Bill Blowup

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CUTS International

The Real Estate (Regulation and Development) Bill, 2013

The Real Estate (Regulation and Development) Bill, 2013 (the Bill) seeks to regulate transactions between buyers and sellers in the residential real estate sector to ensure consumer protection and standardisation of business practices. The Bill provides for establishment of the state-level regulatory authorities called the Real Estate Regulatory Authority (RERA) to register residential real estate projects for regulation and promotion of the real estate sector. It seeks to ensure sale of a plot, apartment or a building in an efficient and transparent manner and to protect the interests of the consumers in real estate sector. The Bill also seeks to establish state-level tribunals called the Real Estate Appellate Tribunals (REAT) to hear appeals from the decisions, directions or orders of the RERA and for matters connected therewith or incidental thereto. The Bill was earlier introduced in Rajya Sabha on August 14, 2013 and referred to the Standing Committee on September 11, 2013.

The Bill at a Glance

Highlights

- Establishment of the RERA for regulation and development of real estate sector.
- Constitution of the state-level Appellate Tribunals (REAT).
- Establishment of the Central Advisory Council to advise the Central Government (CG) on major questions of policy and matters relating to the growth of real estate sector.
- Registration of residential real estate projects and real estate agents.
- Mandatory public disclosure of all project details by uploading on RERA's web portal.
- Compensation/return of the amount collected, to the buyer with interest for any loss because of false advertisement.
- Written agreement for sale if more than 10 percent of the cost of the project is accepted as advance money.
- Promoting fair and standardised business practices in real estate sector.

Lowlights

- The Bill does not cover commercial and industrial real estate projects.
- Excludes projects smaller than 1000 square meters or 12 apartments from its purview.
- Inconsistencies with various state laws regulating the real estate sector.
- Defects can be brought to the notice of the promoter only within two years.
- Excessive delegation of legislation to state governments.
- Absence of mandatory reference to the Competition Commission of India (CCI), if the matter has a bearing on competition issues.

Action Points

- The Bill should cover commercial and industrial real estate projects as well.
- Size of the excluded projects should be reduced to cover smaller projects under the purview.
- Time period of two years should be increased to five years for rectification of structural defects in development.
- Digitisation of land records to ensure that the same land is not sold to many individuals.
- RERA to give directions to state governments to establish a single window system for providing timely clearance for projects.
- All real estate agents should be registered with RERA.
- Cost of non-compliance with commitments made upfront, should be made very high.
- Mandatory reference to the CCI, if the matter has a bearing on competition issues.

INSIDE

Introduction

The real estate sector in any country plays a significant role in shaping the economic infrastructure. The importance of the sector can be noted by the fact that a study by HUDCO-IIM, Ahmedabad observed that for every rupee invested in this sector, the addition to Gross Domestic Product (GDP) of the State is 78 paisa. A unit increase in expenditure in this sector has a progressive effect and the capacity to generate income about five times. If the economy grows at the rate of 10 percent, the housing sector has the capacity to grow at a rate of 14 percent and can generate 3.2mn new jobs, over a decade.[1]

Currently, the real estate and housing sector is largely unregulated and opaque with the consumers often unable to procure complete information or enforce accountability against builders and developers in the absence of effective regulation. There is some kind of regulation in the form of various approvals mandated by the law for the developers, but the absence of a specific regulator for the sector makes it ineffective. According to a study carried out by Federation of Indian Chambers of Commerce and Industry (FICCI) and Ernst & Young[2], *"On the Regulatory index amongst the countries surveyed, India ranked last along with Russia amongst ten countries surveyed......"*. The need for a regulator in the real estate sector has been said to be more than that of a regulator of stock exchange, since real estate *per se* affects more consumers[3]. The CCI has pointed out that the absence of a single regulator for the real estate sector is partly responsible for poor grievance redressal[4].

In the light of this, the Real Estate (Regulation and Development) Bill, 2013 was introduced in Rajya Sabha on August 14, 2013 and which subsequently was referred to the Standing Committee on Urban Development on September 11, 2013 (which submitted its report on February 13, 2014). The Bill is currently pending before the Rajya Sabha. It advocates for a uniform regulatory environment, to protect consumer interests and ensure orderly growth of the real estate sector. It is a pioneering initiative to protect the interests of the consumers, to promote fair play in real estate transactions and to ensure timely execution of the projects. It is expected to ensure greater accountability towards the consumers.

The Bill seeks to establish the RERA for regulation and development of real estate sector. It contains provisions for disclosures by developers on the estimated time by which they will complete their projects and essentially uploading all the project details on the RERA's web portal. There are various other provisions like equitable rate of interest payable by the developer and the buyer in case of any default, prohibition of false and misleading advertisement, etc.

The Bill also seeks to have proper co-ordination with the CCI by ensuring that if any issue relating to an "agreement, action, omission, practice or procedure" which can lead to "prevention, restriction or distortion" of competition in the real estate sector comes before the RERA can be referred to the CCI. However, this discretionary reference might not have the desired outcome and, therefore, there should be mandatory consultation between the RERA and the CCI.

