



# International Journal of Research in Academic World



Received: 24/September/2024

IJRAW: 2024; 3(10):92-94

Accepted: 28/October/2024

## Role of Consumer Laws in Real Estate Sector in India

<sup>1</sup>Dr. Abhijeet Dhere and <sup>\*2</sup>Shivaji S Bibe

<sup>1</sup>Head, Department of Law, School of Law, MIT-WPU, Pune, Maharashtra, India.

<sup>\*2</sup>Research Scholar, Department of Law, School of Law, MIT-WPU, Pune, Maharashtra, India.

### Abstract

Since the RERA Act was passed, some legal arguments have claimed that consumer forums cannot handle complaints from home buyers. Courts often face the question of whether a complainant can use the Consumer Protection Act if another option is available. The courts usually try to answer this positively, but their position regarding home buyers hasn't been very clear. It's been argued that RERA is specific legislation for important issues, and remedies should mainly follow what the Act says. Real Estate industry has become an important part of the Indian Economy now. With such high number of transactions, both in terms of quantity and amount, it is natural that a number of legal disputes/grey areas will arise, both for the Promoters and the consumers. RERA Act, 2016 is an extension of Consumer protection law in India. Before Consumer Protection Act, 2019 there was Consumer Protection Act, 1986. In Consumer Protection Act, 2019, the word Deficiency and Defect is well defined and also interpreted by Supreme Court of India time to time in various cases.

**Keywords:** Real Estate (Regulation & Development) Act, 2016, CPA-Consumer Protection Act, 1986, CPA 2019-Consumer Protection Act 2019 etc.

### Introduction

Real estate is a very important sector in our country. Many people work hard their whole lives to buy their dream property. As people's economic situations improve, buying property becomes a popular investment. Real estate includes land and buildings. For many, owning a home is still a dream, but buying property can come with many problems, especially for buyers who invest a lot of money. These issues can violate basic consumer rights, so it's crucial for buyers to know their rights when purchasing property. Proper legal help and laws protect consumers and ensure that they get justice quickly.

### Is the Buyer Covered under the Ambit of the Consumer Protection Act?

The Supreme court has answered the above-mentioned question in a judgment dated 2nd November 2020, passed by the Supreme Court of India in the case of M/s Imperia Structures Ltd v Anil Patni & Another (Civil Appeal No. 3581-3590 of 2020), the Supreme Court held that the redressal mechanism/provisions under the Real Estate (Regulation and Development) Act 2016 (RERA) do not act as a bar to complaints under the Consumer Protection Act 1986 (CP Act). The principles laid down in this judgment by the Supreme Court, find a place in a range of earlier series of decisions passed by various High Courts as well as the National Consumer Disputes Redressal Commission (NCDRC) which has stated that allottees/homebuyers are well within their rights to avail remedies under the CP Act as well

**\*Corresponding Author:** Shivaji S Bibe

as RERA and even the Insolvency and Bankruptcy Code 2016 <sup>[1]</sup>.

A lot of the builders have mischievously labelled customers as non-consumers under the Consumer Protection Act, 2019, intentionally, to save them from liability and to ensure that the buyer is not protected under the customer protection act. However, in the case of Alope Anand V Ireo Pvt Ltd and Ors <sup>[2]</sup> the Hon'ble NCDRC held that a home-buyer comes under the definition and ambit of a 'consumer' as per the Section 2(1)(d) of the Consumer Protection Act, 2019 and can sue the builder under the provisions of the Consumer Protection Act, 2019. However, the Commission had also stated that the buyer should not be indulged in the trading of companies, and should have bought the property as an end user.

### Problems Buyers Face While Buying Properties

Real Estate sector has never been hassle free, and given the huge growth in the sale and purchase of properties in the past few decades, the issues in this sector has multiplied. A lot of greedy builders, lure in unsuspecting buyers in malicious purchase offers or trouble them in different ways by providing deficiency in services. Following are the issues that a consumer willing to purchase a property might face whilst buying a property:

#### 1. Unfair Clauses in the Flat Buyer Agreement

An FBA, i.e., a Flat Buyer's Agreement is the agreement signed between the builder and the purchaser, which contains

all the relevant clauses, terms and conditions that both the parties agree upon, and will be relevant during the course of the completion and handing over of the property to the purchaser. This contains the dates of payment of the due amount, penalty in cases of delayed payment etc.

