

Regulating Realty: A Missed Opportunity?

Significant slowdown in the real estate markets is attributed to a severe crisis in confidence among buyers towards the developer community, which would be addressed by setting up of a real estate regulator with enactment of the Real Estate Bill that will streamline operations of the entire industry. However, with the change in government, the bill stands lapsed. This note brings in light the major concerns and slips in the bill and makes a case for immediate reintroduction of the Bill in the Parliament.

Misleading advertisements and delayed handovers—ordinary citizens often suffer at the hands of edacious and unscrupulous real estate promoters and their agents. Therefore, in the world of small buyers being at the mercy of big builders, regulations are needed desperately to create a level-playing field. Only little has been done till now in this regard. The law to regulate the sector has been passed in Maharashtra, but no regulatory body has yet been set up. Haryana government was also determined to follow on similar lines, but apart from much fanfare, nothing has been materialised.

The Real Estate (Regulation and Development) Bill 2013 seems to provide some respite to many middleclass Indians aspiring to ‘own’ a dwelling in space crunched cities. When enforced, it would be a pioneering initiative to protect the interest of consumers, promote fair play in real estate transactions and ensure timely execution of real estate projects. The bill proposes to “*establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and protect the interest of consumers in the real estate sector.*”¹

Though it is a good beginning, but there are few gaps which need to be mended on its road to success. The bill has already drawn scathing criticisms, to the extent that an urban planner called it ‘*Junk*’². On the other hand, the builders and developers are also quite apprehensive, as the bill seems too naive and inexperienced to deal with

the complexities of real estate sector. Until few areas of concern are addressed, the bill remains mere *bric-a-brac*. With the new government in place, there is anticipation of a turnaround. The new government is acting pro-bill; Urban Development minister has already initiated talks with the stakeholders.

Key Provisions of the Bill

- Establishment of Real Estate Regulatory Authorities (RERAs) state level with specified functions, powers, and responsibilities to oversee real estate transactions;
- Registration of real estate projects and registration of real estate agents with RERAs;
- Mandatory public disclosure of all project details like site, layout plan and schedule for completion of the project;
- Compulsory deposit of 70% to cover the construction cost of the project, of funds received by the Promoter, in a separate bank account.
- Establishment of Real Estate Appellate Tribunals, where the decisions of RERAs can be appealed.

The centralising nature of the bill has also raised some apprehension. The critics argue that Indian real estate market, hurling with malpractices in absence of effective regulation, needs an efficient and inclusive legislation. Confederation of Real Estate Developers’ Association of India rightly argued that blanket regulations accompanying the central bill might give rise to more problems rather than solving the existing ones.³

While the Bill is a commendable step forward, it is not free from loopholes. The major slips that need to be addressed are:

- **Long Chain of Intermediaries:** The bill envisages registering only the developer, the agent and the project size on the website, rather than the long chain of

¹ BILL NO. XLVI OF 2013 as introduced in the Rajya Sabha, available at http://mhupa.gov.in/W_new/Real%20Estate%20Bill%20as%20introduced%20in%20the%20Rajya%20Sabha%20on%202014.8.2013.pdf last accessed on 25th November, 2014

² Shirish B Patel, “*Junk the Real Estate Bill, it Makes No Sense*”, *The Economic Times*, 15th October, 2013.

³ ‘Real Estate Bill Evokes Mixed Reaction’, *The Financial Express*’ available on <http://www.financialexpress.com/news/real-estate-bill-evokes-mixed-reaction/1126058/1>, last accessed on 11th November, 2014.

intermediaries including landholder, developer, architect, approving authority, contractor, agent and buyer. Regulatory mechanism would be well inclusive if it adjudicates the other segments of intermediaries too, for instance- ensuring the high construction standards to be maintained by the contractors.

- *Single agreement*: The bill requires for every realtor to get registered with the Real Estate Regulation Authority (RERA), and the developer needs to deposit 70% of the funds collected from the buyers in an escrow account, but the practice of making more than one agreement already exists to save stamp duty and other taxes, so there is a potential loophole here. Therefore, it must be ensured that there is only one agreement that is made for the entire transaction, inclusive of all the amenities.
- The requirement to deposit 70% of project cost, including land and construction costs, in the escrow account may unnecessarily increase the overall costs. In many regions, the cost of construction could be much less than 70% of project costs, particularly where land is expensive. This would put the developers under pressure to raise extra amount to meet the provision and consequently, transfer the cost to their customers.
- *Area Measurement*: Developers usually charge their customers on the basis of super built-up area, which includes other amenities like garden, corridors and community areas in addition to the exact carpet area of the flats. In many occasions, customers are double charged for the amenities as they are billed separately. Although, the bill mandates every developer to declare the carpet area, it doesn't specifically restrict them of adding up other areas into it. Therefore, including the charge of extra amenities in the carpet area of the flat must be restricted.
- *Plot Size*: The act mandates the registration of real estate project in case where the area of land proposed to be developed exceeds one thousand square meters or number of apartments proposed to be developed exceeds twelve, this provision is too easy to circumvent. Any builder exceeding the one thousand square meter threshold may simply divide the plot into two and propose two separate projects and thus escape the regulatory ambit.
- The bill also makes provision for punishment and penalties for contravention of the provisions. This way, the government simply ignores the direct linkage between project delays and administrative bottlenecks.

- The bill shows a lack of understanding of the state-wise variations in nature of realty and is uncertain regarding the central authority addressing the land acquisition at state level, with different laws in different states.⁴ In this regard, streamlining of procedures into a single window system might help.

Suggested Measures

Though the promising provisions of the bill fanfaronade of being consequential for the growth in urban housing in India, it follows a typical myopic view by not being sensitive about the grievances of the developer community and therefore missing a balanced vision. The bill needs to consider opinion and concerns of all stakeholders. Also, following the good construction practices in Singapore and Malaysia, the Bill should be amended to include clauses stipulating eligibility norms of contractors.

The real estate sector has always been encumbered by numerous legislative approvals (including environment approvals, building layout, amenities, ownership etc.) that are compulsory for the developer to obtain before commencement of their project, and this cumbersome process often causes delays- reflected through escalated project costs that are ultimately transferred to the buyers. Therefore, instead of bringing in the procedural paraphernalia, government should target on facilitating such mechanisms that streamline approval procedure at central and state level so that the bill eases realty environment rather than garrotting it with bureaucratic procedures.

Along with establishing a regulatory authority, the government should address the challenges that mar the growth in this sector, such as- high borrowing costs, lack of institutional funding, lengthy approval processes and slow and uneven infrastructure development.⁵ The needs is to fast track the proceedings on the bill on high priority and reintroduce it in the parliament, incorporating the recommendations of the standing committee since one days delay is another day's lack of progress.

⁴ 'Six loopholes in Realty Bill', 'The Financial Express' available on <http://www.financialexpress.com/news/six-loopholes-in-realty-bill/899484/4>, last accessed on 14th January, 2014.

⁵ "Real estate regulation Bill fails to address key issues" available at <http://www.rediff.com/business/slide-show/slide-show-1-special-real-estate-regulation-bill-fails-to-address-key-issues/20130611.htm#1> last accessed on 25th November, 2014.

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