Though the Real Estate Bill was introduced with the objective of bringing much required transparency in real estate dealings through provisions for registration of real estate projects and real estate agents with the RERA, it falls short in certain areas, which still need to be reconsidered. These areas are addressed in this Bill Blow up.

Parliament's Jurisdiction to Legislate on Real Estate

Real Estate projects are currently regulated by state governments as land and land improvements are in the State List of Seventh Schedule of the Constitution. Entry 18 of the State List empowers states to make laws related to land or rights in or over land, land improvement and colonisation of land. The Ministry of Housing and Urban Poverty Alleviation in response to the parliamentary questions also stated that it is primarily the responsibility of the state governments to regulate the real estate and that states must monitor the real estate projects[5]. Therefore, Parliament's jurisdiction to approve laws relating to real estate sector can be questioned.

However, it may be argued that the primary aim of this Bill is to regulate contracts and transfer of property, both of which fall within the Concurrent List[6]. A Government's Press release[7] also affirms this position by stating that "The Bill is being proposed under Entries 6, 7 and 46 of the Concurrent List of the Constitution of India, which deals with Transfer of Property, Registration of Deeds and Documents, and Contracts". Therefore, one may question the Parliament's power to make laws in relation to the real estate sector.

The Bill *vis-à-vis* State Laws

The Bill provides that the states can continue to regulate the real estate, to the extent these are not inconsistent with the provisions of the Bill. If any state has enacted a law for regulation of the real estate sector and any provision/(s) of that state law are inconsistent with the provisions of the proposed Bill then those provisions will be superseded by the provisions of the Bill. Some states have enacted laws to regulate real estate projects and some are in the process of enacting laws in this regard. There are many instances where state laws regulating the real estate sector have conflicting provisions with that of the proposed Bill.

While the proposed Bill requires establishing a statutory regulatory authority (i.e. RERA) at state-level to register the real estate projects, the state of West Bengal has delegated this function to the government[8]. Further, the Bill mandates that 70 percent (or less, as determined by the state governments) of the funds collected from the buyers can be used only for construction of that project, and certain state governments have allowed for greater flexibility in usage of funds.

The Maharashtra Housing Regulation and Development Act, 2012 mandates that the entire amount collected from buyers should be kept in a separate account and can be used for the defined purposes. The Draft Haryana Real Estate (Regulation and Development) Bill, 2013 mandates that 70 percent of the amount collected from buyers for a project should be used for that particular real estate project. Thus, in case of conflicting provisions, the provisions of the laws approved by the Parliament will prevail.

The Indian Parliament is competent to make laws on matters enumerated in the Union List. State Legislatures are competent to make laws on matters enumerated in the State List. While both the Union and the States have power to legislate on matters enumerated in the Concurrent List. In the event of repugnancy, laws approved by Parliament shall prevail over the State laws, to the extent of the repugnancy. Therefore, the conflicting provisions, if any, should be appropriately dealt with and the rule of harmonious construction should be followed to avoid any bottlenecks in the functioning of the regulatory authorities, which would be constituted at the state-level.

Meagre Coverage

The proposed Bill applies to residential real estate i.e. housing and any other independent use ancillary to housing. It does not cover commercial and industrial real estate projects, which form substantial part of the real estate sector. The Standing Committee on Urban Development recommended that it should regulate commercial and industrial real estate projects as well[9].

Further, the Bill does not apply where the area of land proposed to be developed does not exceed 1000 square meters or the number of apartments proposed to be developed does not exceed 12. This could lead to the exclusion of a large number of small housing projects. It is, therefore, recommended to lower the limit to cover many more small housing projects under the purview of the Bill. Also, capacity building of the regulator should also be done to ensure effective regulation of large number of projects. The Standing Committee on Urban Development recommended that this limit should be lowered to 100 square meters and three apartments. Further, Special Purpose Vehicles (SPVs) projects undertaken in smaller areas of lands through bifurcation of the whole land by the builders are considered as One Single Project under the provisions of the Bill[10].

The proposed Bill requires mandatory registration of the real estate agents, facilitating the sale of projects covered by the Bill. The Committee recommended that all the real estate agents be required to register with the RERA and not just those facilitating the sale of a project covered under the Bill. In addition, a model code of training for real estate agents should also be included in the Bill.

Restricted End Use

The Bill mandates that 70 percent (or less, as determined by the state governments) of the amount collected from the buyers of a project be used only for construction of that project. The provision seeks to curb the practice of builders diverting money from an existing project to other projects, resulting in delays in completion.

The cost of a real estate project includes the cost of land and the cost of construction. In certain cases, the cost of construction may be less than 70 percent and the cost of land may be higher than 30 percent of the total cost of the project. Mandating 70 percent of the amount collected from the buyers for a project should be used only for construction of that project, could lead to part of the collected money remaining unutilised. At the same time, the developer may need to borrow funds to finance the cost of purchasing land. The interest cost on these funds would increase the project cost, which may ultimately have to be borne by the buyers.