Many a times, the builder however draft and include unreasonable clauses in the FBA, like high rates of penalty on the buyer for delayed payment, unreasonably long time periods for the completion of the construction, and other clauses favoring the builder. These one-sided clauses can often cause mental agony to the purchaser. Even the Hon'ble Apex Court in the case of Pioneer Urban Land & Infrastructure Limited V Govindam Raghavan<sup>[3]</sup> held that these one-sided agreements, containing bias clauses totally favoring one party are a clear case of deficiency of service, under Section 2(11) of the Consumer Protection Act, 2019, and such agreement would not be final and binding, if a buyer is compelled to sign a biased one-sided agreement.

## 2. False Assurances and Claims by the Builders

Many a times, the builders use fake adverts and misleading advertisements to lure in more potential buyers of the property. Flat builders have many a times used deceptive means of advertising and have given false hopes to the buyers. They claim to provide world-class facilities, high-end services, high-rise buildings etc. in their projects, while it doesn't even exist nor the builder has any intention to provide the same to the buyers.

The Hon'ble Supreme Court in the case of DLF Universal V The Director General (Investigation and Registration)<sup>[4]</sup> had held that these false adverts, and misleading advertisements, made specially to induce potential customers, and showcasing facilities and amenities which does not exist or will not exist amounts to a form an unfair trade practice, defined as per the Section 2(47) of the Consumer Protection Act, 2019.

## 3. Delays in Handing over the Possession

Delayed Possession is nothing but handing over the possession of the respected property after the stipulated date of handing over the possession, even after the buyer has timely paid all of his dues. Most of the times, it is due to the ill-intention of the builder, who tries to redirect the money for his own selfish interests.

This has an adverse effect on the home buyers, who have already duly paid in accordance to the clauses of the Flat Buyers Agreement (FBA), and have many a times take home loans at high interest rates, despite legally being the purchaser of the property.

In the case of Emaar MGF Land Ltd V Karnail Singh<sup>[5]</sup> it was held that delays in possession is a type of deficiency in services, and not in accordance with the Consumer Protection Act, 2019.

## 4. Sale of disputed Properties

A lot of times, the builders/seller sell one property to two separate individuals, or sell a property in a legal dispute or allot property that is in litigation. Such properties have no clean title and cannot be allotted to any individual, yet the builders have often practiced this. In the case of B.N. Venkatesh Murthy V Bangalore Development Authority<sup>[6]</sup> the respondent had made a sale of plots which were in litigation, and had no clean title. The court had stated, upon the appellants complaint that the sale was arbitrary and amounted to deficiency in services, under the Consumer Protection Act, 2019.

## • Usage of Substandard Materials in the Construction of the Property

Builders have often used substandard and cheap materials for the construction of the property, to increase his profits. This offers a low quality as expected, and has an adverse effect on the buyers, who spends extra money to purchase high-quality products for the construction of his property. The builder has also many a times engaged in poor quality of workmanship, leading to poor and low-quality properties.

In the case of Kailash Malpanu V Kishore Kumar Khatri<sup>[7]</sup> the court had decided that in cases of usage of substandard materials by the builder, the builder was held guilty of deficiency in services as per the Consumer Protection Act, 2019 and the buyer was awarded compensation along with 18% interest.

## Real Estate (Regulation and Development) Act, 2016

The demand for a regulation concerning real estate sector in India is not a new one. The 21<sup>st</sup> century saw a huge spurt in transactions involving the real estate sector in India, which of course led to an increase in the need of a real estate regulation in India. Urbanization and the growing economy also played an important role in the need of the regulation.

In 2016, the Real Estate (Regulation and Development) Act was finally passed. The act does not regulate real estate or real estate development, since both of these are covered under the authority of the State, as per the State List given in the 7<sup>th</sup> Schedule of the Indian Constitution. Rather, the act covers authority only over the sale and transaction of real estate, including properties, plots, apartments etc.

The preamble of the act has states that the act has been prepared to establish a regulatory authority and appellate tribunal to regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential building and other similar properties.

The introduction of this act was a much-needed step, as it had provisions for proper regulation of real estate industry, and would ensure that the consumers and homebuyers are protected from the mala fide intentions of the greedy builders.

## Legal Provisions under RERA

Under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the aggrieved party can file a complaint against any builder, seller or any agent of the concerned property.

Section 3 of the Act makes it mandatory for prior registration of the real estate property/project with the concerned Real Estate Regulatory Authority, and if the Promoter is unable to register such property with the concerned authority, the builder shall be liable to a penalty which can be up to 10% of the total cost of the concerned property/project, as per the section 59 of the act. The aggrieved party can file a complaint with the authority or the adjudicating officer as per the section 31 of the act.

