate account in a scheduled bank within a period of 15 days to cover the cost of construction to be used for that purpose.
- Quarterly updates of various aspects of the projects including a list of approvals taken, documentation, the status of projects, etc.

The Rationale

- Protect the allottees interest and ensure accountability;
- Establishment of fast- track dispute resolution mechanism;
- Introduction of professionalism and pan India standardization;
- Information symmetry between the promoter and allottee;
- Imposing certain responsibilities on both Promoters and Allottees;
- Infuse transparency, ensure fair-play and reduce frauds & delays;
- Establish regulatory oversight mechanism to enforce contracts;
- Creating Investor confidence by promoting good governance in the sector.

2. CONCLUSION

The landmark legislation Real Estate (Regulation and Development) Act, 2016 (RERA), marking the beginning of a new era in the Indian real estate sector and a step towards reforming the real estate sector in India, encouraging greater transparency, citizen centricity, accountability and financial discipline. This paper tries to give an outline about the Real estate Act 2016 and the Real Estate rule 2018 passed by the Government of Kerala. The enactment of the said Act and rule has been a real advantage for all the stakeholders in the real estate sector. Earlier the sector was totally disorganised but now it has been transformed into a standardized form. This has led to a major transformation in the real estate sector.

REFERENCES

- India Brand Equity Foundation. (September 9, 2012). Indian Real Estate Industry. <https://www.ibef.org/industry/real-estate-india.aspx>
- Kerala Real Estate Regulatory Authority. (2019). RERA Act and Rules. <https://rera.kerala.gov.in/system/files/2019-12/RERA-Act-and-Rules.pdf>
- Government of India, Ministry of Housing and urban affairs. (2017). Real Estate Regulation and Development Act 2016. <http://mohua.gov.in/>
- Government of Kerala, Ministry of Housing and urban affairs. (June 20, 2018). Kerala Gazette. <https://go.lsgkerala.gov.in>
- Ministry of law and justice. (March 26, 2016). The Gazette of India. <https://rera.kerala.gov.in>