

Status of Implementation of Real Estate (Regulation and Development) Act, 2016 in Select States of India

Abstract

Real Estate (Development and Regulation) Act, 2016 (RERA), a pro-consumer legislation aims to protect the interest of consumers by ensuring accountability, transparency and establishing an adjudicating mechanism for 'speedy' redressal of disputes. Despite a year of establishment, the progress made by states pertaining to implementation of the Act remains patchy. The paper highlights the progress made by select four states and a Union Territory with respect to adoption of the Act. Further, the paper also analyses rules framed by the states. It attempts to highlight uniqueness of provisions of state rules and observe potential deviations from the Central Act.

Introduction

Real Estate (Development and Regulation) Act, 2016 (RERA), which brought a structural change in the regulatory architecture for Indian real estate sector, completed a year of enforcement on May 01, 2018. The Act aims to promote healthy growth of the sector by ensuring sale of plot, apartment or building or real estate project, in an efficient and transparent manner and providing universal standards to the real estate sector.

Some of the key provisions of RERA are listed below:

Table 1: Key Provisions of Real Estate Regulation and Development Act, 2016

- **Establishment of Real Estate Regulatory Authority and Real Estate Appellate Tribunal in every state**
- **Mandatory Registration of Real Estate projects and agents prior to sale of any property**
- **Application of the Act on ongoing projects**
- **Standardisation of key aspects, such as carpet area, penalties on default**
- **Mandatory deposit of 70 percent of sales receipts in a separate account and conditions on withdrawal of money**
- **No advance money to be taken from buyer without registration of Sale Deed.**
- **Penalties including imprisonment to developer for contravention of Act**

Purpose

The purpose of this paper is to conduct a comparative analysis of **four select states (Madhya Pradesh, Maharashtra, Rajasthan and West Bengal)** and **Union Territory of Chandigarh** with respect to adoption of the Act in July 2018 (establishment of the Authority and notification of rules). The study also compares respective State Rules with the Central Act in order to highlight uniqueness of the provisions of state rules and observe potential deviations from the Central Act.

The paper acts as a ready reckoner of rules drafted by select states. The study comprises of two sections, namely '**Profile of States with respect to Adoption of RERA, 2016**' and '**Clause-wise Analysis of State Rules**'. The paper presents an analysis of three key objectives of the Real Estate (Regulation and Development) Act, 2016 namely, **Regulation of Real Estate Sector, Facilitation of Promotion and Development of Real Estate Sector** and **Protection of Interest of Consumers**.

Selection of States

The paper presents an analysis of RERA enforced in states of **Madhya Pradesh, Maharashtra, Rajasthan, West Bengal** and the **Union Territory of Chandigarh**. The states are selected on the basis of initiatives taken by state governments to enforce RERA in their respective states and the maturity of real estate markets that states comprise of.

- **Madhya Pradesh** and **Maharashtra** are amongst first states to notify their rules, establish permanent Real Estate Regulatory Authority and set up an active online portal to facilitate registration of projects and agents. Also, Maharashtra has two significant real estate markets of India, namely Mumbai Metropolitan Region (MMR) and Pune together attracted nearly US\$6.36bn of

private investment in the sector in 2015.¹ Therefore, it would be essential to analyse rules that shall affect developers in this state.

- In India, **Mumbai, Pune, Delhi** and **Bangalore**, amongst others are key real estate markets. However, due to rapid urbanisation, real estate markets in Tier II and III cities, such as **Jaipur** (Rajasthan) have great potential to become prominent in the future. Rajasthan represents emerging markets of the sector that are adopting standardised rules at a relatively early stage as compared to other mature markets.
- In order to analyse the progress of Union Territories in adoption of the Act, the rules of **Chandigarh** are analysed. The rules for Union Territories were drafted by the Ministry of Housing and Urban Poverty Alleviation, Government of India.
- **West Bengal** is unique case study. West Bengal enforced its own Act for the sector called the West Bengal Housing Industry Regulation Act, 2017 (WBHIRA).

Profile of States with respect to Adoption of RERA, 2016

Every State and Union Territory had to compulsorily establish a state Real Estate Regulatory Authority and notify their rules within a year of enforcement of the Central Act. Given the backdrop of state-wise implementation of clauses, Table 2 reflects the progress made by selected states with respect to establishment of a regulatory authority and notification of rules.

Table 2: Progress of States with Respect to Establishing a RERA

Particulars	Central Act	Madhya Pradesh	Maharashtra	Rajasthan	West Bengal	Chandigarh
Status of Notification of Rules	Act enforced	Rules notified	Rules notified	Rules notified	Enforced West Bengal Housing Industry Regulation Act, 2018	Rules notified
Date of Notification of Act/Rules	1-May-16	22-Oct-16	20-Apr-17	1-May-17	Act: 1-Jun-18 Rules: 8-Jun-18	31-Oct-16
Authority notifying the Rules/Act	MOHUA ²	MP Urban Development and Housing Department	Maharashtra Housing Department	Rajasthan Urban Development Department	Bengal Housing Department	MOHUA
Status of		Permanent ³	Permanent	Interim ⁴	Interim	Interim

