

Legislative Brief

The Real Estate (Regulation and Development) Bill, 2013

The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha by the Minister of Housing and Urban Poverty Alleviation on August 14, 2013.

The Standing Committee on Urban Development (Chairperson: Mr. Sharad Yadav) submitted its report on February 13, 2014.

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Highlights of the Bill

- ◆ The Bill regulates transactions between buyers and promoters of residential real estate projects. It establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs).
- ◆ Residential real estate projects, with some exceptions, need to be registered with RERAs. Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs.
- ◆ On registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.
- ◆ 70% of the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount to less than 70%.
- ◆ The Bill establishes state level tribunals called Real Estate Appellate Tribunals. Decisions of RERAs can be appealed in these tribunals.

Key Issues and Analysis

- ◆ One may question Parliament's jurisdiction to make laws related to real estate as "land" is in the State List of the Constitution. However, it may be argued that the primary aim of this Bill is to regulate contracts and transfer of property, both of which are in the Concurrent List.
- ◆ Some states have enacted laws to regulate real estate projects. The Bill differs from these state laws on several grounds. It will override the provisions of these state laws in case of any inconsistencies.
- ◆ The Bill mandates that 70% of the amount collected from buyers of a project be used only for construction of that project. In certain cases, the cost of construction could be less than 70% and the cost of land more than 30% of the total amount collected. This implies that part of the funds collected could remain unutilized, necessitating some financing from other sources. This could raise the project cost.
- ◆ The Standing Committee examining the Bill has made several recommendations. These include: (a) the Bill should also regulate commercial real estate, (b) smaller projects should also be covered, and (c) all real estate agents must be required to register.
- ◆ The real estate sector has some other issues such as a lengthy process for project approvals, lack of clear land titles, and prevalence of black money. Some of these fall under the State List.

PART A: HIGHLIGHTS OF THE BILL¹

Context

Real estate involves the sale, purchase and development of land for residential, commercial and industrial purposes. Different aspects of real estate are regulated by different levels of government. Real estate projects are currently regulated by state governments under their respective state town and country planning or apartment ownership Acts. Typically, town and country planning Acts regulate land use and development. Apartment ownership Acts regulate individual ownership of apartments in buildings with multiple apartments. Approvals for construction of real estate projects are primarily given at the local and state level. Certain approvals are given by the central government. Consumer grievances may be redressed through forums established under the Consumer Protection Act, 1986. Unfair trade practices may be challenged under the Competition Act, 2002.

Several court cases have addressed issues in the sector such as unfair buyers' agreements and illegal construction.² The Competition Commission of India has pointed out that the absence of a single regulator for the real estate sector is partly responsible for poor grievance redressal.³ In 2013, the Committee on Streamlining Approval Procedures in the Real Estate Sector recommended making the sector more transparent, with information on real estate projects made easily available. It also recommended strengthening the grievance redressal mechanism in case of non-compliance with building standards or contracts.⁴

In 2009, the Ministry of Housing and Urban Poverty Alleviation had published a Model Real Estate Regulation and Development Bill, to regulate and promote real estate and ensure consumer protection.⁵ The Model Bill provided a legislative framework which state governments could choose to adopt while enacting their own laws. Some states have enacted laws or are in the process of enacting laws to regulate the real estate sector, along the lines of the Model Bill.⁶

The Real Estate (Regulation and Development) Bill, 2013 seeks to regulate contracts between buyers and sellers in the real estate sector to ensure consumer protection, and standardisation of business practices. It establishes regulatory authorities at the state level to register residential real estate projects. The Standing Committee examining the Bill submitted its report on February 13, 2014.⁷