For the registration of the property/project, the Promoter has to provide certain information like the brief details of his venture, the project details, genuine copies of various governmental approvals etc., as per the section 4 of the RERA, 2016. If the builder is unable to do so, he won't be able to register the property and in case the builder provides any false or fabricated information, and is unable to meet the conditions set out in Section 4, then he would be liable to a penalty of up to 5% of the concerned property, as per the section 60 of the RERA which provides for the Penalty.

## Landmark Cases

### 1. Emaar MGF Land Ltd COV Aftab Singh <sup>[8]</sup>

This was a case of delayed possession, where the respondent was unable to get the possession even after paying all the dues on time. The respondent had filed a complaint as per the provisions of the Consumer Protection Act. However, the builder claimed that due to an arbitration clause mentioned in the agreement signed between the two parties, it was arbitrary of the buyer to file a consumer complaint. However, the Hon'ble Apex court had decided that the buyers of any property are defined as consumers as per the *Aloke Anand V Ireo Pvt Ltd and Ors* <sup>[9]</sup>, and hence the buyer has the right to seek redressal as per the Consumer Protection Act.

- **Ireo Grace Realtech Pvt Ltd V Abhishek Khanna and Ors** <sup>[9]</sup>: In this landmark judgment of the Supreme Court, it was decided that the buyer cannot be compelled by the developers and the sellers to be bound by one-sided clauses and agreements present in the Flat Buyers Agreement (FBA). Many times, the builders compel the buyers to be bound by unreasonable clauses like high penalty in cases of delayed payments, no provisions for penalty in cases of delay by the builder etc. However, this judgement set out a precedent that the clauses in the agreement cannot be one sided.
- **Kolkata West International City V Devasis Rudra** <sup>[10]</sup>: In this case, the buyer was unable to get possession of the property, despite paying all the dues in time due to the delay by the builder. The buyer was made to wait for an extended period of time to get the possession, yet he was never given possession of the property, nor was he provided any refund along with an interest rate and other charges, including mental agony and litigation costs. However, the Hon'ble Court held that the buyer is liable to pay the entire amount deposited along with a percentage rate of interest to cover up the financial hardships faced by the appellant while paying for the property.
- **Newtech Promoters and Developers Pvt Ltd V State of UP** <sup>[11]</sup>: The Hon'ble court had decided that the buyer has the absolute right whether he wants a refund or the possession of the property, in cases of delayed possession of the property. The buyer is entitled for a refund in cases of delayed possession; however, the buyer would still have the option to opt for the possession of the property, which the builder is bound to construct in, during the grave period.

### Comparative Analysis between Real Estate (Regulation and Development) Act and Consumer Protection Act: Is RERA Gaining Precedence over CPA?

Real Estate is one of the most important and crucial sectors in any economy across the world not only India. In India, there was no proper regulatory body to maintain proper code of conduct, which was essential, and due to this, there were many real estate scams in India, and it created chaos in this sector. The most recent scam done is the famous Amrapali case, which shook the whole nation. Real estate fraud is not a new concept, it started way back in 90s, as there was no proper regulatory authority to provide proper punishment to the real estate developers who were involved in these scams. Due to limited legislation in this sector, the buyers had no option but to approach the NCDRC (National Consumer Dispute Redressal Commission). Due to limited powers, they were unable to provide necessary relief relating to Real Estate frauds. The legislative intent of Consumer Protection Act, 2019 aimed at protecting the interest of consumer (overall

protection) and it was not enacted to deal with real estate frauds whereas RERA is specially made to deal with real estate disputes, frauds etc. The legislative intent behind RERA is only to protect the homebuyers from the malice intent of promoter, builder, real estate agent, etc.

## Conclusion

Real Estate industry has become an important part of the Indian Economy now. With such high number of transactions, both in terms of quantity and amount, it is natural that a number of legal disputes/grey areas will arise, both for the builders and the consumers. Protection of the consumers, and ensuring that the real estate industry is properly regulated is an important challenge for the authorities and the governments, however acts like RERA, 2016 have significantly assisted in ensuring a proper regulation of the real estate industry in the nation.

The act adjudicates the complaints and appoints adjudicating officers. Both the allottees and the purchasers/buyers and sellers of the property are covered under the act, and the act provides for provisions of penalty/punishment in cases of any violation of any of the provisions of the act.

The act has given the consumers, to some extent, more liberty in terms of buying properties, as they have a regulatory authority backing them up, and is a very important step in the way of real estate industry development.

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