¹ <http://www.ventureintelligence.com/downloads/pe-trend-report-2016.pdf>

² Ministry of Housing and Urban Affairs

Table 2: Progress of States with Respect to Establishing a RERA

Particulars	Central Act	Madhya Pradesh	Maharashtra	Rajasthan	West Bengal	Chandigarh
Authority Established						
Date of Establishment of Authority	Within one year of enforcement of Act	May 01, 2017	May 01, 2017	February 17, 2017	June 01, 2018	October 31, 16
Composition of the Authority	Chairperson and two whole time members	Chairman Anthony De Sa Member 1 Dinesh Nayak Member 2 Aniruddh Kapale	Chairman: Gautam Chaterjee Member 1 V S Singh Member 2 B D Kapadnis	Interim Chairman Pawan Kumar Goyal (Additional Chief Secretary) Members: NA	NA	Chairman Ajoy Kumar Sinha IAS ⁵ Members: NA
Status of Web-based Registration Portal		Active	Active	Active	No portal	Active ⁶
Progress in Registrations (in July 2017 and July 2018)		Agents: ⁷ 2018: 411	Agents: ⁸ 2018: 15418	Agents: ⁹ July 18: 669	NA	NA
Appellate Tribunal	Within one year of enforcement of Act	May 2017	May 2018	Interim Tribunal: Food Safety Appellate Tribunal	NA	Interim Tribunal: Value Added Tax Tribunal ¹⁰
Conciliation Forum		NA	February 2018	NA	NA	NA

³ A dedicated Authority which has a full time Chairman and at least two full-time members

⁴ As per the Central Act, until a permanent authority is set up by the state, the Secretary of the Department for Housing and Urban Development shall be the Interim regulator or Authority

⁵ <http://rera.chbonline.in/aboutUs>; Ajoy Kumar Sinha is the Chairman of Chandigarh Housing Board

⁶ However, no data on number of registrations

⁷ <http://realty.economictimes.indiatimes.com/news/industry/only-20-agents-10-projects-registered-under-rera-in-madhya-pradesh-in-2-months/59407371>

⁸ <http://www.livemint.com/Money/5aEjFs9FCoNCbTtKW5a6OO/Maharashtra-is-way-ahead-of-other-states-in-implementing-RER.html>

⁹ <http://rera.rajasthan.gov.in/>

¹⁰ <http://rera.chbonline.in/aboutUs>

Observations

- Of the four selected states, three states, namely Rajasthan, Madhya Pradesh, Maharashtra and the Union Territory of Chandigarh have notified their rules.
- On the other hand, **West Bengal** enacted a separate law for the state called the '**West Bengal Housing Industry Regulation Act, 2017**' on **June 01, 2018** and notified **Housing Industry Regulation Rules on June 08, 2018**.
- While four out of five states have an active online portal to facilitate registration, even after a year of enforcement of the Central Act, only two of the five states, namely **Maharashtra** and **Madhya Pradesh** have established a permanent regulatory authority.
- Maharashtra facilitated highest number of registrations with nearly **16,125 projects** and **15,418 agents** registered within a year, followed by Madhya Pradesh with **1885 projects** and **411 agents**.
- As per the Central Act, every state must establish a **permanent Appellate Authority** within a year of enforcement of the Act. However, out of five states, only **Madhya Pradesh** and **Maharashtra** established a permanent Appellate Tribunal, whereas, in **Rajasthan**, the **Food Safety Appellate Tribunal** is recognised as the **Interim Appellate Authority**.
- As compared to the Central Act, the **West Bengal Act does not mention any timeline for establishment of the Appellate Authority**.
- As per the Central Act, it is the responsibility of the Regulatory Authority to facilitate conciliation of disputes between developers and home buyers through a dispute settlement forum. **Maharashtra**, in **February 2018** established a **Dispute Conciliation Forum** comprising 33 members representing consumers and developers.

Clause-wise Analysis of State Rules

A clause wise comparison of states with the provisions of the Central Act shall provide an understanding on variations in rules of each state with respect to key elements of the Central Act. The clauses under comparison are under three categories:

1. **Entry Regulation** (Clauses pertaining to registration of promoters, new projects and real estate agents which also include fee charged for registration; information disclosure mandates; conditions for grant and withdrawal of registration)
2. **Facilitation of Business** (Clauses that provide certain exemptions to small real estate developers or enable ease of doing business)
3. **Clauses pertaining to Consumer Protection** (Clauses that facilitate consumer protection)

Entry Regulation

RERA mandates the registration of real estate developers (or promoters), projects and real estate agents. For this purpose, developers and agents must disclose information pertaining to their business, financials and projects by submitting relevant documents which are accessible by general public from the website of the respective state regulatory authority. This section analyses rules pertaining to regulation of entry of players in the sector.

Table 2 summarises the entry-related rules laid down by select states.

Registration of new projects: As per the Central Act, all projects with land area of **more than 500 square meters or eight apartments** shall seek registration with the Real Estate Regulatory Authority of the respective state. The registration shall be granted to projects within 30 days of application.¹¹

The Real Estate Authority could not reject registration to a project without providing the developer an opportunity to be heard.

