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Loopholes in Real Estate (Regulatory & Development) Act'2016

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ABSTRACT: RERA stands for the Real Estate Regulatory Authority. This was formed to bring about transparency in the real estate sector. The RERA Act was brought in to eradicate problems within the sector. It aims to reduce project delays and mis-selling. But there are some gaps in the Act, which gives benefits to Builders & Developers hence it adversely affects the buyer. This study is to identify those gaps and suggest guidelines to overcome the identified loopholes in the RERA Act'2016. It came into existence as per the Real Estate (Regulation and Development) Act, 2016 which aims to protect the home purchasers and also boosts the real estate investments. The bill of this Parliament of India Act was passed on 10 March 2016 by the Upper House (Rajya Sabha). The RERA Act was effective on and from 1 May 2016. At that time, out of 92 sections only 52 were notified. All the other provisions were effective on and from 1 May 2017.

The Real Estate (Regulation and Development) Act, 2016 under Section 84 envisions that within a period of six months from its commencement date, State Governments will set the rules to carry out the provisions associated with the Act. On 31 October 2016, the centre, through HUPA (Housing & Urban Poverty Alleviation) Ministry, released the general rules of the Real Estate (Regulation and Development) Act, 2016. All these rules are applicable to the Union Territories like Chandigarh, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli and Andaman & Nicobar Islands.

I.INTRODUCTION

The Loopholes of Real Estate reveals the tax and legal strategies used by the rich for generations to acquire and benefit from real estate investments. Clearly written, The Loopholes of Real Estate shows you how to open tax loopholes for your benefit and close legal loopholes for your protection.

Salient Features

RERA was established to enhance accountability and transparency with respect to housing transactions and real estate. It has various salient features:

- Establishment of Real Estate Regulatory Authority in every Indian state in order to monitor as well as adjudicate and arbitrate any disputes with respect to real estate projects in the concerned state.
- Establishment of a fast-track mechanism for settlement of disputes. This will be done via an appellate tribunal and dedicated adjudicating officers.
- All real estate projects must be registered with RERA so that the authority will have jurisdiction over the projects. The registration of a particular project can be rejected by the authority if guidelines have not been adhered to.
- In case a promoter wishes to transfer or assign a majority of your rights and liabilities in a real estate project to a third party, written consent from two-thirds of the allottees will be needed in addition of the written approval of RERA.
- If there is any default from the side of the buyer or promoter, both will be liable to pay an equal rate of interest.
- If the promoter causes any losses to the buyer due to other people laying claim to property (defective title of land) which is under construction or has been constructed, the promoter will have to compensate the buyer. There is no limitation provided by any law currently with respect to the compensation amount.
- If a person has any problems regarding violation of the provisions or rules of this Act by a promoter, buyer, or an agent, they can file a complaint with RERA.
- While an enquiry is taking place, RERA can stop an agent, promoter, or buyer from continuing any activity against which a complaint has been raised.
- If any of RERA's decisions regarding a complaint is not satisfactory, the aggrieved party can submit an appeal before the Appellate Tribunal.

- No civil court will have any jurisdiction with respect to any matter that comes under RERA or the Appellate Tribunal's jurisdiction. As such, no court can grant an injunction with regards to any action taken by RERA or the Tribunal.

Some Points Under Real Estate Regulation and Development (RERA)

- **Security:** Under the RERA act, a minimum of 70% of the buyers' and investors' money will be kept in a separate account. This money will then be allotted to the builders only for construction and land related costs. Developers and builders cannot ask for more than 10% of the property's cost as an advance payment before the sale agreement is signed.
- **Transparency:** Builders are supposed to submit the original documents for all projects they undertake. Builders are not supposed to make any changes to the plans without the consent of the buyer.
- **Fairness:** RERA has now instructed developers to sell properties based on carpet area and not super built up area. In the event that the project has been delayed, buyers are entitled to get back the entire money invested or they can choose to be invested and receive monthly investment on their money.
- **Quality:** The builder must rectify any issue faced by the buyer within 5 years of purchase. This issue must be rectified within 30 days of the complaint.
- **Authorisation:** A regulator cannot advertise, sell, build, invest, or book a plot without registering with the regulator. After registration, all the advertisement for investments should bear a unique project wise registration number provided by RERA.

II. AIM OF RESEARCH

To Identify the loopholes in Real Estate (Regulatory & Development) Act'2016

III. OBJECTIVES

The main objective of this research is to investigate the impact of revised guidelines of RERA Act on Builders & Developers.

