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WORKSHEET - 3

**Real Estate Regulation Act
(RERA)**

**Foundation PT CUM MAINS
WORK-SHEET**

Part - 3

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The Real Estate (Regulation and Development) Act, 2016 came into force on May 1, 2016. The Central and state governments are liable to notify the Rules under the Act within a statutory period of six months.

Land, Rights over Land, Land Improvements – Fall under the ‘**State List**’ (Under 7th schedule) of the constitution.

Regulating contracts and transfer of property – Fall under ‘**Concurrent List**’ (Under 7th schedule) of the constitution. The above act deals with this.

Aim:

Bring about transparency in the real estate sector, thereby encouraging investments by foreign and domestic financial institutions and protecting the interests of home buyers

Key Issues (need) in the Real Estate Sector:

- 1). Lengthy approval process for project clearances
- 2). Lack of clear land titles
- 3). Prevalence of **black money**
- 4). Diversion of funds received by the developer towards one project to more lucrative ones
- 5). Construction work has come to a standstill or the developer has left without completing the project
- 6). Developer changes the layout or building plans after purchase
- 7). Legal disputes (It had to be settled in the courts)
- 8). Endemic issues – For Ex recessive conditions in the past few years.
- 9). Distress caused by two drought years has also cut demand in the rural and semi-urban segment.

What is RERA?

- RERA, 2016 is a central legislation which aims to regulate the real estate sector. It seeks to empower and protect property consumers and make transactions fair and transparent.
- The RERA Act was enacted under Entry 6 and 7 (dealing with contracts and the transfer of property) of the Concurrent List of the Constitution of India
- Enacted in enacted March 2016, RERA came into effect from May 2017

Objectives of RERA: 1. Enhance transparency and accountability in real estate and housing transactions 2. Boost domestic and foreign investment in the real estate sector 3. Provide uniform regulatory environment to ensure speedy adjudication of disputes 4. Promote orderly growth through efficient project execution and

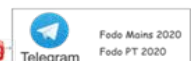
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standardization; 5. Offer single window system of clearance for real estate projects 6. Empower and protect the right of home buyers

Key Provisions of Real Estate Regulation Act: 1. Establishment of state level regulatory authorities- Real Estate Regulatory Authority (RERA)- the Act provides for State governments to establish more than one regulatory authority **Functions:**

- Register and maintain a database of real estate projects; publish it on its website for public viewing,
- Protection of interest of promoters, buyers and real estate agents
- development of sustainable and affordable housing,
- Render advice to the government and ensuring compliance with its Regulations and the Act

2. Establishment of Real Estate Appellate Tribunal- Decisions of RERAs can be appealed in these tribunals.

3. Mandatory Registration: All projects with plot size of minimum 500 sq.mt or eight apartments need to be registered with Regulatory Authorities.

4. Deposits: Developers needs to keep 70% of the money collected from a buyer in escrow account to meet the construction cost of the project. Note: An escrow account is a temporary pass through account held by a third party during the process of a transaction between two parties.

5. Liability: A developer’s liability to repair structural defects- 5 years

6. Penal interest in case of default: Both promoter and buyer are liable to pay equal rate of interest in case of any default from either side

7. Cap on Advance Payments: A promoter cannot accept more than 10% of the cost of the plot, apartment or building as an advance payment or an application fee from a person without first entering into an agreement for sale

8. Clearly defines Carpet Area as net usable floor area of flat. Buyers will be charged for the carpet area and not super built-up area.

9. Punishment: Imprisonment of up to three years for developers and up to one year in case of agents and buyers for violation of orders of Appellate Tribunals and Regulatory Authorities.

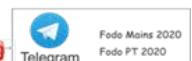
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Critical Evaluation of RERA: Benefits 1. Completion/ Delivery of Projects:

- According to ICRA’s research, there has been a marked improvement in project completions (ICRA’s sample set: 11 listed real estate developers who have projects across India)
- Project completions increased from 30.02 million sq-ft in FY2015 to 45.51 million sq-ft in FY2017
- Project deliveries witnessed a growth of 30.5% from 2016 to 2017 2. Model builder-buyer agreement, disclosure norms has brought transparency in the real estate sector 3. The Act has been effective in boosting confidence in the buyers. This is reflected by the increase in housing sales. Home sales registered a 33 per cent rise in the top nine cities in last one year 4. RERA has been highly successful in Maharashtra.
- Currently, more than 25,000 projects have been registered under RERA across India, out of which 62% are in Maharashtra alone
- Maharashtra Real Estate Regulatory Authority (MahaRERA) has disposed off 1168 complaints 5. Boost confidence in global investors- increased investment in real estate sector.

