

Regulating Realty: Cabinet's Nod to Real Estate Bill

CIRC brought in light the major concerns and slips in The Real Estate (Regulation and Development) Bill 2013 and made a case for immediate reintroduction of the Bill in the Parliament (See [CIRC Issue Note 10](#)). In the present note, we discuss the amendments in the bill, questioning where the bill straggles.

Be it the targeted housing schemes for the poor like Indira Awas Yojana or the ease of building homes assisted by banks and/or housing finance companies, the real estate is presently a booming sector in the country.

Alas, the present state of real estate and housing sector is largely unregulated and opaque, with consumers often being vulnerable at the hands of unscrupulous real estate promoters and their agents coupled with lack of accountability against builders and developers in the absence of effective regulations and enforcement. Following which, CIRC brought in light the major concerns and slips in The Real Estate (Regulation and Development) Bill 2013 and made a case for immediate reintroduction of the Bill in the Parliament (See [CIRC Issue Note 10](#)). In the present note, we discuss the amendments in the bill, questioning where the bill straggles.

After the union cabinet cleared the Bill on 8th April 2015, it inched closer to seeing the light of the day once approved by the President. As per the guidelines, the states have to set up regulatory bodies within a year of the Bill's enactment, along with a web based online registration facility within a further period of one year from setting up the bodies.

The Real Estate Regulatory Authority will coordinate the development of the real estate and render necessary advice to the concerned government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector.

Key Features

- Establishment of one or more Real Estate Regulatory Authorities (RERAs) in each state/UT or one authority for two or more States/UT, with specified functions, powers, and responsibilities to oversee real estate transactions.
- The bill mandates registration of real estate projects and transfer of immovable properties with RERAs (Chapter II).
- Mandatory public disclosure of all project details like site, layout plan and schedule for completion of the project, land status, status of statutory approvals and disclosure of proforma agreements, names and addresses of real estate agents, contractors, architect, structural engineer etc.
- The Bill's proposal to mandate a deposit of 70% of the project cost in a separate bank account has now been reduced to 50% (chapter III). CIRC recommendation on this was in synch with that of the standing committee and has been adopted (See [CIRC Issue Note 10](#)).
- Establishment of Real Estate Appellate Tribunals (REAT) has been laid down in the bill, where the decisions of RERAs can be appealed. It will also be responsible for fast-tracking the dispute settlement mechanism by the adjudicating officers (Chapter V).
- Punitive provisions including de-registration of the project and penalties in case of contravention of provisions of the Bill or the orders of the RERAs or REATs.

Changes Suggested by the Standing Committee

There have been many failed attempts of passing the bill in the previous years. Unlike that, this time the changes suggested by the standing committee have been included.

- The ongoing projects are also covered in the amended bill.
- Including commercial real estate in its ambit.
- The law will nip many malpractices in the bud as the promoters won't be allowed to change plans and structural designs without the consent of two-third buyers in a project as per the amendments to the bill.
- Mandatory deposit of 50% of the project costs, reduced from 70%, will still put enough restrictions on developers to divert funds into some other project and ensure better completion records.

The bill, when implemented, is expected to address the increasing number of disputes between the home buyers and the realty developers, especially unreasonable delays in completion of projects. Developers also seem to derive the benefits as improved transparency and accountability will improve institutional fund flow into the sector.

The Flip Side

Although the bill seems all inclusive, essentially after the amendments, some feel that it lacks in places. The bill does nothing to address the two main problems in property market - supply shortage and black money. Once the bill becomes a law, supply shortages may occur in the residential sector, as developers cannot launch or advertise a project before obtaining all project related permissions. They won't be able to make any 'pre-launch' offers; this means they will have to find money from other sources to arrange funds for obtaining approvals and registration of the project.

This may therefore lead to increased prices of property, along with frustration among investors.

The Bill also says that a central appellate tribunal should be set up as a central body and each individual state should also have state regulators. This means that there would be some central guidelines for real estate sector and builder and each state will focus on regulating their states real estate builders. There might be few rules different from states to states. On this front, there might be some confusion.

Real estate developers are of the view, and rightly so, that along with such regulators, long pending issues such as creation of a single window system for clearance and clearances from urban local government bodies should also be brought under the ambit of the proposed regulator. The builders have been long complaining of the inordinate delays besides the difficulty in obtaining approvals for construction from the multi-headed government agencies. Getting construction permits in time is one of the worst benchmarks in World Bank's Doing Business in India metric.

As a collateral law, there is a need to enact the Unfair Terms in Contract Act, which will enable the ability of the courts to check one sided clauses which are often the cause of disputes, not only in real estate but many other consumer contracts. Such a law exists in many countries. The Law Commission of India has recommended this many years ago but our lawmakers have not yet responded.

The Issue Note is prepared by Ira Sharma, Research Assistant, CIRC.
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