Further, the registration is mandatory **for each phase of the project**. It is observed that all states have put forth necessary rules to ensure phase-wise registration of the project. A real estate project is largely developed in phases and each phase acts as a separate project.¹² Permits, such as Occupation Certificate and other clearances are also obtained from local authorities for each phase separately. Hence, it is essential for states to provide clear rules to facilitate phase-wise registration. This could enable developers to facilitate phase-wise transfer of land title and form association of buyers as soon as a phase is completed and ensures that buyers have better protection.

¹¹ If the developer or the real estate agent is not communicated about approval or rejection of registration within 30 **days** of application, the project or real estate agent is '**deemed**' to be registered.

¹² <http://economictimes.indiatimes.com/wealth/real-estate/rera-from-may-1-2017-are-on-going-projects-being-covered-in-your-state/articleshow/58161531.cms>

Table 3: Rules Regulating the Entry of Players under RERA							
Sr. No.	Particulars (Criteria)	Central Act	Madhya Pradesh	Maharashtra	Rajasthan	West Bengal	Chandigarh
1	Registration of new project	<ul style="list-style-type: none"> Registration mandatory for each phase of project Registration to be granted within 30 days 	<ul style="list-style-type: none"> Follows the Central Act 	<ul style="list-style-type: none"> Follows the Central Act Phase-wise registration of on-going projects as well 	<ul style="list-style-type: none"> Follows the Central Act 	<ul style="list-style-type: none"> The Act also provides for phase-wise registration of project Grant of registration in 30 days 	<ul style="list-style-type: none"> Follows the Central Act
2	Registration of on-going project	<ul style="list-style-type: none"> Project with no Completion Certificate to be registered Project to be registered within the period of three months 	<ul style="list-style-type: none"> Follows the Central Act Deadline: July 31, 2017 	<ul style="list-style-type: none"> Follows the Central Act Deadline: July 31, 2017 	<ul style="list-style-type: none"> Follows the Central Act Deadline: June 18, 2017 	<ul style="list-style-type: none"> Follows the Central Act On-going projects to be registered by 31-Aug-2018 	<ul style="list-style-type: none"> Projects with no Completion Certificate on October 31, 2016 Deadline: January 30, 2017
3	Disclosure for Registration of New Projects	<ul style="list-style-type: none"> Details of Enterprise Projects in last five years Approvals from Local Authorities Commencement Certificate Project details Sanctioned plans Name of Agents for the project 	<p>Additional Disclosures:</p> <ul style="list-style-type: none"> Open Parking Spaces 	<p>Additional Disclosures:</p> <ul style="list-style-type: none"> Proposed utilisation of Floor Space Index/Transfer of Development Rights; Covered parking spaces (open park spaces to be conveyed to the society); Nature of Association of Buyers 	<p>Additional Disclosures:</p> <ul style="list-style-type: none"> Open, Covered, Basement, Stilt Parking Spaces 	<p>Additional Disclosures:</p> <ul style="list-style-type: none"> Open Parking Spaces 	<p>Additional Disclosures:</p> <ul style="list-style-type: none"> Open and Covered Parking Spaces

4	Disclosure for On-going Projects	As per rules of respective State Authority	Additional Disclosure: <ul style="list-style-type: none"> • Status of project • Extent of completion • Carpet Area of each apartment 	Additional Disclosure: <ul style="list-style-type: none"> • Last Sanctioned Plan • Original timeline given to buyers • % of project completed (to be certified from Architect) • Estimated balance Construction Cost (certified from Engineer) • Estimated balance project cost (certified from CA) 	Additional Disclosure: <ul style="list-style-type: none"> • Status of project • Extent of completion • Carpet area of apartment 	Additional Disclosure: <ul style="list-style-type: none"> • Status of project • Extent of completion • Carpet area of apartment 	Additional Disclosure: <ul style="list-style-type: none"> • Last Sanctioned Plan; • Total money collected and utilised for development and balance money lying with the developer; • Original timeline given to buyers; • % of project completed (to be certified from Architect); • Estimated balance Construction Cost (certified from Engineer); • Estimated balance project cost (certified from CA)
5	Registration of Real Estate Agent	<ul style="list-style-type: none"> • Single registration for one state; • Renewal of registration after every five years 	<ul style="list-style-type: none"> • Follows the Central Act 	<ul style="list-style-type: none"> • Follows the Central Act 	<ul style="list-style-type: none"> • Follows the Central Act 	<ul style="list-style-type: none"> • Follows the Central Act 	<ul style="list-style-type: none"> • Follows the Central Act
6	Withdrawal of Registration	Withdrawal within 30 days of application	10 percent fee or Rs 50,000 is retained as processing fee	<ul style="list-style-type: none"> • 10 percent fee (max. Rs 50,000) is retained as processing fee • If withdrawn after 30 days, full amount is retained 	5 percent fee (max. Rs 25,000) retained and rest paid in 30 days' time	<ul style="list-style-type: none"> • Amount of Registration fees retained to be decided by the authority 	NA

Registration of real estate agents: Real estate agents negotiate the transaction of a unit in a real estate project on behalf of the developer and the buyer. He receives commission as a percentage of the sales price of the property from the project developer as well as the buyer.