- Guidelines for Builders & Developers for project approval under RERA
- To Identify the impact of RERA guidelines for Builders & Developers
- To Understand the gaps which are benefiting the Builders & Developers

IV. DISCUSSION

Loopholes of Real Estate will teach you to:

Open up the tax loopholes available only to real estate investors
Close the legal loopholes of unlimited personal liability
Pay less in taxes, while using the bank's money
Determine the right way to hold title to your real estate
Protect your real estate — including your home — from predators and creditors

The Indian Real Estate sector is considered by many to be most the most corrupt sector. Currently this sector is largely unregulated and opaque, with consumers often unable to procure complete information or enforce accountability against builders and developers in absence of effective regulation. This sector has also emerged as a source of black money and corruption over the past years.

Due to the lack of regulation, there are many cases of unfair practices that are being followed in the real estate sector. Firstly, the home buyer is often a mute signatory to agreements, which are framed by sellers for their own advantage, thus lacking transparency. Secondly, the buyer is obligated to pay an exorbitant penalty interest in case of any delay in payments to the seller. The reverse is generally not true. In case there is any delay in the possession of the property, the seller deems it to be due to unforeseeable conditions as mentioned in the agreement even though this may not be the case. Also the buyer is required to pay an exorbitant price for square feet, while the usable square feet is generally much lower and not mentioned in the agreement.

While making payments, the buyer is required to pay part of the payment in cash and part of the payment in cheque. The reason for the prevalence of this practice lies in the fact that it is advantageous to both the parties. The seller can then show less income while filing for income tax, thus requiring him pay less income tax. The buyer has to pay a



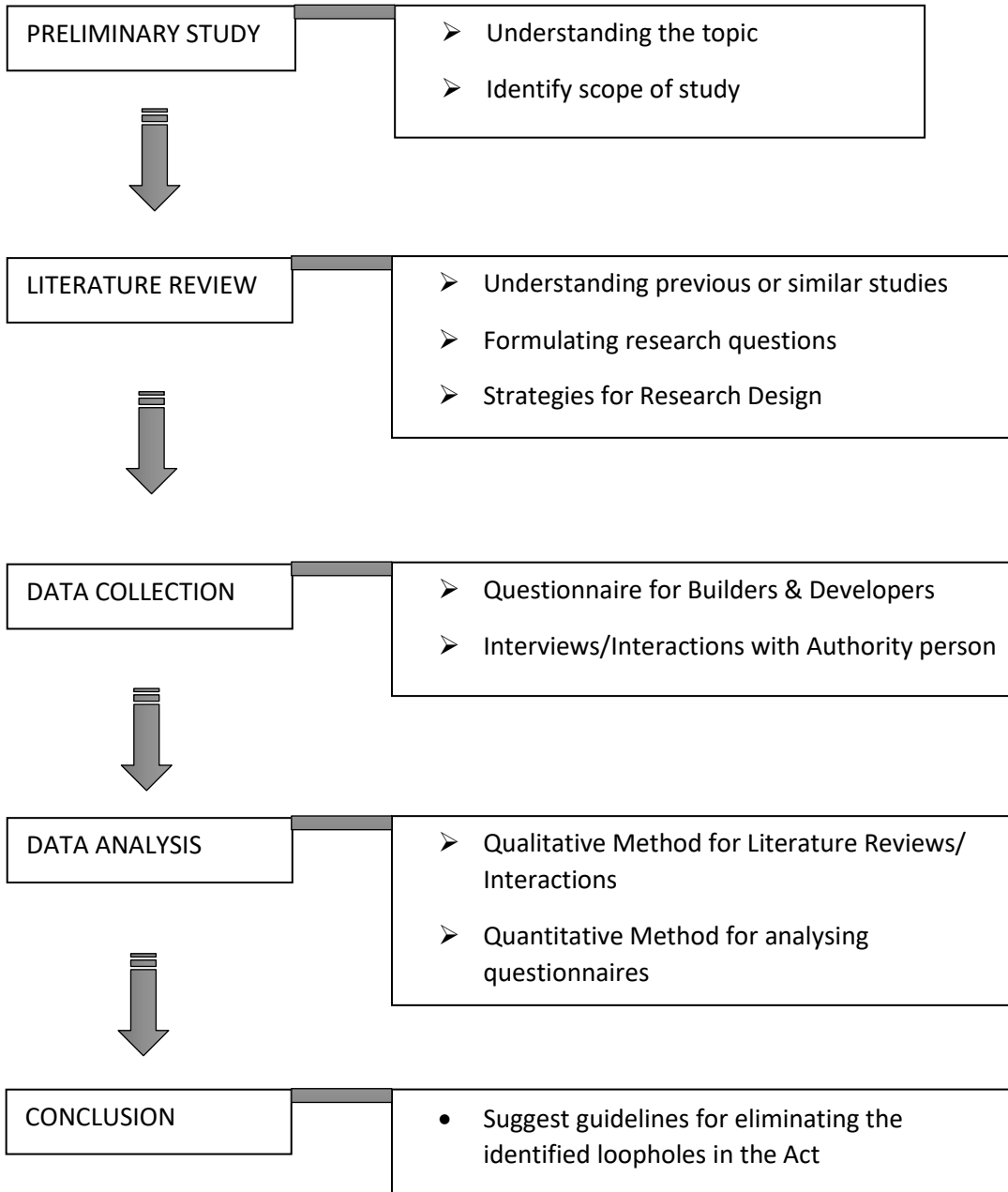
lesser amount as stamp duty, a payment made to the government, which is generally around 10 percent of the cost of the property. This practice is responsible for the generation of black money in the economy.

