

RERA: LAW OF THE LAND?

It is nearly a year since the Indian realty entered a new paradigm with the onset of nationwide implementation of the Real Estate (Regulation and Development) Act, 2016 (RERA). As the first anniversary of RERA draws closer, so does the knowledge that the

implementation across states is nowhere close to its goal. While the state-level dilution of the Act on aspects like definition of ongoing projects and punishment for violations is well observed, in this white paper we have delved into the establishment of the

RERA machinery across the country. Taking stock of the current scenario, some issues have come to light that are vital for the implementation of RERA in the true letter and spirit of the Act.

A LOT of ground to be covered!

Real estate is a state subject and the central government formulated Act is a model Act, which is then re-drawn and adopted by the states. Since, 1st May 2016 when the central law came into effect with 60 out of 92 sections, a complete one year time until implementation was available at the disposal of states for establishment of the RERA machinery. Subsequently, the remaining 32 sections came into force on May 1, 2017. Further, 3 months (1st May 2017 to 31st July 2017) were provided to promoters for

registration of on-going projects. In the past one year, RERA compliance in some markets has been a prominent factor for price rationalisation in the residential segment as it has put a break on pre-sales activities and fund mobilisation by developers' at the once popular "soft launch" stage. There have been instances where developers have resorted to selling inventory at a marked discount in a bid to raise finances as no sales at pre-launch stage are allowed now. New supply in the residential segment has also taken a massive

hit as RERA compliance and mounting unsold inventory pressures have forced developers to curtail launches. In 2017, new residential supply across the top eight Indian cities (Ahmedabad, Bengaluru, Chennai, Hyderabad, Kolkata, Mumbai, NCR and Pune) plunged by 41% over 2016. NCR was the worst hit market where a 56% annual drop was noted. However, the progress on RERA compliance across the country still presents a gloomy picture.

Facts at a glance

Total States in India: 29

Total Union Territories in India: 7

RERA is applicable across 28 States (except Jammu and Kashmir) and 7 UTs

RERA Rules not yet notified in...

West Bengal, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

TABLE 1

RERA Implementation Summary

	STAGE I Rules Notified	STAGE II Establishment of Real Estate Authority	STAGE III Functional Portal	STAGE IV Establishment of Real Estate Appellate Tribunal
Number of States	20	20	14	10
Number of Union Territories (UTs)	7	7	5	5

Source: Knight Frank Research

Note: The table above includes states and UTs with both Permanent and Interim Real Estate Regulators and Appellate Tribunals As per information on April 23rd, 2018.

Most states and Union Territories (UTs) have followed a quasi-implementation route which does not amount to creation of an effective regulator that has started delivering on its intent. Maharashtra is the only exception where the regulator's proactive functioning

has set new precedents every second day. Currently, more than 25,000 projects have been registered under RERA across India, out of which 62% are in Maharashtra alone. But in some states, extension of deadlines for project registration is still underway. For

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instance, in Goa the deadline was extended till February 2018. The delay caused in registering projects also restricts the information that can be supplied to consumers via functional portals. At present, only 19 states and UTs have a functional portal in place, that too with a lot of

information dissymmetry across data points. In Andhra Pradesh, only two projects are registered under RERA. Haryana still does not have a portal and the status of projects registered manually remains unknown. Similarly, while the number of live projects in Bengaluru alone stands at around 1,300

projects, the total number of projects registered for the entire state of Karnataka is only 1,500. The progress on establishment of a Real Estate Appellate Tribunal is far more disappointing with only 15 out of the 35 (states and UTs) having made progress on this parameter.

Permanent Regulator in 25 states yet to see light of the day!

While the Central act permitted states to designate any regulatory authority as the Real Estate Regulatory Authority, it did not define any timeline when such an “Interim” Regulator should cease to exist. In addition, since the interim regulators are only “designated” as a Real Estate Authority, it is only an additional responsibility for them to implement the rules and regulations as per RERA. Hence, their efforts fall short of the intended goal of a dedicated real estate regulator.