Key Features

Real Estate Regulatory Authorities, Appellate Tribunals

- All states and union territories (UTs) must establish state level regulatory authorities, called Real Estate Regulatory Authorities (RERAs) within one year of the Act coming into force. Two or more states or UTs may set up a common RERA. A state or UT may also establish more than one RERA.
- Functions of a RERA include: (a) ensuring that residential projects are registered, and their details uploaded on the RERA website, (b) ensuring that buyers, sellers, and agents comply with obligations under the Act, and (c) advising the government on matters related to the development of real estate.
- Each RERA will consist of a chairperson and at least two full time members with experience in sectors such as real estate, urban development, law and commerce.
- One or more tribunals, called Real Estate Appellate Tribunals, will be established in states and union territories to hear appeals against decisions of RERAs. One Tribunal may be established for two or more states. Each Tribunal will consist of a chairperson and two members, one with a judicial background and one with a technical background.
- If a RERA observes that an issue impacts competition, it may refer the case to the Competition Commission.
- A Central Advisory Council, consisting of representatives from union ministries, state governments, RERAs and representatives of the real estate industry, consumers, and labourers will be established. The Council will advise the central government on major questions of policy, and protection of consumer interests.

Registration of real estate projects and agents

- The Bill requires that all residential projects, with some exceptions, be registered. Promoters cannot book or offer these projects for sale without registering them. Registration is not required for projects that: (a) are less than 1000 square metres, or (b) entail the construction of less than 12 apartments, or (c) entail renovation/repair/re-development without re-allotment or marketing of the project.

- State governments can establish a lower limit for the exemption. Where a project is developed in phases, each phase must be registered separately. In order to register, the promoter must provide details such as the layout plan of the project, and the carpet area of property for sale to the RERA.
- If the applicant does not hear back from the RERA within 15 days of the application for registration, the project will be considered registered. Registration may be revoked after giving 30 days notice to the promoter. In case of revocation, the RERA can recommend the completion of the project through the competent authority or association of buyers or in any other manner. Here, competent authority refers to the local authority responsible for land development.
- Real estate agents must register with a RERA in order to facilitate the sale or purchase of property in real estate projects that have been registered. Registered agents must not facilitate the sale of unregistered projects or mislead buyers regarding services offered.

Duties of the promoter and the buyer

- On registration, the promoter shall upload details of the project on the website of the RERA including the number and types of properties for sale, and quarterly updates on the status of the project. In addition, the promoter must make the site and layout plans of the project, and the schedule of completion of the project available to the buyer. In case a buyer incurs a loss because of false advertising, and wishes to withdraw from the project, the promoter must return the amount collected, with interest.
- 70% of the amount collected for the project from buyers must be used only for construction of that project. The state government can change this amount to less than 70%. The promoter shall not accept more than 10% of the total cost of the property as an advance payment without entering into a written agreement.
- The promoter shall: (a) obtain a completion certificate from the relevant authority, (b) form an association or society of buyers, and (c) provide essential services till the association of buyers takes over the maintenance of the project. If the promoter is unable to give possession of the property, he shall be liable to return the amount received by him for the property, with interest.
- The buyer must make required payments within the term specified in the agreement signed with the promoter. He will be liable to pay interest for any delay in payment. Buyers must participate towards the formation of an association/society/cooperative society.

Penalties

- In case the promoter fails to register the property, he may be penalised up to 10% of the estimated cost of the project. Failure to register despite orders issued by the RERA will lead to imprisonment for up to three years, and/or an additional fine of 10% of the estimated cost of the project. The promoter will have to pay up to 5% of the estimate cost of the project if he violates any other provisions of the Act.
- Real estate agents will have to pay a fine of Rs 10,000 for violating any provisions of the Act, for each day the violation continues.

PART B: KEY ISSUES AND ANALYSIS

Jurisdiction of Parliament to legislate on real estate

The Bill seeks to regulate transactions between buyers and promoters of residential real estate projects to ensure: (a) consumer protection, and (b) standardisation of business practices in the sector. It does so through establishment of real estate regulatory authorities at the state level.