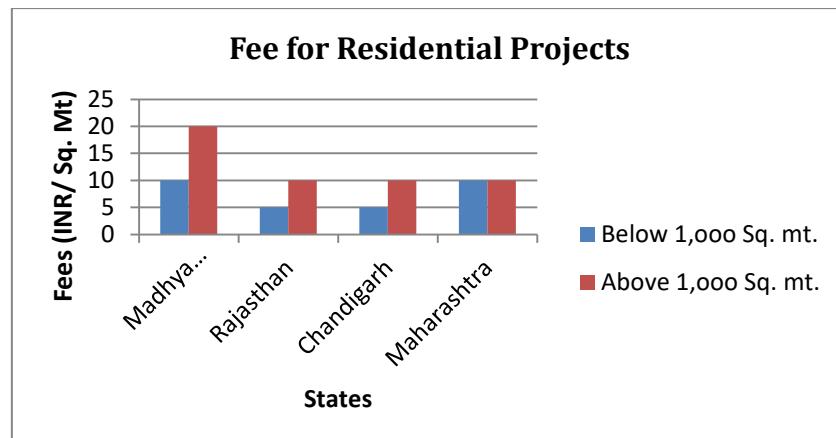
Central Act mandates registration of individual agents as well as companies. The licence provided under the Act is granted to the agent for five years on renewal basis. Further, the agent must register separately for each state in which he has his operations. The rules laid down for registration of agents by all states are in coherence with the Central Act.

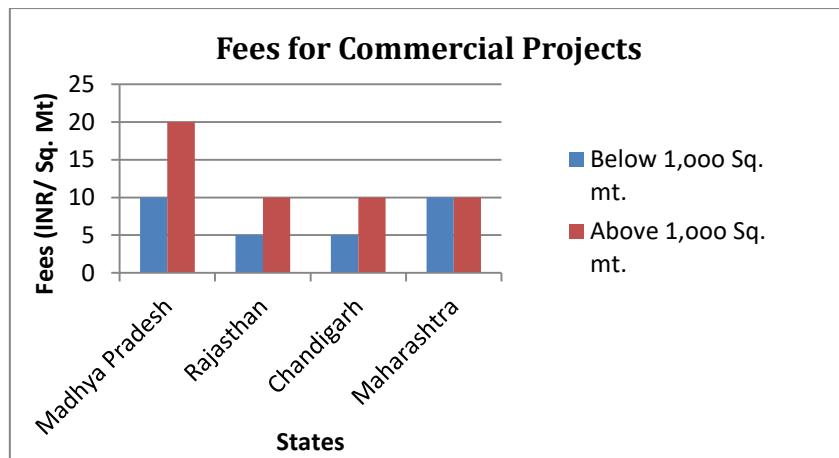
*The Central Act defines a real estate agent to be any person who, **by any medium**, introduces prospective buyers and sellers for a transaction in property. However, there is ambiguity on whether real estate websites shall also come under the regulatory purview of RERA. As real estate portals facilitate sale of property by introducing prospective buyers and sellers, state authorities must facilitate registration of portals as real estate agents.*

Fee for Registration

Registration of Projects

The Central Act permits state authorities to determine the fee for registration of projects and real estate agents. It is observed that all states, except Maharashtra have separate fee structures for residential and commercial projects. The Maharashtra RERA has fixed a common registration fee of Rs 10 per square metre with a minimum of Rs 50,000 and a maximum ceiling of Rs 100,000 for both residential as well as commercial projects.





It is to be noted that **West Bengal Housing Industry Act and Rules** are silent about the fee for registration of projects.

Rajasthan and Chandigarh have proposed a fee for **Mixed Development Projects**,¹³ which is Rs 10 per square metre for area less than 1,000 square metres and Rs 15 per square metre for area more than 1,000 square metres.

Registration of Real Estate Agent

There are variations in the fee structure for registration of Real estate agents set by state authorities. The fee structure for the five states is represented as in the table below.

Table 4: Fee for Registration of Real Estate Agents (in INR)

Agent Type	Madhya Pradesh	West Bengal	Maharashtra	Rajasthan	Chandigarh
Individual	25,000	25,000	10,000	10,000	10,000
Companies	200,000	250,000	50,000	50,000	50,000

The fee for real estate agents in **Madhya Pradesh** and **West Bengal** are amongst the highest for both individuals and companies as compared to other three states. It is also to be noted that state authorities have not put forward the rationale for setting up a fee structure for the sector. Therefore, suitability of the fee structure cannot be ascertained.

¹³ Mixed Development Projects is a real estate project which can have both residential as well as commercial buildings

Documents for registration

Registration of Projects

In order to register a project, Central Act mandates developers to furnish information, such as details about project, developer, construction approvals and Commencement Certificate of project, amongst others. Apart from that, state authorities also demand for additional details like '**types of parking spaces**'.