This pathetic situation of the real estate sector requires redressal, which can be brought about by putting into place a regulatory authority thus improving transparency for the buyers. The Real Estate (Regulation and Development) Bill, a bill aims to establish a regulatory authority as an oversight mechanism to enforce disclosure, fair practice and accountability in the real estate sector and to provide adjudication machinery for speedy dispute redressal. This bill is yet to be passed by the parliament. It is of utmost significance that the parliament pass this bill.

According to the draft submitted, the developers would have to declare legal title of the land and approvals and sanctions from the authorities. This prevents real estate developers to advertise and market the project to buyers without receiving approvals and clear land titles. The compliance on declaring legal title to the land and legal valid authentication of title in case land is owned by another person would refrain developers from launching projects before the land acquisition process is complete. Also, the developers would be required to disclose all details of projects, including layout plans, carpet area of each unit on the authority's website, which would create a lot of transparency and information symmetry for buyers.

That real estate laws in India are complex is a widely known fact. But the extent of their complexity hits you only when you actually buy or sell property. It is only then that you find out that you can never have a 100 per cent foolproof title of any property you want to buy in the country.

V.METHODOLOGY



VI.RESULTS

The least one can do to safeguard the transaction from fly-by-night operators is by carrying a reality check on documents relating to buying/selling property. An extra effort will go a long way in saving you running from pillar to post in a never-ending legal battle.

Following is a checklist of important documents needed:

Agreement to Sell (ATS): This is the first step in the legal process of buying property. It needs to be ensured that right information is included in this document before one signs on the dotted line. An incomplete document may not fetch you recourse in case of a fraud. The agreement to sell needs to be registered on a stamp paper of at least Rs 100. In case the ATS is coupled with possession, it needs to be registered at the value mandated by the government.

Due Diligence: Carry out due diligence of the property on your own. You do not need to hire a lawyer for the job, unless the nature of the property deal runs into crores. Due diligence involves verifying all the documents with the



tehsil under whose purview the property falls. In case the project is under construction or hasn't started as yet, then you must verify the financial strength of the builder.

Stamp Duty: Remember that stamp duty is always paid on the instrument, never on the transaction. Stamp duties are paid as per the laws mandated by the government of the state where the property exists.

Sale Deed: Remember to sign the sale deed, as it has to be executed by both the seller and the buyer. Both have to be present at the office of the Registrar of Assurances for signing.

Power of Attorney (POA): A POA should be authenticated by the registrar in the state where the property is located. It need not necessarily be registered, but it is better to get it done so as to avoid any future dispute.

VII.CONCLUSIONS

One of the biggest problems that remains even after the implementation of RERA is that of obtaining various approvals from various Government agencies by the Builder. In the absence of a single window for disbursement of all regulatory approvals the launching of the projects tends to get delayed in the hands of the developers. The same has been a longstanding demand of the real estate sector as it will help in timely completion of the projects. Although there are loopholes and the implementation has been patchy, analysts and market players feel RERA has brought about a systemic change in the real estate sector which has also boosted the sentiments among home buyers. With the regulatory mechanism in place, the consumers' grievances can now be resolved faster.

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