



RERA is Retroactive: SC

Why in News

Recently, the [Supreme Court \(SC\)](#) interpreted that the [Real Estate \(Regulation and Development\) Act, 2016 \(RERA\)](#) is retroactive.

- The SC's ruling is aimed at protecting [homebuyers](#), the ruling brings a **major relief for the buyers, speeds up the resolution process**, and makes it difficult for state governments to dilute the intent of the law.

Brick by Brick

Several states' RERA rules not in sync with the Act

- ▶ **Many excluded** certain ongoing projects with conditions
- ▶ **States** will have to amend rules following apex court's affirmation
- ▶ **Centre**, housing ministry had already clarified the stance
- ▶ **Homebuyers'** body FPCE had approached govt over dilution of rules in 2016

Key Points

- **Retroactive Implementation:**
 - The SC affirmed that the provisions of the RERA 2016 are **applicable to projects that were ongoing** and for whom completion certificates were not obtained at the time of the enactment of the law.
 - Under the Act, **registration of real estate projects was mandatory.**
 - It mandated that for projects that were ongoing on the date of commencement of the Act, specifically projects for which the completion certificate had not been issued, the **promoters shall be under obligation to make an application to the authority** for registration of the project.
 - Regulations of RERA authorities in states including **Uttar Pradesh, Haryana, Punjab, Karnataka, Telangana and Tamil Nadu are currently not in line** with this position and may need to amend their rules to ensure all ongoing projects get covered under RERA.
- **Recovery of Invested Amount:**
 - SC also held that the **amount invested by the allottees, along with interest** as

quantified by the regulatory authority or the adjudicating officer, **can be recovered as arrears of land revenue from the builders.**

- The builders had contended that homebuyers are only entitled to recover interest or penalty as arrears of land.
- However, taking into consideration the scheme of the Act, the court observed, what is to be returned to the allottee is his own life savings. The **amount with interest as computed/quantified by the authority becomes recoverable** and such arrear becomes enforceable in law.

▪ **Penalty for Developers:**

- It is mandatory for real estate developers to **deposit at least 30% of the penalty ordered by the regulator**, or the full amount as the case may be, before they challenge any RERA order. This is expected to **ensure that only genuine appeals are filed and homebuyers' interests are protected.**
- SC noted that the obligation cast upon the promoter of pre-deposit under the Act, in no circumstance can be said to be in **violation of Article 14** (Equality before law) **or Article 19 1(g)**(freedom to practise any profession, or to carry on any occupation, trade or business) **of the Constitution of India.**
 - Builders/promoters who are in appeal are **required to make the pre-deposit to get the appeal entertained** by the Appellate Tribunal.
 - A **promoter** is defined as a person who is entrusted with the task of promoting the project (real estate project), which was developed or constructed by the developer.
- The intention of the legislature appears to be to **ensure that the rights of the decree holder (the successful party) is to be protected** and only genuine bonafide appeals are to be entertained.

Real Estate Regulation and Development Act, 2016

▪ **Need:**

- **Securing the Largest Investment Sector:** Regulation of the real estate sector was under discussion since 2013, and the RERA Act eventually came into being in 2016. Data show that **more than 77% of the total assets of an average Indian household are held in real estate**, and it's the single largest investment of an individual in his lifetime.
- **Creating Accountability:** Prior to the law, the real estate and housing sector was largely unregulated, with the consequence that consumers were unable to hold builders and developers accountable.
 - The **Consumer Protection Act, 1986 was inadequate** to address the needs of homebuyers.
 - RERA was introduced with the objective of **ensuring greater accountability towards consumers, to reduce frauds and delays**, and to set up a fast track dispute resolution mechanism.

▪ **Major Provisions:**

- **Establishment of state level regulatory authorities- Real Estate Regulatory Authority (RERA):** The Act provides for State governments to establish more than one regulatory authority with the following mandate:
 - 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 ensure compliance with its Regulations and the Act.

- **Establishment of Real Estate Appellate Tribunal-** Decisions of RERAs can be appealed in these tribunals.
- **Mandatory Registration:** All projects with plot size of minimum 500 sq.mt or eight apartments need to be registered with Regulatory Authorities.
- **Deposits:** Depositing 70% of the funds collected from buyers in a separate escrow bank account for construction of that project only.
- **Liability:** Developer's liability to repair structural defects for five years.
- **Penal interest in case of default:** Both promoter and buyer are liable to pay an equal rate of interest in case of any default from either side.
- **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.
- **Carpet Area:** Defines Carpet Area as net usable floor area of flat. Buyers will be charged for the carpet area and not the super built-up area.
- **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.

▪ **Implementation of the Act:**

- **34 states/Union Territories have notified rules under RERA**, while its implementation in Nagaland is under process.
- **West Bengal has enacted its own legislation** — West Bengal Housing Industry Regulation Act, 2017 (HIRA) — instead of notifying rules under RERA.
- 30 States/UTs have set up Real Estate Regulatory Authorities, and **26 have set up Real Estate Appellate Tribunals**, as per the latest data available with the Ministry of Housing and Urban Affairs.

Source: IE

PDF Refernece URL: <https://www.drishtiiias.com/printpdf/rera-is-retroactive-sc>