RERA considers disclosure of **parking spaces** crucial. Local laws (under their respective City Development Plans) do not authorise builders to sell open parking space as they were considered to be a part of the common areas of the project. Hence, unauthorised sale of open parking space would take place.¹⁴ Regulating sale of parking space through standardisation of definition of parking space and disclosure of the same shall help to curb down their illegal sales.

All states have their own rules for disclosure pertaining to parking spaces. The rules also mandate disclosure of sales price of the parking space in the sale agreement. Table 5 presents rules regarding parking spaces of select states:

Table 5: Disclosure on Parking Spaces under RERA

Parking space	MP	Maharashtra	Rajasthan	Bengal	Chandigarh
Open	✓		✓	✓	✓
Covered		✓	✓	✓	✓
Basement			✓		
Stilt			✓		

Maharashtra permits sale of only closed parking spaces, however mandates transfer of open parking spaces to association of buyers. On the other hand, **West Bengal** defined both **closed** and **open parking spaces** as **Garage Space**. The West Bengal Rules allow sale of garage space which can be open as well as a closed space.

In addition to this, Maharashtra also mandates the developers to provide details on use of **Floor Space Index (FSI)**¹⁵ and **Transfer of Development Rights (TDR)**. Due to space constraint in Mumbai and its suburban regions, Maharashtra, under its Development Control Rules, puts forth stringent regulations pertaining to permissible built-up area for a project and consumption of FSI and TDR¹⁶. Information on

¹⁴ <http://www.thehindu.com/todays-paper/Now-builders-can-sell-parking-spaces/article16782051.ece>

¹⁵ Floor Space Index is ratio of total built-up area of the project to the total area of land of that project.

¹⁶ FSI and TDR needs to be purchased by a developer from the Municipality and therefore, is an important component in the land cost of the project. If any developer constructs beyond the permissible FSI limits, that excessive built-up space becomes an illegal construction.

permissible built-up area would allow consumers to make an informed choice on purchase of a property which does not flout any local regulation. Mandates on putting up information on FSI and TDR in public (website) shall help to reduce such information asymmetry and consequent litigations as is evident from the controversial case of **Campa Cola Compound** in Mumbai.¹⁷

Facilitation of Business

The objective of RERA is also to promote development of the Real Estate Sector. In order to facilitate ease of doing business (EoDB) in the sector, the Act provides the following two exemptions:

- Exemption to small projects from registration
- Deemed registration to projects and real estate agents

Exemption to small projects: The Central Act exempts projects with land area less than 500 square metre or eight apartments in all the phases from registration mandates. It is observed that all states have provided the exemption to small projects. However, states, such as **Maharashtra** and **West Bengal** provide further exemptions to projects, where a Public Authority is responsible for structural repairs to buildings.

The Act provides developers exemption in registration of small projects. This could act as an incentive for developers to invest in affordable housing segment which ranges from 25 square metres to 80 square metres.¹⁸ Real estate sector in India largely comprises of small developers that construct projects on smaller land area and public sector undertakings (PSUs) that largely provide affordable housing. Exemption to small projects could provide even large developers an incentive to offer affordable housing.

According to India Brand Equity Foundation (IBEF), the potential market size for affordable housing shall increase from 25 million (in 2010) to 38 million housing units (in 2030).

Deemed Registration: RERA states that if any developer or a real estate agent, who has applied for registration is not communicated about approval or rejection of registration within **30 days** of application, the project or real estate agent is '**deemed**' to be registered. In addition to deemed registration of projects provided by the Central Act, Maharashtra states that registration of **Agents** shall be provided within seven days of the expiry of 30 days' timeline.

*As a project cannot be advertised or market without prior registration from the state authority, **Deemed Registration** to a project or agent could ensure timely registration of the project and prevent losses to the developer due to cost overruns. Deemed registration of projects and agents could also ensure accountability of the State Authority to facilitate timely registrations.*

¹⁷ <http://www.thehindu.com/in-school/signpost/campa-cola-complex-row-whats-the-story/article6177142.ece>

¹⁸ <https://content.magicbricks.com/property-news/affordable-housing-what-matters-size-of-house-or-buyers-income/98064.html>

Clauses Pertaining to Consumer Protection

Consumer protection is one of the most important objectives of RERA. It empowers home-buyers by reducing asymmetry of information and ensures accountability of real estate developers and providing a redressal mechanism in cases of disputes. This section analyses the clauses which ensure protection of consumers.

Table 6 summarises the key provisions of each state with respect to consumer protection.

Standardisation of Carpet Area: The Central Act standardises the definition of Carpet Area¹⁹ and mandates developers to disclose and sell their units only on the basis of Carpet Area instead of the Super Built-Up Area.

Standardisation of Carpet Area provides accurate information to the consumer about the net usable area of the property enclosed by the internal walls.

All states have provided for disclosure of the carpet area of the property. However, **Maharashtra** and **Rajasthan** permit a variation of three percent in the '**Final Carpet Area**'²⁰ of the property. It allows consumers to make an informed choice about the purchase of the property only on the basis of the net usable area of the property.

Non-Discrimination Clause: In several instances, buyers have been denied occupancy of property on the grounds of ethnicity, religion, gender, marital status or food habits.²¹

In order to prevent discrimination against buyers by developers, all states mandate the developers to file a declaration which provided that developers shall not discriminate against buyers on any grounds.