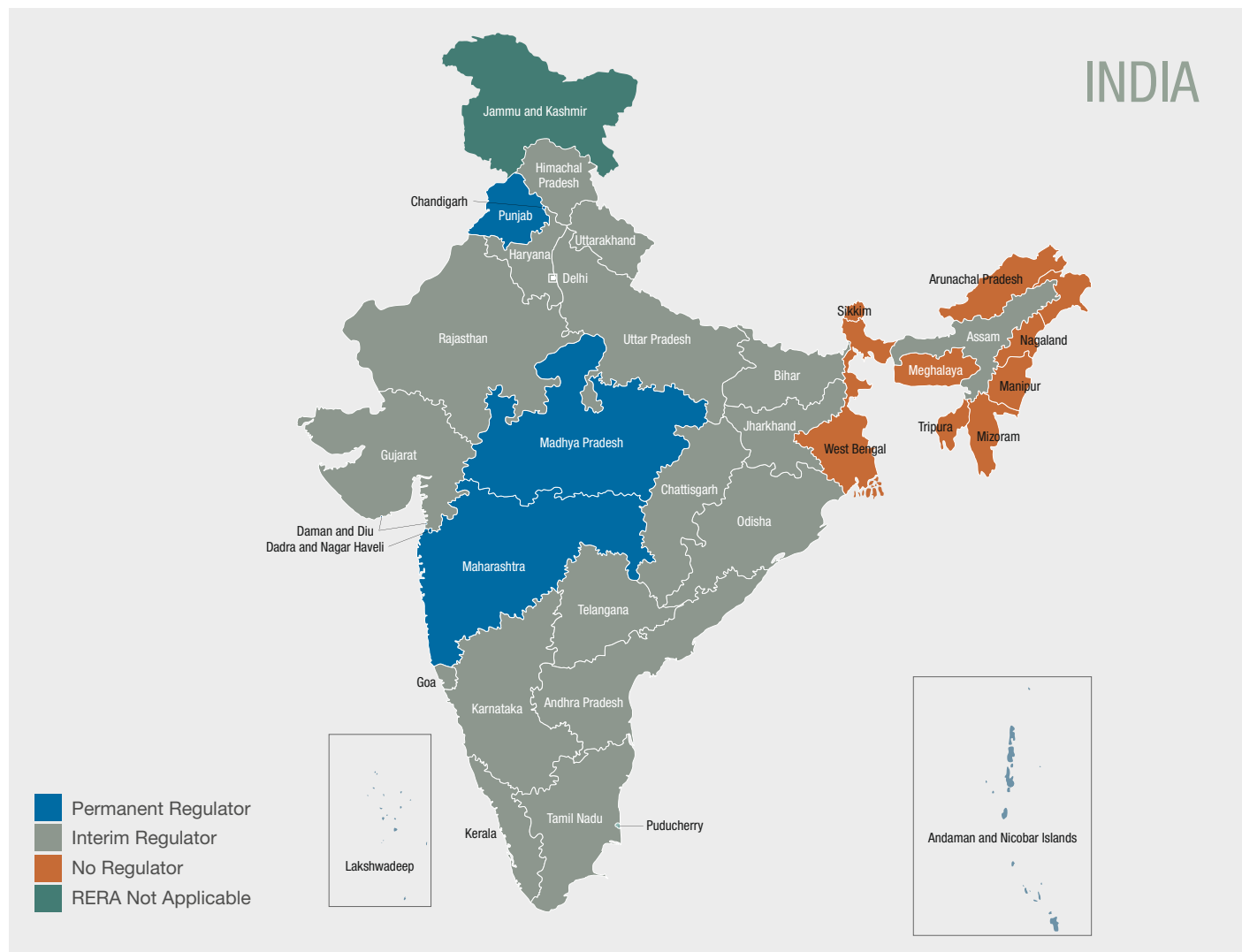
Sections 20 to 39 of the Central RERA outlining the process for setting up a Real