Currently, real estate projects are primarily regulated by state governments as land and land improvement are in the State List of Seventh Schedule of the Constitution. Under Entry 18 of the State List, states can make laws related to land, or rights in or over land; land improvement; and colonisation of land. In response to parliamentary questions, the Ministry has stated it is primarily the responsibility of state governments to regulate real estate and that states must monitor real estate projects.⁸

However, the scope of this Bill is limited to contracts between buyers and promoters, and transfer of property. Both these items fall within the Concurrent List.⁹ A government press release also states this position.¹⁰

Inconsistencies with state laws regulating real estate

Clause 78

The Bill provides that states can continue to apply their laws regulating real estate, to the extent that these laws are not inconsistent with the Act. However, several states have enacted or are in the process of enacting laws that have provisions that are inconsistent with the Bill. These provisions will be superseded by the Bill. Some examples are listed below.

While the central Bill mandates establishing a statutory regulatory authority to register projects in a state, West Bengal has delegated this function to a government department.¹¹ While the central Bill mandates that 70% (or less, as determined by state governments) of the funds collected from buyers of a project be used only for construction of that project, certain state governments have allowed for greater flexibility in usage of funds. The Maharashtra Housing Regulation and Development Act, 2012 mandates that the entire amount collected from buyers be kept in a separate account and be used for *purposes collected*.⁶ The draft Haryana Real Estate (Regulation and Development) Bill, 2013 mandates that 70% of the amount collected from buyers for a project be used for that particular *real estate project*.⁶

States such as Punjab, West Bengal and Uttar Pradesh have stated that they would prefer to continue existing laws to regulate real estate.¹² We compare the Bill with certain state laws in the Annexure.

70% of amount collected from buyers to be used only for construction

Clause 4(2)(i)(D)

The cost of a real estate project includes the cost of land and the cost of construction (and the profit margin). The Bill mandates that 70% (or less, determined by states) of the amount collected from buyers for a particular project be deposited in a separate bank account and be used only for *construction* of the project. The provision seeks to address the practice of builders using money from an existing project for other projects, resulting in delays in completion.⁷ However, this provision could lead to an increase in the cost of the project.

In some cases, the cost of land may be higher than 30% and the cost of construction less than 70% of the total cost of the project. Mandating that 70% of the amount collected from buyers for a project should be used *only for construction* of that project, could lead to part of the money collected remaining unutilised. At the same time, the developer may need to borrow funds to finance the cost of purchasing land. The interest cost on these funds would increase the project cost, which may have to be borne by the buyers.

Similar legislation has addressed the issue differently. The Model Bill (2009) states that the entire amount collected from buyers be kept in a separate account and be used for *purposes collected*, allowing for greater flexibility in its usage.⁵ The Maharashtra Act (2012) does the same.⁶ The draft Haryana Bill (2013) mandates that 70% be collected and that this amount be used for the *real estate project*.⁶

Key recommendations of the Standing Committee

The Standing Committee on Urban Development submitted its report on the Bill on February 13, 2014.⁷ Key recommendations relate to:

- **Commercial and industrial real estate:** The current Bill seeks to regulate only residential real estate. The Bill should regulate commercial and industrial real estate as well.
- **Exclusion of certain projects:** The exclusion of projects smaller than 1,000 square meters or 12 apartments from the purview of the RERA could lead to the exclusion of a large number of small housing projects. This limit should be lowered to 100 square meters and three apartments.
- **Registration of all real estate agents:** All real estate agents should be required to register with a RERA and not just those facilitating the sale of a project covered by the Bill.
- **Single window system for project approvals:** A new provision should be inserted to allow RERAs to give directions to state governments to establish a single window system for providing clearances for projects. A time limit should be specified for state and local authorities to issue completion certificates.
- **Definition of carpet area:** The Bill defines carpet area as 'net usable floor area' of an apartment, excluding the area covered by its walls. The term 'net usable floor area' should be defined in the Bill.
- **Structural defects:** The Bill specifies that a promoter must rectify any structural defect which is brought to his notice within two years of allotment. This term should be increased to five years.

Other key issues in the real estate sector

Several committees and government agencies have outlined major challenges in the real estate sector.^{4, 15, 16} However, it is unclear if a central law can address these issues, given that some of these items fall under the purview of the state government.