Responsibility of developer to provide essential services and rectify structural defects: As per the Central Act, a developer must provide essential services to buyers until the conveyance and maintenance of the society is handed over to the Association of Buyers. Rajasthan further provides that the cost of maintenance may be included in the cost of the property.

All the states mandate that the developer shall ensure rectification of structural defects for five years at his own cost.

Compensation to buyers in case of delays: All state authorities provided the interest rate on compensation to be paid by both buyers and developers at SBI Lending Rates + two percent in case of delays.

Maharashtra follows the Central Act and mandates payment of compensation within 30 days of accrual, whereas other states mandate payment in **45 days of accrual. A rate of compensation fixed by the statute ensures transparency in the amount to be paid to the developers.**

¹⁹ Carpet area is the net usable floor area of the property which excludes external walls, area of service shafts, balconies, terrace area, etc. area that is enclosed by the internal walls of the property shall be carpet area

²⁰ Maharashtra has further put out an order that clarifies that calculation of carpet area shall not include verandah or exclusive balcony space.

²¹ <http://timesofindia.indiatimes.com/city/pune/rera-to-ensure-no-bias-against-home-buyers/articleshow/57805187.cms>

Table 6: Key Provisions Pertaining to Consumer Protection under RERA

Sr. No.	Particulars (Criteria)	Central Act	Madhya Pradesh	Maharashtra	Rajasthan	West Bengal	Chandigarh
1	Criteria for Sale of Property	<ul style="list-style-type: none"> Property to be sold on Carpet Area basis Act defines Carpet Area 	Sale on the basis of Carpet Area	Sale on the basis of Carpet Area subject to variation cap of three percent	Sale on the basis of Carpet Area subject to variation cap of three percent	Sale on the basis of Carpet area	Sale on the basis of Carpet area
2	Non-Discrimination Clause	Act does not provide for non-discrimination clause	Developers to file Declaration on non-discrimination against allottees	Developers to file Declaration on non-discrimination against allottees	Developers to file Declaration on non-discrimination against allottees	Developers to file Declaration on non-discrimination against allottees	Developers to file Declaration on non-discrimination against allottees
3	Maintenance of Essential Services	Mandatory for developers till conveyance given to Association	NA	NA	Cost of maintenance included in the cost of the property	NA	NA
6	Rectification of Structural Defects	<ul style="list-style-type: none"> Developer responsible for repairs up to five years, even after providing conveyance To be rectified within 30 days 	Follows Central Act	Follows Central Act	Follows Central Act	Follows Central Act	Follows Central Act
4	Formation of Association of Buyers	In three months of booking of two-thirds of flats	NA	In three months of receipt of Occupation Certificate (OC) of last building of phase	NA	NA	NA
5	Transfer of Conveyance Deed/Title Deeds	Transfer of Conveyance (including proportionate title in common areas to the Association) as per local laws or in three months of receipt of OC	Developers to provide proforma of conveyance deed	<ul style="list-style-type: none"> For Plots: Within three months of receipt of full consideration by buyers For Single buildings: Within three months from date of receipt of OC or 51 percent buyers paying full amount For Layout: within one month of formation of buyers' association 	Developers to provide proforma of conveyance deed	Developers to provide proforma of conveyance deed	Developers to provide proforma of conveyance deed
7	Compensation to buyers	<ul style="list-style-type: none"> Rate of Interest decided by State Authority 	<ul style="list-style-type: none"> Interest Rate: SBI Prime Lending Rate+two percent 	<ul style="list-style-type: none"> Interest Rate: SBI highest Marginal Cost of Lending Rate + two 	<ul style="list-style-type: none"> Interest Rate: SBI highest Marginal Cost of Lending Rate + two 	<ul style="list-style-type: none"> Interest Rate: SBI Prime Lending Rate+ two percent 	<ul style="list-style-type: none"> Interest Rate: SBI highest Marginal Cost of Lending Rate

		<ul style="list-style-type: none"> To be paid within 30 days of accrual 	<ul style="list-style-type: none"> To be paid within 45 days of accrual 	<ul style="list-style-type: none"> percent To be paid within 30 days of accrual 	<ul style="list-style-type: none"> percent To be paid within 45 days of accrual 	<ul style="list-style-type: none"> To be paid within 45 days of accrual 	<ul style="list-style-type: none"> + two percent To be paid within 45 days of accrual
8	Maintenance of Separate Account for Receipts	<ul style="list-style-type: none"> 70 percent sale receipts to be deposited and used only for covering project cost; Amount to be withdrawn in proportion of work completed; Withdrawals to be certified by Architect, Engineer and CA 	<p>Calculation of project cost for withdrawals: Construction Cost is only towards the on-site expenses</p>	<p>For new projects:</p> <ul style="list-style-type: none"> Account maintained only till OC received; Entire amount to be withdrawn after receipt of CC; <p>Mandates for On-going projects also</p> <p>Calculation of project cost for withdrawals: Construction cost to include both On-site and Off-site expenses</p>	<p>Construction cost is only towards the on-site expenses</p>	<p>Construction cost is only towards the on-site expenses</p>	<ol style="list-style-type: none"> No rules for calculation of project cost Mandates for on-going projects also

Formation of Association and providing Conveyance of Title to the Association: The developer is responsible for formation of an Association of Buyers as per the local rules²² once the majority of properties is sold. An Association empowers buyers to collectively represent themselves in matters of disputes. Further, the title to common areas of the project is also transferred in the name of the Buyers' Association, which is collectively responsible for its management.

