

A NEW ERA OF TRANSPARENCY: REAL ESTATE (REGULATION AND DEVELOPMENT) BILL 2013

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Abstract: Real estate sector is largely unregulated and messy sector in India. There are no proper guidelines on most of the issues and builders take benefit of this to make maximum out of the situation and take buyers for the ride at every level. The real estate prices have crossed the level that it has become extremely problematic for a common man to purchase his own house. In this scenario, the real estate regulations are not just a requirement, but a big need of the hour if our economy and society needs some stability in long run. In this paper, all the major facts in Real Estate (Regulation and Development) Bill, 2013 are being discussed. Where on one hand, this bill contains good points that will help the industry, on the other hand this bill also have many loopholes which can be exploited by the builders.

Keywords: Real Estate Bill, India, Regulation, Industry.

I. THE PRELUDE

The real estate sector in India has been largely unregulated and opaque, with distressed consumers, builders and developers who are unable to procure complete information, or enforce accountability against each other in the absence of effective regulation. Land laws have become redundant as they are static over more than a century. The real estate industry despite its mammoth size did not have a regulator to regulate and balance the interests of the developers on one hand and the consumers on the other hand. It also lacks transparency with respect to the nature of project, size, cost and the timely completion of the project. No guidelines were framed stating the duties of the developer to the consumer. Allegations about charging exorbitant prices, delay in completing the project or abandoning the project were openly made against some of the builders. The consumers had to sign on the dotted line, while the builder reserved the right to change the terms of the agreement with ease. The average consumer suffered silently, those who challenged had to take recourse to Consumer Courts. For a long time a need has been felt to regulate and organise the sector. The last few years have seen enormous rise in the sector and real estate prices have increased tremendously. There has been a spurt in foreign investment as well. Hence, some new legislations are sought to be enacted which will affect the real estate industry in a big way.

The Real Estate (Regulation and Development) Bill 2013 is an important move by the government of India to curb the irregularities and increase transparency in this sector. It is an attempt to make builders accountable and transparent dealings. It is essential that the present issues be properly addressed so as to contribute to real sector's growth. It will also ensure land transfers safer and transparent. It has been almost 5 yrs. when the first draft of Real Estate Regulatory Bill introduced and after that many amendments were done in it over the time to make it more effective. This

bill will keep the scrupulous developer at bay and secondly sooner than later it will push sale of the developed land/flats. It also has provisions for setting up a regulator for the real estate sector and imprisonment also up to three years for developers who make offences like giving misleading promotions about projects repeatedly.

The Real Estate Bill which was first presented in Rajya Sabha in August 2013 seeks to establish an authority to regulate, control and promote development, bring transparency, protection of customer's interest and to facilitate speeding up the construction and timely possession. The draft Bill calls for strict disclosure norms and compulsory registration for every new housing project. The legislation aims at a major turnaround of the real estate sector while restricting unfair practices. However it is essential that the concerns of the industry are also taken into consideration before passing this bill.

II. HIGHLIGHTS OF REAL ESTATE BILL

- **Applicability** - Initially the bill was applicable to residential real estate only. Now, the Cabinet has stretched the applicability of the Bill to commercial real estate also. Ongoing projects that have not got Completion Certificates have also been come under the purview of this Bill. Further, such projects will need to be registered with the regulator.
- **Mandatory to Acquire All Clearances before the Launch** - In the proposed bill, it would be mandatory for the developers/builders to acquire all the required clearances from relevant authorities and government bodies before formally launching the project. Right now builders launch the project when there is nothing on the site and have no approvals for anything. They give rosy pictures to investors, start taking funds from customers and then start the overall process of acquiring the land, getting approvals, and coming up with the structure. This creates frustration among investors and delay in completion of projects.
- **Use of Photograph of Actual Site During Advertisements** - For advertisements of the project, the builders will have to use the actual site pictures or the real construction work pictures. Right now builders do not use the actual pictures for promotional purpose. It's easy to create an illusion by using graphics and shiny pictures full of greenery and nature around it. It gives the feeling that it's an opportunity one can't miss. However in reality the project site is somewhat different. Quite often it happens that the picture shown in sale brochure or in newspaper ads doesn't resemble with the actual site condition.
- **Sale of Property as Per Prices Linked with Carpet Area** - The bill says that any sale proceedings should use the prices which are linked with carpet area and not super built up area. Generally, builders use "super built up area" as the parameter and define the per sq.ft. Price according to it. Carpet area is the net usable area which is used for living however in addition to net usable area super built up area includes area covered by walls, doors, parking area, staircases, temple inside the project, gym, garden etc. which is part of the package purchased by the buyer. As super built up area becomes high and per sq.ft. price looks small. That's why builders quote their price only on super built up area. However, only carpet area is mentioned even in agreements.
- **Setting Up State Level Regulators And Central Appellate Tribunal** - A two-tier dispute resolution mechanism is suggested which comprises of a Real Estate Regulatory Authority (to act as the nodal agency to co-ordinate efforts regarding

development of the real estate sector and render necessary advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector) and adjudicating officers at state-level and a central Real Estate Appellate Tribunal to judge upon matters relating to residential projects covered under the Act. Till now, real estate transactions are largely governed by the agreements between the parties, with remedies including specific relief (if applicable) and damages for breach available under civil and criminal law. Pursuant to enactment of the proposed legislation, civil courts will not have any say in respect of any matter covered under the Act. However, real estate regulator can't help much in case title of a land is disputed and builder has bought into the project. The buyer will be the sufferer in such case.