Estate Regulatory Authority came in force two years ago, but only 3 states (Maharashtra, Madhya Pradesh and Punjab) have established a permanent one so far. The devil, as we know, is in the detail. Firstly, while the Central act permitted states to designate any regulatory authority as the Real Estate Regulatory Authority, it did not define any timeline when such an “Interim” Regulator should cease to exist. Secondly, since the interim regulators are only “designated” as a Real Estate Authority, it is only an additional responsibility for them to implement the rules and regulations as per RERA. Hence, their efforts fall short of the intended goal of a dedicated real estate regulator. From the consumers' perspective, RERA implementation and compliance needs undivided attention and focus from regulators

for smooth operations.

Sadly, most states have been playing the waiting game about getting a Permanent Regulator after handing over the reins to such “Interim” authorities. What was strictly supposed to be a stopgap arrangement has turned into a standard. Such authorities are making half-hearted attempts as evident by progress on even basic parameters like getting the portals up and running, registering projects and agents. Since the Central RERA also stipulates transfer of all applications, complaints or pending cases to Permanent Regulators, the “Interim” regulators seem to let the grass grow under its feet.

At present, 25 Indian states are yet to establish Permanent Real Estate Regulators.



The actual functions of a permanent real estate regulator are to facilitate the growth and promotion of a healthy, transparent and competitive real estate market. These include making recommendations to the government on measures to (i) encourage investments in real estate (ii) creation of a single window approval system (iii) encourage grading of

projects on various development parameters as well as grading of promoters and (iv) measures to facilitate digitisation of land records. Dispute conciliation between promoters and buyers is only one of the functions. But most states are far away from the whole nine yards. Until the permanent regulators are off the ground, the shift to an

organised real estate market would be difficult. If the regulators don't evolve into institutions with the necessary experience in understanding the ground level challenges faced by participants, they cannot be their eyes and ears to represent their interests.

TABLE 2

What are the disadvantages if the Interim Real Estate Regulators continue to operate?

- Focus of regulators, whether permanent or interim, is to maintain RERA compliance visibility. However, with interim regulators, creation of an information rich portal and supporting infrastructure still remains work in progress. Hence buyers are left with no other choice but to resort to third party information for real estate due diligence.
- The administrative nonchalance puts a big question mark on the efficacy with which consumer disputes are addressed, ruled and made available to public at large.
- Several officers in interim regulators are heads of state level development departments, development authorities and housing boards. This raises a very pertinent question – will there be no conflict of interest when these officers have to evaluate cases pertaining to projects where the said bodies are promoters/developers? In all likelihood, justice in real estate rulings would be tainted by bias.

RERA judgments reinstating consumer confidence

Recent judgments by MahaRERA have been successful in restoring buyer sentiment in under construction projects and addressing intricacies of the construction development process. Some judgments have been delivered within 30 days of complaint filing. Since its constitution, MahaRERA has ruled in over 1000 cases with the first ruling coming in September 2017.

- Nature of complaints pertained to delay in possession of the flats where buyers had issues with the revised completion timeline of the projects indicated on the RERA website, ambiguity in regulatory approvals and slow construction pace.
- Our previous studies indicate 78% of these complaints were settled in favor of consumers between August and Dec 2017.
- Prompt rulings such as imposing fines on erring developers who are advertising projects without RERA numbers,

returning advance to buyers with interest in case of non-delivery of flats, helping allottees and promoters reach amicable grounds were unprecedented when real estate was not governed by any law in India.

