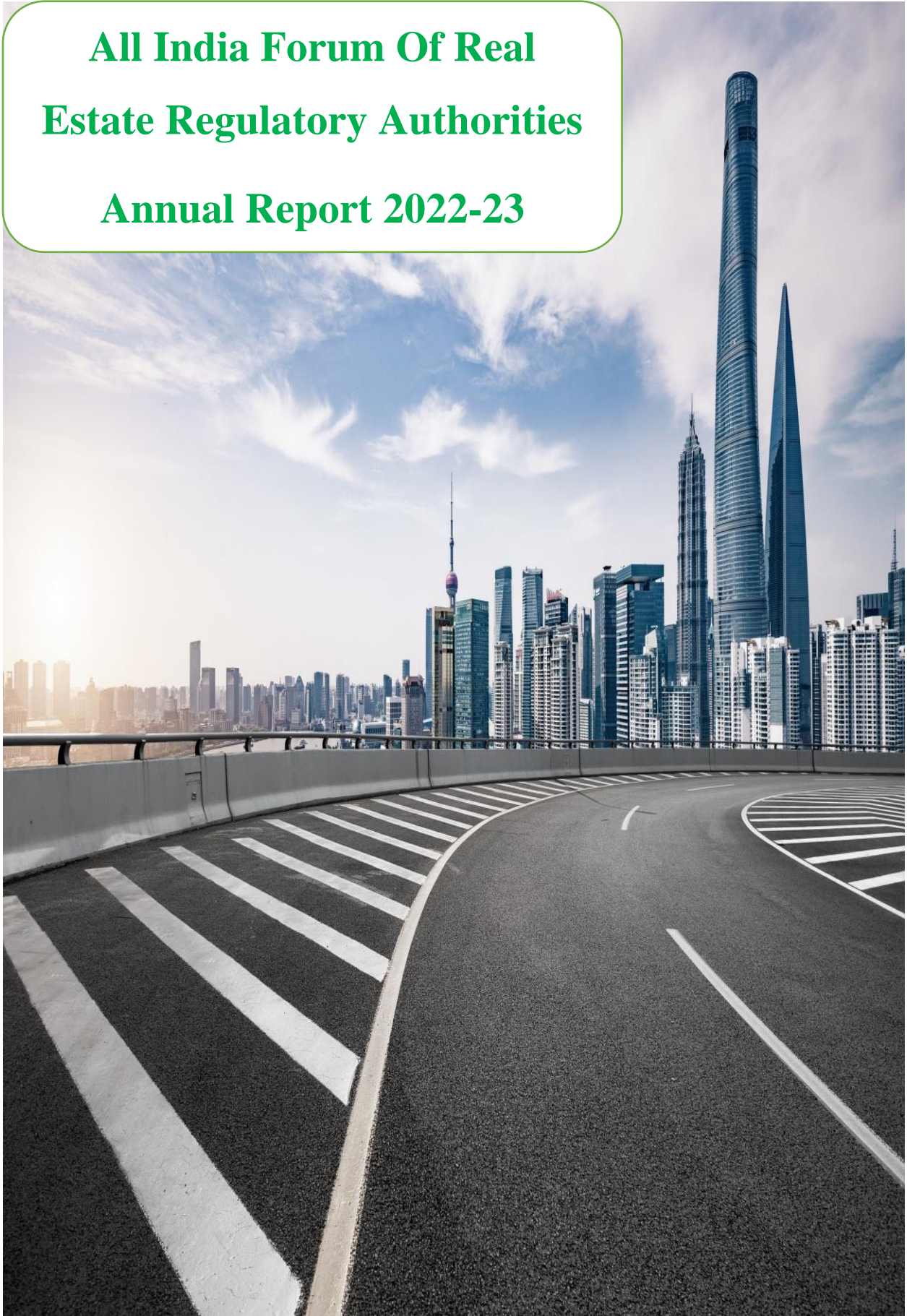


**All India Forum Of Real
Estate Regulatory Authorities
Annual Report 2022-23**



1. A Brief Overview

Urbanization and the expansion of the real estate sector are intrinsically intertwined, as the development of infrastructure and the availability of housing are dual prerequisites for an enhanced quality of life. The Real Estate sector, encompassing residential, commercial, hospitality, and more, plays a pivotal role in addressing spatial needs. Due to its substantial backward and forward linkages, the sector significantly influences the growth of related industries such as steel, cement, and construction materials, consequently impacting the overall economy's expansion.