- **Registration of Real Agents/Dealers** - Currently, real estate agents and dealers are not necessary registered with central/state body. Thus, they do not follow any code of conduct or service standards. Now they will have to register themselves and will have clear responsibilities and functions. It is the duty of the real estate agents to maintain books of accounts, records and documents and not to involve in any unfair trade practices. Also, the bill recommends the registration of developers, their projects and their real estate agents with the authority to approve and monitor projects. This bill will bring accountability of dealers/agents and consumers can also demand their rights from agents and dealers for the amount of commissions paid to them.
- **Separate Bank Account for Each Project** - As per the bill, builder will have to maintain separate bank account for each and every project. Also, he has to keep up to 50% of the funds of the project in the same bank account. Usually, when builder faces a severe cash crunch, he launches a new project and uses the money collected in new projects to complete the old projects and this cycle goes on which leads to huge delays at times.
- **Builders can't take More Than Ten percent Advance without a Written Agreement** - A builder won't be able to take more than 10% advance money from buyers without a written agreement. Right now a lot of dealings materialize by paying huge advances at initial stage even before the written agreement as lots of transactions happen on trust basis. Agreements happen after many months or years.
- **Full Refund with Interest, If Property Not Handed over Time** - As per the bill, the builder will have to refund the money along with the interest, if he fails to deliver the project on time. Earlier, this point is generally omitted in the agreement by the builders. Customer has no option except to file a consumer court to get his right. However, this bill will make it a standard rule or clause.
- **Adherence to Approved Plans** – Developers under the proposed Bill must stick to approved plans and project specifications and are also liable to put right any major structural defect or poor workmanship in the unit for the promised duration of warranty/after sale services at their own cost. If developers fail to do so within a reasonable time, they shall be liable to pay suitable damages or compensation to the buyers as may be decided by the Authority. Promoters will not be allowed to change plans and structural designs without the prior consent of 2/3rd of consumers of a project.
- **Transparency**-Developers would be required to make available information and documents to prospective buyers to bring transparency in development of the

proposed project such as master plan of area, layout plans, structural drawings and designs, material specifications and construction schedule, etc. Also, all information regarding project management, project details, schedule of development works, statutory approvals regarding change of land use, development licenses, builder-buyer agreements, names and addresses of sale channel partners, architects and consultants etc. is also required to be disclosed.

- **The Bill Applies to Project over 4,000 sq. Meters in Size** - This bill is applicable only to projects which are of 4,000 sq. meters and above size overall. If a project is bigger than 4,000 sq. meters, the bill permits to break the whole project into different phases and each phase can be seen as different project.
- **No Single Window Clearance for Approvals** - Builders have raised the issue of single window clearance from a very long time. Getting government clearances and various approvals takes lot of time and opens up the gate for bribes and bureaucracy. This bill has failed to address this problem at all. A separate government department having a single window clearance will address the issue of project completion time more effectively.

Table 1: Evaluation and Impact of Bill Provisions

Provisions	Impact
Mandatory to Acquire All Clearances Before The Launch	As per this provision, the practice of “soft/pre-launch” offers will curb. All permissions are also to be displayed on the website of the developer. However, this might slowdown the supply side because right now a builder keeps on launching new projects. On the other hand, buyers will not feel cheated if there is any flaw in the project since clearance will be granted only when all requirements get fulfilled.
Use of Photograph of Actual Site for Advertisements	This is of great help for buyers. There will be no cheating on account of rosy pictures.
Sale of Property As Per Prices Linked With Carpet Area	Per sq. feet will shoot up high to negatively influence the mindset of Indian customers.
State Level Regulators and Central Appellate Tribunal to be Set Up	Buyers will get their grievances addressed very fast.
Real Agents/ Dealers Needs to Register Themselves	This will empower customers to get good documentation and possession services with greater fairness and transparency.
Separate Bank Accounts For Every Project	This provision will enforce financial discipline, transparency and accountability of the funds deposited by the customers for particular project. However, effectiveness of this provision depends on its enforcement. Even if there is an escrow account, it is difficult to know if it is being used for construction alone. Sanctity of expenses done for particular project or an activity is difficult to ascertain.
Builders Can't Take More Than 10% Advance Without a Written Agreement	Good for buyers as reasonable amount of money is transferred to builders in place of huge funds on finalization of agreement as compared to project progress.

Full Refund With Interest, If Property Not Handed Over Time	Buyers will get compensation if delay happens in possession of property.
Adherence To Approved Plans	Great for users. Builders are often known to hand over projects with a different area than otherwise applicable, or with a wall that's no longer there, or such. Customers will not feel cheated with this provision
Transparency	The buyers will be exposed to all information relating to project. Developers can't cheat them easily.
The Bill Rules Applies To Project Over 4,000 Sq. Meters In Size	This clause itself destroys the protection layer for consumers. Builder can always break the whole project into different phases and show them as separate project. Many builders anyways run various projects under different companies name (which are actually just one project side by side) to save on tax.
No Single Window Clearance For Approvals	This takes a lot of time and opens up the gate for bribes and red tapism.

III. THE FINALE

At present, the real estate and housing sector is fundamentally unregulated and opaque, with consumers often being unable to procure complete information and hence failed to enforce accountability against builders and developers in the absence of effective regulation. There is a dire need of some regulations to have a check on unfair practices of builders. However, the effectiveness of the proposed regulatory Bill depends on how successfully the housing sector issues like standardization of agreements of sale, efficiency in resolution of complaints and encouragement of private equity through effective regulations are enforced. The government's role in regulating the growth of the real estate housing sector along with the cooperation extended by the major players also plays an important role. Though this bill is a blessing for real estate customers, it has however received much condemnation from developers for not addressing their long unresolved issues. Not only the developer but all stakeholders like brokers, contractors and architects should be made accountable. To what extent this bill has achieved its objectives; this will become clear only when the bill becomes a reality.

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