- Lengthy approval process for project clearances:** In 2012, the Committee on Streamlining Approval Procedures for Real Estate Projects recommended establishing a single window clearance system for approvals. It noted that up to 50 approvals are required for projects, across three levels of government, taking up to four years.⁴

The Bill allows RERAs to make recommendations to state governments regarding measures to improve the approval process. However, the Standing Committee has recommended that a new provision be inserted to allow RERAs to direct state governments to establish a single window system.⁷
- Lack of clear land titles:** The Planning Commission has pointed out that unclear land titles and lack of transparency in real estate transactions are detrimental to the development of the real estate sector.¹³ In 2010, the centre published a Model Bill, the draft Land Titling Bill, to reform the land titling system.¹⁴ In 2012, the Standing Committee on Rural Development suggested that modernisation of land records, including land titles, would be useful for land based developmental and regulatory activities.¹⁵
- Prevalence of black money:** In a 2012 paper on black money, the Finance Ministry pointed out that the real estate sector, which constitutes about 11% of the GDP of the country, is particularly vulnerable to black money through underreporting of transaction prices while paying taxes.¹⁶

Notes

- This Brief has been written on the basis of the Real Estate (Regulation and Development) Bill, 2013, which was introduced in the Rajya Sabha on August 14, 2013, <http://www.prsindia.org/uploads/media/Real%20Estate/Real%20Estate%20Bill.pdf>.
- Belaire Owners Association vs. DLF Limited, HUDA, and Ors, CCI, Case No. 19/2010, August 12, 2011; Esha Ekta Apartments Co-operative Housing Society Limited and Ors vs. Municipal Corporation of Mumbai and Ors, AIR 2013 SC 1861; Priyanka Estates International Pvt. Ltd. vs. State of Assam, AIR 2010 SC 1030.
- Belaire Owners Association vs DLF Limited, HUDA, and Ors, CCI, Case No. 19/2010, August 12, 2011. The CCI fined DLF Limited Rs 630 crore for abusing its dominant position in the sector by enforcing unfair buyers' agreements.
- "Volume I: Report of the Committee on Streamlining Approval Procedures for Real Estate Projects in India", Ministry of Housing and Urban Poverty Alleviation, January 2013, http://mhupa.gov.in/W_new/SAPREP-march.pdf.
- The Model Real Estate (Regulation and Development) Act, 2009, Ministry of Housing and Urban Poverty Alleviation, mhupa.gov.in/W_new/Model%20Real%20Estate%20Act.doc.
- Maharashtra Housing Regulation and Development Act, 2012, https://www.maharashtra.gov.in/Site/Upload/Acts%20Rules/English/Housing_Act29314.pdf, Draft Haryana Real Estate (Regulation and Development) Bill, 2013, <http://tcpharyana.gov.in/Tentative%20Draft%20Bill%2014.02.2013.pdf>.
- "30th Report: The Real Estate (Regulation and Development) Bill, 2013", Standing Committee on Urban Development, February 13, 2014, <http://www.prsindia.org/uploads/media/Real%20Estate/SCR-Real%20Estate%20Bill.pdf>.
- Lok Sabha, Unstarred Question No. 657, Ministry of Housing and Urban Poverty Alleviation, August, 7, 2013; Lok Sabha, Unstarred Question No. 1564, Ministry of Housing and Urban Poverty Alleviation, August 21, 2012; Lok Sabha, Unstarred Question No. 4707, Ministry of Housing and Urban Poverty Alleviation, May 4, 2012.
- List III (Concurrent List) has the following items. Entry 6: Transfer of property other than agricultural land, registration of deeds, documents. Entry 7: Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
- "Real Estate Bill to protect the interest of Consumers and Promote Fair Play in Real Estate Transactions", Press Information Bureau, Ministry of Housing and Urban Poverty Alleviation, June 5, 2013.
- West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.
- Cabinet Note on the Real Estate (Regulation and Development) Bill, 2013 (obtained through RTI), March 2013.
- "10th Five Year Plan", 2002 – 07, Planning Commission, http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_ch7_6.pdf.
- Draft Land Titling Bill, 2010, Ministry of Rural Development, <http://www.prsindia.org/uploads/media/draft/Revised%20Draft%20L%20and%20Titling%20Bill%202011%2013-05-2011.pdf>.
- "33rd Report: Computerisation of Land Records", Standing Committee on Rural Development, August 28, 2012, http://164.100.47.134/Isscommittee/Rural%20Development/15_Rural%20Development_33.pdf.
- "Black Money: White Paper May 2012", Ministry of Finance, May 2012, http://finmin.nic.in/reports/WhitePaper_BackMoney2012.pdf.