Nonetheless, before the Government of India enacted legislative reforms, the real estate sector grappled with pressing issues that detrimentally affected buyers, eroding trust in the system and impeding the housing sector's growth on the whole. On one hand, buyers confronted unpredictable markets, lacking assurances of timely housing acquisition and lacking institutional remedies in case of defaults. Conversely, developers found themselves navigating through various bureaucratic departments to secure approvals, leading to protracted project initiation timelines. With the intention of tackling challenges within the real estate sector, the Government of India introduced The Real Estate (Regulation and Development) Act, 2016 (referred to as the "RERA Act"), which took effect on May 1st, 2016. Following the enactment of the Act, individual states began establishing Real Estate Regulatory Authorities (RERAs), each encountering initial hurdles in implementation. Recognizing the shared difficulties faced by RERAs in executing the Act, a consensus emerged for a unified platform to facilitate a comprehensive view of implementation experiences, as opposed to a fragmented approach by individual states.

In 2018 and 2019, several RERAs convened to brainstorm over matters of mutual concern. Subsequently, in June 2019, the Ministry of Housing and Urban Affairs initiated a committee to explore the feasibility of a centralized web portal for all RERAs. The concept of a collective forum gained traction among various RERAs and the Government of India. Through a series of meetings, the All India Forum of Real Estate Regulatory Authorities (AIFORERA) took shape. AIFORERA was officially registered as a society on September 24, 2019, under the Societies Registration Act XXI of 1860 in Delhi. Nine members representing RERAs from states including Uttar Pradesh, NCT Delhi, Punjab, Madhya Pradesh, Maharashtra, Chhattisgarh, Gujarat, Rajasthan, and Haryana

(Panchkula) signed the original Memorandum of Association along with associated documents. The society's headquarters are situated at the office of the Delhi RERA, located on the 2nd Floor of the Shivaji Stadium Annexe building, Shaheed Bhagat Singh Marg, New Delhi.

AIFORERA's core objectives encompass policy analysis, advocacy to ensure efficient fulfilment of RERA Act mandates, knowledge exchange, promotion of a transparent and equitable regulatory framework for real estate development, capacity enhancement for stakeholders in the real estate sector, and pursuit of shared interests.

This annual report presents a brief summary of the activities undertaken by the AIFORERA in the year 2022-23. It includes various events organized by AIFORERA or in which AIFORERA has participated in the year 2022-23 in furtherance of its objectives as well as steps taken to put the functioning of AIFORERA on a firm footing.

2. Office Bearers

As per Statutes, the AIFORERA has four office bearers namely Chairman, Vice Chairman, Secretary, and Treasurer to manage the day-to-day administration of the Society. The following officers held these positions during the financial year 2022-23.

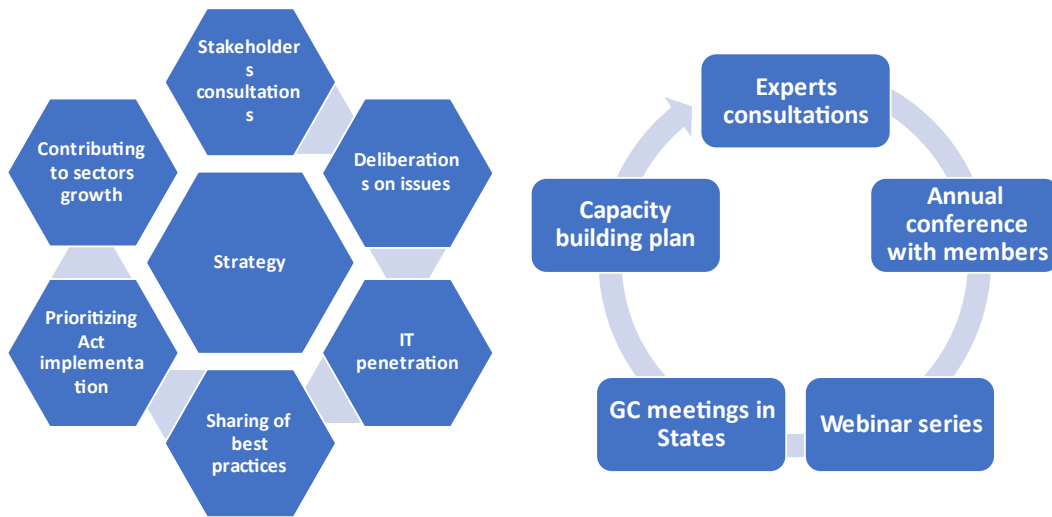
| Office | Name | Period | Name | Period |
|---------------|---------------------|---|--------------------|--|
| Chairman | Mr. K. Gnanadesikan | Nov 2021- Oct 2022 | Mr. Ajoy Mehta | 1 st Nov. 2022- 31 st March 2023 |
| Vice Chairman | Mr. Ajoy Mehta | Nov 2021- Oct 2022 | Dr. Shrikant Baldi | 1 st Nov. 2022- 31 st March 2023 |
| Secretary | Mr. Naveen Verma | Nov. 2021- 14 th March, 2022 | Mr. Anand Kumar | 15 th March, 2022- 31 March, 2023. |
| Treasurer | Mr. Siddhanta Das | Nov 2021- Oct 2022 | Mr. P.H. Kurian | 1 st Nov. 2022- 31 st March 2023 |