Providing Conveyance Deed: The ownership of the project land is transferred to the property buyers upon conveyance of title. It is essential to transfer the title to buyers, in order to gain benefits of additional development rights or FSI of the project.²³ The Central Act mandates conveyance of title of property (to the buyer) and the title of common areas (to the Association) **within three months of receipt of OC** for the completed building or phase. While all states follow the Central Act, **Maharashtra has more detailed rules for transfer of title with respect to the kind of project namely plots, single building projects and layouts.**²⁴

²² Largely under the Cooperative Societies Act of the particular state

²³ Like rent from hoardings, income from network towers put up within society's premises, etc.

²⁴ On failure of conveyance of title by the promoter, the buyers in Maharashtra are also entitled to '**Deemed Conveyance**' under the Maharashtra Ownership of Flats Act, 1963. Although the act has been repealed by the Central Real Estate Act, 2016; Deemed conveyance can still be granted.

Maintaining a Separate Account for sales receipts (Escrow Account): When the money pertaining to a particular undertaking is deposited in a separate account to be managed by a third-party professional, it is called an **Escrow Account**.²⁵ This clause is significant from consumer protection perspective. Usually, developers divert sales receipts of one project in order to acquire land for other new projects,²⁶ due to which the project often gets stalled at later stages and buyers are not handed over their properties on time.

Maintaining a separate account for depositing sales receipt shall prevent diversion of buyer's funds to other projects and shall ensure that there are sufficient funds for timely completion of existing projects.

Every developer must compulsorily maintain a separate account to deposit **at least 70 percent of the sales receipts of the buyers as and when received**. The deposited amount shall only be used to cover the cost of the project for which considerations are received. Maharashtra and Chandigarh further extended the provision of escrow account clause to the on-going projects and ensured that 70 percent of the unutilised funds are deposited into a separate account.

Rules for withdrawal of funds from Escrow Account: Withdrawals from the account, in proportion of project cost must be certified by an Architect, Engineer and a Chartered Accountant. Further, in order to facilitate **withdrawals of funds from the account**, every state must formulate its own rules to calculate the project cost. Project cost comprises of two cost components, namely **Land** and **Construction**. The definition of both costs varies from state to state.

States, such as **Madhya Pradesh** and **West Bengal** allow only costs incurred by developers to procure land, whereas Maharashtra provide for only '**on-site expenses**' to be covered under the construction cost, whereas **Maharashtra** and **Rajasthan** allow overheads in form of legal, marketing and finance costs, amongst others in calculation of land cost.

Further, in order to calculate the construction cost of project, only **Maharashtra** allows inclusion of both **on-site** as well as **off-site expenses in the construction cost**,²⁷ hence ensuring that the project cost is not under-calculated. Maharashtra also specifies that escrow account must be maintained by developers only up to the receipt of Occupation Certificate of that phase.

²⁵ The separate account to be held by a scheduled bank as referred in the above clause is the Escrow Account and the scheduled bank shall be the Escrow Agent. The escrow accounts are generally used in the real estate transactions in order to manage the sale receipts of properties. Instead of direct dealing between the buyer and the seller, the escrow agent acts as the middleman, wherein fulfilment of certain predetermined conditions (such as inspection or repair or completion of the work or delivery) are made mandatory to conclude the deal.

²⁶ <http://www.businesstoday.in/magazine/focus/parsvnath-developers-inability-to-refund-for-delayed-projects/story/236885.html>

²⁷ There are two cost components in project cost, i.e. land and construction. Construction cost includes **on-site expenses** like raw materials, labour cost, etc. and **off-site expenses** include costs like interest on debt taken for construction

Observations and Recommendations

- Exemptions from registration to projects with **smaller land parcels may promote affordable housing segment in India**, where home sizes are largely in the range of 25 to 80 square metres.
- Another exemption in the form of deemed registration could act as a **mechanism to establish accountability of regulators** for timely processing of registration applications.
- Under the Central Act, any individual or entity, which facilitate sale of property by introducing buyers and sellers through any medium is termed as a real estate agent. As real estate portals also facilitate sale of property and as the websites have a nation-wide reach, **states must take necessary steps to bring real estate websites under the regulatory purview in order to ensure that websites do not sell unregistered projects.**
- Maharashtra still fares better in providing protection to consumers as there are stricter mandates and greater details put forth for the above clauses. Further, Maharashtra has also accommodated local laws governing the real estate sector which includes rules on developmental rights, formation of association and deemed conveyance to property, amongst others. **All states must provide for detailed rules that incorporate local laws pertaining to the sector.**
- **All states have taken voluntary initiative to curb discrimination against buyers on all grounds by mandating a Declaration of non-discrimination against buyers.**
- **It is also essential for states to lay down detailed rules governing withdrawals of funds from the escrow account, especially on the calculation of project cost.** Project cost must comprise not only direct costs but also overheads associated with its development. This shall also ensure better planning and execution of the project.
- Mandate on developers to maintain essential services and rectify structural defects even after completion of development acts as an **accountability mechanism for developers and enable them to ensure better quality of services and projects in order to avoid cost overruns in the project.**

