Understanding the evolution and efficacy of RERA

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Real Estate (Regulation and Development) Act, 2016 (**Act**) was enacted in order to effectively respond to a host of systemic issues in the real estate sector and balance the interest of all stakeholders in this ecosystem. Through this article, we aim to evaluate the journey of the legislation and where it stands today.

The Act seeks to harmonize the jurisdictions of the Centre and the States/Union Territories by vesting the relevant authorities – legislative, executive, and judicial – (**Authorities**) with requisite competence for carrying out its provisions. Along with setting up the machinery for administering and adjudicating its provisions, the Authorities were further empowered to make regulations and rules under the Act.

While the Act was launched with much fanfare, the initial euphoria appeared to be short-lived. Non-compliances, deviations, and delays in the implementation were punched in the trampoline of the statute, which led to a sluggish rate of progress. The situation was further amplified by rampant delays by states in setting up the relevant Authorities under the Act, lackadaisical functioning of the institutional mechanism and creation of rules in deviation from the Act. It is an established principle of law that where rules are to be framed for "carrying out the purpose of the Act", such rules cannot travel beyond the Act itself. The Authorities failed to demonstrate any semblance of uniformity in their adjudications, which was against the spirit of the Act.

Implementation of the provisions of the Act was also hampered by a perceived bias towards homebuyers. There were perceptions that in its quest of beneficence to the home buyers, the Act encapsulated provisions that were seen as draconian by real estate promoters. Features such as deterrent penalties, defect liability period, lack of explanations on critical aspects significantly impacted the economic interest of the promoters. IN addition to this, there was significant confusion regarding its applicability – while the Act calls for synchronization with other legislations, inconsistencies remained. A thorough introspection would reveal that the propensity for such delays and transgressions are a manifestation of insufficiency of dialogue amongst stakeholders and lack of will to trigger the appropriate machinery in the resolution of said deficiencies. The Central Government failed to invoke the provisions of Section 91 of the Act which provided for "… incorporation of provisions not inconsistent with the provisions of the Act, for removal of difficulty arising in giving effect to the provisions of the Act, within a period of two years from the date of commencement of the Act."

In the midst of mounting problems, judicial wisdom and pronouncements stirred the sector and led it on the projectile of progress. Certain judgments and amendments are enumerated hereinbelow, that map such progression.

1. The year 2017 proved to be a constitutional litmus test for the Act as various writ petitions were instituted before the Courts assailing its constitutional validity. The Supreme Court directed the Chief Justice of Bombay High Court to assign the cases to a particular Bench for adjudication. Reference is also made to the judgment in **Neelkamal Realtors Suburban Private Limited Versus Union of India,** by and under which the constitutional validity of the Act was upheld by the Bombay High Court.

2. The Apex Court in **Pioneer Urban Land and Infrastructure Versus Union of India** ruled that the Act, Insolvency and Bankruptcy Code, 2016 (Code), and the Consumer Protection Act, 1986 (CPA) have concurrent jurisdictions, which diluted its overall purview and impact. The

judgment provided relief to the promoters, in case the allottee is a speculative buyer/or if the Code has been invoked with malicious intent. It further illuminated "… A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. …" It would be prudent that the Act is considered sacrosanct and followed completely in 'letter and spirit'.

3. In **Navin Raheja Versus Shilpa Jain and Others**, the NCLAT deprecated the acts of the trigger happy allottees, *"… They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and get back, by way of this coercive measure, monies already paid by it. … It is clear that it is very difficult to accede to the Petitioners' contention that a wholly one-sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death."*

4. While trying to extend some relief to home buyers, Supreme Court clarified that the allottees of real estate are deemed 'financial creditors' under the Code and are entitled to trigger the Code under Section 7, which led to a deluge of cases at NCLT since even a single allottee was allowed to initiate insolvency against a real estate company. Through the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (**Amendment**), made applicable from December 28, 2019, a condition was laid down wherein not less than one hundred allottees, or not less than ten percent of the total number of allottees under the same real estate project, whichever is less, could jointly file before the NCLT. Thereafter, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (**Ordinance Amendment**) of June 5, 2020, provided further relief by including a new section 10A which has practically suspended the applicability of section 7, 9 and 10 of the Insolvency & Bankruptcy Code, 2016

Undeniably, the legislation had been engineered to be the panacea for problems in the sector. However, despite considerable time having elapsed since its inception, it has got entangled in a web of confusion and lackadaisical implementation. For the sector as a whole, the concurrent jurisdiction of the Act, the Code, and CPA may prove to be a silver lining – if calibrated, juxtaposed and synchronized properly, these will provide multiple forums of redressal and the conjoint effect would provide some semblance of streamlining in the sector.