



How Homebuyer Rights Changed After RERA Verdicts

Ashwini Priolker
@ashupriolker

Bookmarked

Published on October 09 2020, 11:10 AM
Last Updated on October 09 2020, 11:10 AM



Homebuyers across India took recourse to the Real Estate Regulatory Act for resolving their problems in the three years since the stricter housing law was rolled out.

But the law hasn't been uniformly implemented across the country as it's been interpreted differently on many issues by states that have the power to notify their own rules.

- So far, more than 52,000 projects and 40,517 agents have registered under RERA.
- More than 46,000 complaints having been disposed of by real estate regulatory authorities across the country.

Here are some of the key issues most debated since the Act was implemented:

Withdrawal From Project In Absence Of Sale Agreement

Developers issue a letter of allotment to the homebuyer once a certain amount is paid before signing the agreement for sale. The allotment letter may or may not have the date of possession. The question that arises in such cases is can an allottee withdraw from a project in the absence of an agreement for sale?

The stand taken by various real estate regulatory authorities has "evolved" over time, according to a RERA dossier published by legal firm Juris Corp based on judgments passed by different authorities. "Essentially, real estate regulatory authorities have held that the terms of withdrawal will be governed by the terms of the allotment letter in the absence of an agreement for sale."

On Sept. 27, the Bombay High Court will hear an appeal against a RERA order on sale agreement vs allotment letter. The order is set to become a precedent for this issue.

Can Pre-RERA Projects Come Under RERA?

There were projects that started before RERA came into effect but were delayed. Initially, RERA authorities in states like Maharashtra issued a circular stating ongoing projects with agreements registered before May 1, 2017, will be governed by Maharashtra Ownership of Flats Act. The circular was later diluted to include agreements executed prior to the Act, except in the case of projects that hadn't received occupation certificate.

The President gave his assent to the RERA Act in 2016. After that, states were given a year to notify the rules, said Ameet Mehta, an advocate who was a member of the central government's RERA Drafting Committee.

"Some states didn't adopt the act within the given time period. There were some discrepancies based on the standard format accepted in each state because of the local regulations," Mehta told BloombergQuint. "However, the RERA Act makes it clear that any project which has not received occupation certificate comes under the ambit of the Act."

Relief For Delay In Possession

Homeowners who invested in pre-RERA projects and suffered project delays are entitled to relief. In the case of Umesh Vyas vs. Prima Terra Buildtech Pvt. and Anr., the developer had committed to hand over the flats by December 2013. Following delays, the allottee filed a complaint before MahaRERA seeking interest for delayed possession. The developer contended that the complaint isn't maintainable as the agreement for sale was registered under the provisions of MOFA. Rejecting the developer's contention, MahaRERA held that the allottee was entitled to the relief.

"Before RERA came into existence every state had a local law in place (MOFA in Maharashtra, Gujarat Ownership Flats Act, 1973, in Gujarat). The whole idea of bringing RERA was to safeguard the interest of homebuyers by plugging bottlenecks as also bring standardisation in the real estate sector," Mehta said.

The RERA, which has been established in each state, covers local laws also and acts as an adjudicating body for speedy dispute resolution, he said. In fact, the detailing in Act is to the extent that apart from many legal points, RERA has also brought standardisation in model agreements, model allotment letters and mandatory registration of brokers who wish to sell flats in projects within the state or across different states in the country."

Formation Of Association Of Allottees

There have been instances where the developer has left the project incomplete. Sections 7 and 8 of the RERA gives powers to the real estate authority to revoke the registration of a project if it deems fit.

The Maharashtra real estate regulator released guidelines in March 2019 that allowed homebuyers to remove a developer in case of delays. An association of homebuyers with the consent of at least 51% of the members can come together to remove a builder from the project, according to the standard operating procedure issued by MahaRERA. Several associations of allottees have taken this route to complete projects in cases of delays by developers and were unable to complete it.

In the case of Mithanagar Archa CHS Ltd. vs. Dhanshree Developers Pvt., the developer was ordered to wind up operations. Accordingly, allottees sought revocation of project registration so that the society (formed by the allottees) could complete the project by utilising its funds. After hearing all the parties, MahaRERA revoked the registration of the project and directed to freeze the designated account of the project. This was one of the few instances where MahaRERA revoked the registration of a project.

However, according to Shirish Deshpande, chairman, Mumbai Grahak Panchayat, a consumer body, an association of allottees should bear in mind certain factors before taking over the project. "It's important for homebuyers to find out what will be the completion cost and cost of unsold inventory. The basic thumb rule is to go for a project where 75-80% work is complete," he told BloombergQuint. "When allottees take over the project they get into the shoes of a businessman and hence it's important for them to make sure the project is financially viable."

Interest Payment Under Section 18

Under Section 18 of the RERA Act, homebuyers can seek a refund of the amount paid by them to the developer, along with interest, when the project is delayed. This section has been the most debated under various RERA authorities. In many cases, RERA authorities have refused to allow withdrawal from the project citing grounds of the larger interest of completion of the project.

"The Preamble of the Act, inter alia, states that one of the objectives of introducing the Act was "to ensure the sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner," the Juris Corp RERA dossier states. However, the provisions of the Act were being misused by some allottees to seek compensation from the developers, it said.

In the case of Devindersingh H Anand and Ors. Vs Poona Bottling Co. and Ors., MahaRERA held that those who received allotment at a later stage aren't entitled to compensation under Section 18 of the Act.

The complainants purchased the flats from the original allottees and demanded rent from the developer as compensation for delay in possession on the basis of the date of possession mentioned in the earlier agreement between the original allottees and the developer.

MahaRERA said subsequent allottees were aware that the date of possession had lapsed at the time of purchase and hence they weren't entitled to relief.