3. Highlights of the New Initiatives

During the year under report, the Governing Council of AIFORERA took the following major decisions to address the problems of RERAs:

- (i) With a view to facilitate understanding of issues in the real estate sector, it was decided to have interactions with all the stakeholders including developers, real estate agents, resident welfare associations, and the leading personalities in the legal fraternity. This policy was followed in all the meetings during the year and in the following year;
- (ii) During the Covid-19 restrictions, webinar series were started by the AIFORERA continue dialogue and exchange of views. However, as the webinars continued the utility of this virtual mode was appreciated by all. Therefore, to make the Webinar series even more useful for the member states in the post covid era, burning issues requiring expert views were identified and it was decided that experts from various fields be invited to present state of the art legal position on the issues;
- (iii) Considering the importance of exchange of ideas with members of RERAs, it was decided to hold an annual event of Chairman and Members every year to discuss various problems and share best practices;
- (iv) A Capacity building plan for the officer and staff of RERAs was drawn and circulated for discussions;
- (v) It was decided to set up the Secretariat of AIFORERA at Delhi and appoint Chief Executive Officer to head the Secretariat. The Chief Executive Officer was appointed in March, 2023.
- (vi) Considering the fact that it may be useful for the member RERAs to visit various states and hold meetings of the Governing Council there, the first meeting outside Delhi was held at Chail near Shimla in Himachal Pradesh, followed by meetings at Goa, Kerala, and Rajasthan;
- (vii) A compendium of important judgements was prepared and circulated by the AIFORERA Secretariat.
- (viii)

AIFORERA ACTION PLAN



4. Compendium of Proposed Amendments Prepared

AIFORERA in its quarterly meetings has been discussing various shortcomings of Act and suggestions received from various members were examined and debated in its various meetings held from time to time on both online as well as offline mode. Highlighting the practical limitations, member institutions have limitations of the current provisions. The AIFORERA compiled them and grouped into 5 key areas:

- i. Issues relating to jurisdiction (Project registration or Adjudication Officer/ Authority or Authority vis-a-vis other Tribunals)**
- ii. Issues relating to fiscal discipline by promoters and others**
- iii. Issues relating to completion of registered projects**
- iv. Issues relating to sufficiency of powers of Authority, to enable efficient discharge of functions**
- v. Issues relating to imposition of penalties, their usage and a consumer's right to have an authorized representative institute and attend proceedings.**

Going by the number of RERAs highlighting a common issue, these amendments were codified into Yellow, green, blue, and Pink with Blue being amendments sought by all the RERAs. Detailed proposal is appended to as Annexure A.

5. Annual Conference of Chairman and Members

The first Annual Conference of Chairman and Members of RERAs was held in Delhi on 16-17 March, 2023 in which 45 persons participated. Professional sessions were arranged on themes related to RERA issues like Real Estate Challenges and Opportunities; RERA Today and Tomorrow; interface of RERA with IBC, NCLT, and NCLAT; and Issues relating to Insolvency. Experts from various disciplines were invited for guest lectures on topics shortlisted by the member states. Dr. N. Hiranandani, Managing Director, Hiranandani Group, Mr. Parimal K. Shroff, renowned Advocate, Solicitor, and Notary, and Mr. Rajesh Sharma former member of NCLT made presentations on various issues. The highlights of their presentations are as under:

(a) Real Estate: Challenges and Opportunities

Dr. Hiranandani, Managing Director of the Hiranandani Group, hailed the enactment of the Real Estate (Regulation and Development) Act (RE (RD) Act) as a transformative reform within India's housing sector. While underscoring the pivotal role played by regulatory authorities established under the Act in governing and overseeing the real estate industry, it was emphasized as to how these authorities could foster transparency within the system and provide a platform for buyers to voice their concerns. The presentation brought out the procedural aspects followed by the Authorities when dealing with projects and complaints. By citing examples of various Real Estate Regulatory Authorities (RERAs), the presentation concluded that these bodies are now effectively monitoring project timelines, thereby offering safeguards for compensation in case of delays. Reflecting the builder's predicament after the Act, it was depicted as to how journey has been full of challenges for builders. The silver lining however, is that over the past few years, RERAs have managed to cultivate trust and confidence among its stakeholders, leading to a revamping of India's second-largest employment-generating sector.

