

# RERA: An ardent approach for safeguarding homebuyers' interests

The Real Estate Regulatory Authority Act (RERA), 2016 was enacted with an objective to address the grievances of the buyers and to bring transparency and accountability in the country's real estate sector. Regardless of the micro-differences in the individual state authorities, the compliance towards RERA has been made a diktat for all states and the real estate developers and buyers operating within them, which has impacted in a very positive manner in the real estate sector in India.

The key provisions which ensure the regulation of real estate projects includes the requirement on developers to deposit 70 per cent of funds collected from buyers in separate bank account, mandatory registration with regulatory authorities of all projects with minimum plot size of 500 sq.m., or eight apartments, approval required from 2/3rd of allottees and from regulatory authorities for changes in project configuration and the change in holding, etc.

The implementation of RERA has simplified the complication faced by the home buyers in identifying real estate projects portrayed by the developers. RERA has also had a considerable impact in the nature of builder-buyer agreements. Under the act, state authorities are required to notify Agreement for Sale rules. The prescribed agreement format lays down the title details, possession date, approved layout, carpet area etc, of the property.

The infamous case, Chitra Sharma & Ors. vs. Union of India (Jaypee Infratech case) is one such instance which accentuated the conflict between the IBC and RERA. An insolvency proceeding was initiated against Jaypee Infratech by the NCLT Allahabad on the instance of the financier, IDBI for defaulting in the

repayment of a loan amount of Rs 526.11 crore. Consequently, a PIL was filed in the supreme court by the home buyers opposing the insolvency proceeding. The apex court initially stayed the proceedings but later vacated it and appointed a Committee of Creditors to be operated under section 21 of the Code of 2016 and directed them to "espouse the cause of the home buyers and protect their interests". This case emphasised the difficulty that these two acts pose in the current form. While the IBC was passed with the intention to smoothen the process of "closing the business", RERA has been implemented to "regulate and formalise the real estate sector".

The recent Insolvency and Bankruptcy (Amendment) 2018, has significantly widened the scope of remedies available to the homebuyers by including them within the ambit of financial creditors. The earlier issued separate claim form (Form F) by Insolvency and Bankruptcy Board of India (IBBI), for categorising the home buyers as separate class, neither falling under financial nor operational creditors, through this amendment has been invalidated. The definition of financial debt under section 5(8) of IBC was interpreted as compensation paid for the length of time for which money was advanced. This inclusion would entail the homebuyers to be a part of Committee of Creditors (CoC) with the ability to participate in the decision making under Corporate Insolvency Resolution Process (CIRP) and also to be considered in the liquidation waterfall provided under section 53 of IBC.

Further, pertaining to the issue of applicability and overriding provisions, Section 238 of IBC provides for overriding effect in case of any inconsistency with any other law for the time being in force. Whereas, Section 89 of RERA provides that it would prevail

in case of similar inconsistencies. However, there are no inconsistencies between both the laws as the objectives and procedures are different. Any issue relating to the determination of some rights of the buyer could be dealt under RERA, while the recovery proceedings could be treated as per the provision of IBC.

For instance, the remedies available to the homebuyers would be rendered under RERA when the claims were made against the realtor company which failed to deliver the property as per the arrangement. However, when the insolvency process under IBC is initiated against the realtor company for the non-repayment of dues to the banks/financial institutions there was no such remedy available to the homebuyers as falling under the category of unsecured creditors. The Supreme Court in the case of Jaypee Infratech, showcased the requisite inclusion of homebuyers under the ambit of financial creditors for money advance to the realtor company. This entailed the subsequent amendment in the IBC Act, for securing the rights of the homebuyers as financial creditors.

The much awaited legislation has definitely brought about paradigm shift in the transparency and accountability in the real estate sector. However, the issues pertain to the efficiency of dispute resolution mechanism and the dilution of provisions by state governments suiting their requirement, needs to be encountered with effectively. The prudence of the buyers with regard to the interpretation and understanding of the legislation needs to be emphasised upon to safeguard their interests.

The central government in this regard have also put strict adherence to the implementation of online real estate forums and tightened the noose on states to do away with dilutions and to bring in all the incomplete projects within the ambit of RERA. The Act after

a year of its enactment has brought a structural change in the realty sector in India providing a relief to both homebuyers and the creditors, which would substantially foster the economic growth of the country.

### Conclusion

One of the very important aspect which has not been covered in RERA or IBC is with regard to the Flat purchaser who has purchased the Flat

after paying full consideration with the consent of the mortgager and if the Real Estate Development Company goes into insolvency proceedings then such buyer should be the real owner of the Flat and therefore should be given either the full price of the Flat paid with interest or if the Flat is ready then possession of the Flat should be given as the Real Estate Development Company is no more the owner of such property. This important

aspect also has to be examined by the legislature as well as the Courts in future. ■



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# SUMO SONNET: A residential gateway

**S**umo Properties was formed in the year 2004 by Meda Sreedhar and it was founded with a clear vision to "Transform the way people perceive quality" in real estate and construction industry. Over the years, this vision continues to be the bedrock of all their endeavours. Today Sumo Properties is one of the largest integrated players in Bangalore, who has established themselves to provide high value and quality housing with aesthetically appealing architecture.

### SUMO SONNET: An expression of a poetic lifestyle

An elegant expression of life and leisure, "Sumo Sonnet" is a residential gateway unlike any other, giving rise to precious moments that can only be described as poetry in motion. Presenting an exclusive combination of serenity and connectivity, this truly distinct project is the ideal residential escape that facilitates a charming way of life, while still providing the convenience of easy commutes to all parts of the city.

### Project Location

SUMO SONNET is located at one of the most promising location of South Bangalore-- Kudlu Gate( HSR Layout Ext) and is close proximity to both Sarjapur road and Hosur Road . That means easy accessibility to areas like Outer Ring Road, Bellandur, Marathalli through Sarjapur Road and again, access to places like electronic city, silk board, BTM, Jayanagar, JP Nagar through Hosur Road.



- This project is based on approximately 2 Acres of land, having 78 per cent open space covering 30 plus luxury amenities and 172 flats options of 2 BHK/3 BHK.
- Apartments are constructed by major construction company CCCL and managed by Renaissance India Pvt Ltd. These industry giants made project handover in time.
- Mock up flats are ready by India's major interior companies.
- Land is BBMP approved (A Khata certified) and project is with CC and OC.
- B+G+14 floors apartments are having: No common walls, 100 per cent Vaastu compliances, 78 per cent open space with highest UDS in the industry.

### Project Amenities

There are 30 plus amenities which makes this project outstanding with some unique amenities are swimming pool, spa, jacuzzi, amphitheater, fire pit, BBQ pit, climbing wall, skating zone, dribble court, indoor games, music room etc. ■