Annexure: Comparison of central Bill with Model Bill and state laws

Table 1: Comparison of central Bill with Model Bill and state laws

Provision	Central Bill (2013)	Model Bill (2009)	Maharashtra Act (2012)	Haryana draft Bill (2013)	West Bengal Act (1993)
Regulator	Real Estate Regulatory Authority.	Real Estate Regulatory Authority.	Housing Regulatory Authority.	Haryana Real Estate Authority.	No separate authority created, state govt. can register projects.
Projects covered	<i>Residential</i> real estate above 1000 sq mts or 12 apartments (or a lower area on the recommendation of the state government).	<i>All real estate projects</i> , including commercial and industrial.	<i>Residential</i> real estate projects, above 250 sq mts or 5 apartments.	<i>All real estate projects</i> , above 1000 sq mts or 12 apartments (can be modified).	<i>All real estate projects</i> .
Registration	Registration must be granted within 15 days of application. Can be revoked by giving 30 days notice.	Registration must be granted within 30 days of application. Will be valid for 3 years with 2 renewals of 1 year each.	Registration must be granted within 7 days of application. Can be revoked if the court finds that contract over land is invalid.	Registration must be granted within 30 days of application. Can be revoked by giving 30 days notice.	Registration must be considered within three months of application.
Registration of real estate agents	All agents involved in transactions of registered projects. No time period specified.	No provision.	No provision.	All agents involved in transactions of registered projects. Must be granted within 60 days.	No provision.
Written agreement	If more than 10% of the cost of the property is accepted as an advance.	If any money is collected from the buyer as an advance.	If more than 20% of the cost of the property is accepted as an advance.	If more than 10% of the cost of the property is accepted as an advance.	If more than 40% of the cost of the property is accepted as an advance.
Separate account to be maintained by promoter	70% of the amount (or less as notified by states) collected from buyers must be kept in a separate bank account within 15 days of collection and only be used for <i>construction</i> .	The entire sum collected from buyers must be kept in a separate bank account and be used for the <i>purposes collected</i> .	All amounts collected from buyers must be kept in a separate account monitored by the state government and be used for <i>purposes collected</i> .	70% of the amount collected from buyers must be kept in a bank account within 15 days of collection and be used for the <i>real estate project</i> .	No provision.
Penalty on failure to grant possession	Promoter must return amount with interest and compensation.	Promoter must return amount with interest and pay a penalty determined by the Authority.	Promoter must return the amount with interest not exceeding 15% per annum.	Promoter must return amount with interest and pay compensation.	Imprisonment of 3 months to 4 years, or a fine of Rs 10,000 or the amount of the damages, or both.
Penalty for non compliance with Authority by promoter	Up to 5% of the estimated cost of the project. Fine will be paid daily, but there is no cap on amount to be paid per day.	Not specified, i.e. left to the discretion of states.	Up to Rs 10 lakh.	Up to 5% of the cost of the project. Daily fine of up to Rs 20,000.	Imprisonment of 3 months-3 years, or a fine of up to Rs 5000, or both.
Appellate Tribunal	Real Estate Appellate Tribunal.	Real Estate Appellate Tribunal.	Housing Appellate Tribunal.	Real Estate Appellate Tribunal.	Authority prescribed by the state government.

Sources: The Real Estate (Regulation and Development) Bill, 2013; Model Real Estate (Regulation and Development) Act 2009; Maharashtra Housing Regulation and Development Act, 2012; Draft Haryana Real Estate (Regulation and Development) Bill, 2013; West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993; PRS.

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