Pertaining Issues: 1. Notification of Rules:

- Only 20 out of 28 states have notified rules stipulated under RERA
- West Bengal, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura are yet to notify rules 2. Establishment of Real Estate Authority:
- Only Maharashtra, Madhya Pradesh and Punjab have permanent regulatory authority
- 13 states have ‘designated’ regulatory authorities- an existing body designated as authority until permanent one is established.

4. Establishment of a Real Estate Appellate Tribunal:

- Only 15 out of the 35 (states and UTs) have appellate tribunal

5. Potential conflict between IBC and RERA: Fundamental contradiction-

- IBC allows companies to file for bankruptcy to provide relief to debtors or creditors
- While, RERA seeks to provide relief to homebuyers and hold developers/builders for project delays
- RERA does not address the issue of insolvency of a developer

KEY TAKEAWAYS

- Recently, the Union Cabinet has cleared an ordinance amending

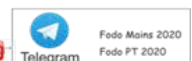
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the Insolvency and Bankruptcy Code (IBC)

- The amendment is expected to facilitate homebuyers when it comes to recovering their dues from bankrupt companies.

6. Conflict between state and Centre over RERA implementation

- State governments regulated real estate before RERA as land and land improvement are in the State List of Seventh Schedule of the Constitution. RERA has been enacted under Concurrent List. This has increased the tussle between various states and Centre over implementation of RERA

7. Dilution of Act by States:

- Act has been diluted by States to favour developers.
- Major areas of dilution include: Definition of ongoing projects, penalties for non-compliance with the Act and payment schedule and liability in case of structural defects

8. Challenge in North East: RERA has been challenged in north-eastern state on certain constitutional grounds- land belonging to the community and autonomous councils

9. Delays due to government approvals:

A major concern has been delay due to government approvals of real estate projects (like like ownership certificate, land use conversion, environmental and pollution NOCs etc)

Way Forward:

1. Centre and state must collectively resolve any conflict arising out of RERA implementation
2. Potential conflict between RERA and IBC to be checked
3. Government agencies should be made accountable for the delay in granting approvals
4. States should not dilute the RERA provisions. Provisions for punishment of violations, should be kept intact in all state laws
5. A robust IT infrastructure should be established for monitoring projects and quick redressal of grievances
6. The government has already set up Central Advisory Council (CAC) for effective implementation of RERA. The scope of functions of CAC should be broadened to include advisory to state bodies on issues related to RERA compliance

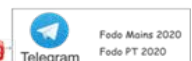
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7. Ensure flow of funds in the sector; endowment funds should be made available to developers.
8. States should fully implement RERA to curb black money, given large part of it originate and flows in the real estate sector
9. For effective implementation, the centre has already intervened and notified June 30, 2018 as the last date for the states to remove dilution of the Act and include all completed projects under RERA.

All the best
JAI HIND

Class explanation- mind map

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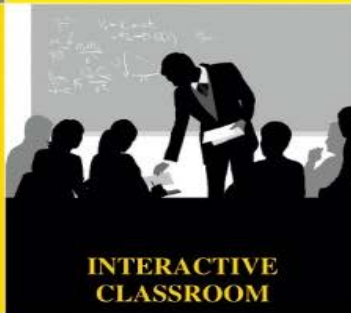
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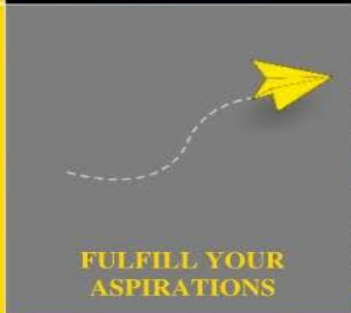
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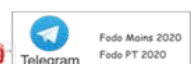
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