Similar legislations have addressed this issue differently. The Model Real Estate (Regulation and Development) Act, 2009 states that the entire amount collected from the buyers be kept in a separate account and be used for the purposes collected allowing for greater flexibility. The Maharashtra Housing Regulation and Development Act, 2012 also works on the same lines with the Model Bill. The Draft Haryana Real Estate (Regulation and Development) Bill, 2013 mandates that 70 percent of the amount collected from buyers for a project should be used for the real estate project. Necessary amendments should be made in the proposed Bill in line with similar legislation in this regard.

Additionally, in line with other countries like Dubai, US and Canada, the Bill should mandate setting up of a trust account for each project and a specific sum say 30 percent of the total amount to be retained and paid to the developer only on possession and completion of conveyancing.

Compliance with Construction Regulations

Registration of purchase of apartments must be done only after 'occupancy certificate' is issued by the competent municipal authority. 'Completion certificate' provided by the builders should not be enough for registration. At present, the registration authorities do not take responsibility for the builder to have complied with the construction regulations. As a result, the buyers who do not have adequate knowledge about the construction laws are coaxed into buying a non-compliant apartment and get into problems while obtaining *'katha'* or *'patta'* for the same. This leads to avoidable corruption. In Australia, the registering authority while registering the property in the name of the buyer takes up this responsibility, which assures the buyer that he is buying a building that is legally compliant with the laws and has been certified by the competent authority.

Recently, there was a court case where the Tamil Nadu Electricity Board (TNEB) refused to provide electricity connection to a building consisting of flats because it did not obtain the occupancy certificate from the relevant authority. Though, the registration of flats had already been done by the registring authority. The court ruled that TNEB was right in not giving the connection and dismissed the case of the builder. However, such cross checks are built in, still the builders are able to violate with impunity by making facilitating payments to the officials.

Lengthy Project Clearance Processes

Due to different registrations, time required to complete the projects bound to increase, which in turn results in increase in the cost of the project that ultimately have to be borne by the potential buyers. In 2012, the Committee on Streamlining Approval Procedures for Real Estate Projects recommended establishing a single window clearance system for approvals. It noted that approximately 50 approvals are required for projects, across the three levels of government consuming around four years[11].

The Bill allows RERA to make recommendations to state governments regarding the measures to improve the processes and procedures for clearance and sanction of plans and development of projects. However, the Standing Committee on Urban Development recommended that a new provision should be introduced to allow RERA to give directions to the state government to establish a single window system (SWS) for providing licences and clearances for the real estate projects. Also, a time limit should also be specified for state and local authorities to issue completion certificates.

Lack of Clear Land Titles

The then Planning Commission of India had pointed out that unclear land titles and dearth of transparency in the real estate transactions are detrimental to the development of the real estate sector[12]. In 2010, the Ministry of Rural Development published the draft Land Titling Bill to reform the land titling system. In 2012, the Standing Committee on Rural Development vide '33rd Report: Computerisation of Land Records' suggested that modernisation of land records, including land titles, would be useful for land based development and regulatory activities. The Standing Committee on Urban Development suggested that RERA should be allowed to give directions to the relevant authorities to digitise land records in order to ensure that the same land is not sold to several individuals.

Presently, the Registrar does the registration of purchase of land in the name of buyer but does not guarantee that the title is clear. However, it gives a separate list of transactions on the said land in the form of a 'no encumbrance certificate'. These two processes must be tied together. The title registering authority must indemnify the buyer against any past error in the title and consequent effects. The authority may have a fund, especially for this purpose to compensate the genuinely aggrieved parties.

Conclusion

The Government seems to have taken the right decision of passing the much required Real Estate Regulatory Bill to control exploitation by the developers, which make false promises to buyers, construction of residential projects on disruptive land, etc. It is a relief to see that there are standard parameters to analyse real estate sector and advantages in this Bill for a common man.

Expecting that there will be positive turnaround in real estate sector and will help the buyers to find dream home at affordable price on time. The only thing to be seen is that the proposed Bill should not end up becoming a *'Chalkmade Taj Mahal'* which would not last long in practice. Necessary measures should be taken on time to curb the issues highlighted above in order to make the Bill workable and effective.

Endnotes

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6. List III (Concurrent List) – Entry 6 and Entry 7.
7. Press Information Bureau, Ministry of Housing and Urban Poverty Alleviation, August 14, 2013
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The author is thankful for suggestions from V Ranganathan (Prof. retd., IIM Bangalore) and Amol Kulkarni (Senior Policy Analyst, CUTS International). This paper has been researched and written by Jitin Asudani for CUTS International, D-217, Bhaskar Marg, Jaipur 302016, India. Ph. 91.141.2282821, Fx. 91.141.2282485, E-mail: cuts@cuts.org, website: cuts-international.org, printed by Jaipur Printers P. Ltd, Jaipur, India.