- In case of an aggrieved developer's complaint to MahaRERA regarding part payment by a buyer citing extension of delivery timeline as a reason for non-payment, MahaRERA asked the developer to advance the completion date as well as instructed the buyer to pay the remaining amount in proportion to completion of the project within 45 days to the developer.
- In a recent case, the Real Estate Appellate Tribunal held MahaRERA accountable for an oversight in reviewing an architect undertaking. A good example of the type of scrutiny a Real Estate Appellate Tribunal can provide, if in place.

By resolving cases on merit basis, MahaRERA is able to meet consumers' expectations of a fast-tracked redressal mechanism and bring about a change in the attitude of real estate developers towards consumers. Karnataka has also started moving in a similar direction with prompt rulings in 63 cases. In Haryana, a private builder was recently fined with INR 3 million for wrongfully advertising an unregistered residential project. However, consumers still continue shopping around at multiple forums to file grievances until the issue gets resolved as an effective regulator does not exist in all states.

Way forward

Dilution of the Central RERA presents a report card which is a picture of despair. Despite positive economic sentiment, the confidence of buyers is still not back. In our view, the following recommendations might salvage the Centre's vision and help RERA meet its desired objectives:

A) It is time for Centre to step in and bring out stringent penalties for non-complaint states. The state governments had ample time to put regulatory machinery in line

with the ground realities and their liability should not end with setting up interim authorities.

b) The scope of functions of the newly created Central Advisory Council (CAC) should be broadened to include advisory to state bodies on issues related to RERA compliance. It should hand hold state governments to create support infrastructure.

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TABLE 3

What MahaRERA got right?

- Registering projects, agents and getting the portal up and running.
 - Fast-tracking consumer complaints; speedy rulings.
 - Setting up Conciliation Forum to reduce number of formal complaints and provide cheaper litigation option to consumers to resolve issues amicably.
 - Real Estate Appellate Tribunal evolving into a reliable watchdog.
 - Planning to implement a GIS based mapping for registered projects in future.
- c) CAC's role should be widened to encompass feedback from industry stakeholders that can be channelled into actionable insights regionally.
- d) A digital platform or portal for Central RERA should also be in place where regular updates on RERA implementation by states should be made available to consumers at large to remove ambiguity about the extent of RERA compliance in each state.
- e) Creating a common RERA portal for remaining states where either manual registration is in place or hasn't started should be the priority. By employing a common vendor for developing the digital interface, the development costs of such a portal can be shared by states. This will save a lot of time and also make real estate information accessible to consumers faster.
- f) Efforts should be made to reach interiors of the state so as to ensure that the coverage is not limited to just a handful of top cities of that state.
- Land being a state subject, "One Nation, One RERA" is only wishful thinking. However, given the impactful stature of MahaRERA after an eventful first year, the new eco-system hence created has made the process transparent for buyers.
- Other states struggling to implement RERA can learn from Maharashtra's strategy and replicate its success to bring the buyers back to under construction projects.

REGIONAL HEADS**AHMEDABAD**

Balbirsingh Khalsa
Branch Director
balbirsingh.khalsa@in.knightfrank.com

BENGALURU

Shantanu Mazumder
Senior Branch Director
shantanu.mazumder@in.knightfrank.com

CHENNAI

Kanchana Krishnan
Branch Director
kanchana.krishnan@in.knightfrank.com

HYDERABAD

Samson Arthur
Branch Director
samson.arthur@in.knightfrank.com

NCR

Mudassir Zaidi
Executive Director - North
mudassir.zaidi@in.knightfrank.com

PUNE

Paramvir Singh Paul
Branch Director
paramvirsingh.paul@in.knightfrank.com

**RESEARCH****Dr. Samantak Das**

Chief Economist &
National Director, Research
samantak.das@in.knightfrank.com

Vivek Rathi

Vice President, Research
vivek.rathi@in.knightfrank.com

Divya Grover

Assistant Vice President
divya.grover@in.knightfrank.com

PRESS OFFICE**Aanchal Shetty**

Assistant Vice President,
Corporate Marketing & Public Relations
media@in.knightfrank.com

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