Conclusions and Questions for Deliberations

States not on Same Page

It is observed that amongst all states, Maharashtra was proactive in establishing a regulator for the state and stated detailed rules for most of the crucial clauses mentioned in the Central Act. Maharashtra rules also accommodate local laws governing real estate project development, such as development rules, permits from local authorities, formation of buyers' association and transfer of title, amongst others. Further, Maharashtra is amongst the few states to establish a **permanent Appellate Tribunal**, an alternate dispute resolution mechanism or **MahaRERA Conciliation Forum**, a 33 member forum to resolve disputes before lodging complaint with the Authority.

While the Central Act recently completed one year of enforcement, only Maharashtra and Madhya Pradesh have established a permanent regulatory authority. The progress made by other states for the same is not satisfactory. Rajasthan and Chandigarh do not have either a permanent authority or a permanent Appellate Tribunal. Lack of a permanent regulator could have adverse effect on the revival of the sector. **A lukewarm**

approach of the states towards implementing RERA weakens the years of endeavour of the Centre and other stakeholders in making Indian real estate sector organised.

Can Stakeholder with Vested Interest in the Sector be the Regulators?

In case of **Chandigarh**, it is observed that the Secretary of Housing, Chandigarh Administration is the interim RERA regulator for the Union Territory. However, the Secretary is also the **Chairman of the Chandigarh Housing Board**, a PSU, responsible for providing housing in the UT. Chandigarh Housing Board is an important player of the sector.

The Central Act specifies that the Chairman or members must not have any vested interests in the authority.²⁸ ***Appointment of the Chairman of Chandigarh Housing Board as the RERA Chairman raises concerns over the independence of the regulator and could potentially lead to regulatory capture of the regulator.***

Can RERA and West Bengal HIRA co-exist?

West Bengal on June 01, 2018 enforced its own Act for the sector called the **West Bengal Housing Regulatory Authority, 2017**. The Act diverges from the Central Act on various fronts, which includes the following:

- Definition of Parking Space (or garage space) and *Force Majeure* events
- The State Act also does not define Planning Area of the state
- The State Act and rules do not specify any fee for registration of projects and real estate agents
- No provision for compounding of penalties under the State Act
- Rules for determination of withdrawal amount from the escrow account are also ill-defined in the State Act
- The State Act also does not clearly contain local laws

Moreover, upon enforcement of the Central Act, several state acts, such as Maharashtra Housing Regulatory and Development Authority Act, 2012 and Kerala Housing Regulatory and Development Authority Act, 2016 were repealed.

Given the dilutions in Housing Industry Regulation Act (HIRA), it is questionable whether the State Act of West Bengal could exist in presence of the Central Act.

Accountability of Regulators

RERA establishes accountability of developers by introduction of registration mandates and other rules pertaining to disclosure of information. RERA also further attempts to indirectly ensure accountability of regulators by facilitating Deemed Registration of projects and agents. However, the Act should further strengthen the accountability of the state regulatory authorities.

²⁸ As per Section 23, sub-section 2

Establishment of Parliamentary Committee Regulatory Institutions

The Real Estate Regulatory Authorities of each state could be held accountable to the Parliament by establishment of **Parliamentary/Legislative Committee on Regulatory Institutions**. This could ensure the independence of the regulatory institutions from the control of the Government or the line Ministry.

A parliamentary/legislative committee on regulatory institutions means a special purpose committee to deal with matters relating to regulatory institutions in addition to the subject matter parliamentary/legislative committees for the specific purpose of governing the overall performance and functioning of such agencies.

A parliamentary/legislative committee on regulatory institutions could be a special purpose committee to deal with the matters relating to regulatory institutions in addition to the subject matter. It could also govern the overall performance and functioning of such agencies. The parliamentary/ legislative committees could not only ensure autonomy of regulatory institutions but also ensure their accountability.²⁹

Creating Awareness amongst Consumers

In order to strengthen the implementation of Real Estate (Regulation and Development) Act, 2016, creation of awareness among consumers is essential. A recent survey conducted by online realty portal Magicbricks highlighted low awareness among consumers regarding law.³⁰ The survey stated that nearly three-fourths of the real estate consumers were not aware of the regulator. Further, it put forth that consumer awareness about the realty law is high in states which have a permanent regulatory authority as compared to states with temporary regulators.

²⁹ CUTS had also recommended establishment of parliamentary/ legislative committees on regulatory institutions as a suggestion to the draft Regulatory Reform Bill, 2013 (to be accessed [here](#))

³⁰ <https://timesofindia.indiatimes.com/business/india-business/3/4th-of-home-buyers-dont-know-rera-is-mandatory/articleshow/63978306.cms>