In terms of areas for potential improvement, the presenter identified several thought-provoking gaps:

- a) To expedite clearances, he suggested considering amendments to the Act that empower Authorities to issue directives to planning bodies for timely approvals or to summon officials in case of delays. Alternatively, regulatory bodies could be granted

the power to issue deemed completion certificates via self-inspection or through the engagement of qualified architects and engineers;

- b) Another major source of delays arises from buyer refund requests. The refund process can significantly strain project finances, disrupting overall financial planning and leading to project stress. To address this, Authorities should diligently evaluate project status and refund requests, striving to strike a balance that aligns with the overarching goal of project completion;
- c) Special efforts need to be directed towards projects already underway at the commencement of the Act. Given that the Act is projected to impact 269 industries within the housing and construction domain, tailored measures are necessary to accommodate ongoing projects.

In conclusion, Dr. Hiranandani underscored the urgency of focusing on stalled projects, urging for their completion. This approach not only benefits homebuyers and developers but also sends positive signals to potential investors in the real estate sector. Ultimately, this collective effort contributes to the broader growth of the economy.

(b) RERA: Today and Tomorrow

Mr. Parimal K Shroff, Advocate, Solicitor, and Notary dwelled upon the legal perspectives of RE(RD) Act. The presentation highlighted how sections 32 and 35 of the Act could turn out to be the game changer. Discussions revolved around making use of these provisions as well as Section 33 (3) for improving the fundamentals in the real estate sector. Concluding the presentation, he left following ideas for further discussions and action:

- That under sections 41 and 42 of the Act, the authorities should hold more frequent meetings with the Central Advisory Council to resolve policy bottlenecks;
- Highlighting the need for a single window clearance mechanism which integrates revenue, planning and development departments with RERA portals for effective and efficient resource planning, it was emphasized that the authorities to explore the possibilities of making an app-based interface for it to be more user-friendly. The process of land title and title insurance should be fast-tracked.
- As the occurrence of the lapsed project is an inevitable reality, the Authorities need to devise methods and policies for the revival of such projects more actively. This can be resolved by

assessing the state's performance through annual reports and by collating the quarterly and half-yearly project progress surveys.

(c) Interface of RERA and IBC, NCLT and NCLAT

This session was led by Mr Rajesh Sharma, Former Member (Tech), NCLT for the Interface of RERA and IBC, NCLT and NCLAT. Tracing the origins of the Acts, the presentation depicted how both the IBC and RERA which were enacted in 2016 have contributed to raising the status of the Ease of Doing Business index from 42 in 2014 to 63 in 2019. State of the art legislation and the decisions of various courts presented in the conference helped clarifying the doubts and get feedback from the Authorities. He clarified for the benefit of the participants that:

- As per section 238 of Insolvency and Bankruptcy (IBC) Act, proceedings under IBC and RE (RD) Act, could simultaneously be conducted. However, in case of a conflict, the provisions of IBC will prevail;
- It was clarified that if any insolvency petition is filed, there is no moratorium unless it is accepted and that as per the latest decision of the Hon'ble Supreme court, home buyers are in the status of financial creditors.

(d) Issues related to Insolvency in Real Estate sector

This session was led by Shri Ravi Mittal, Chairman, Insolvency and Bankruptcy Board of India and Shri Manoj Govil, Secretary, Ministry of Corporate Affairs, Govt. of India. The panel discussed how the IBC can effectively resolve insolvency cases. One of the suggestions was to make an amendment in the IBC Act suggesting project-wise admission of cases in case of real estate. There should be a provision for change in the compliance plan for IBC cases as the proposed date of completion of the project will change if handed over to another company. Currently, the legal position is that the NCLT orders should prevail over RERA orders.

Besides, presentations by Maharashtra, Goa, and Himachal Pradesh also shared their best practices and initiatives in various fields.

6. Burning Issues identified and Action Plan Drawn

(a) Revival of stalled projects

One of the most common issues prevalent in all states is the issue of stalled projects. The AIFORERA took up this issue for discussions at various fora to get feedback and best practices. The rich discussion that followed brought out two main issues. There is a need to distinguish between stalled and lapsed projects. Only lapsed projects have a legal definition and can include both projects that have stalled for variety of reasons and projects that have been completed for all intents and purposes or are not facing any difficulties and have lapsed because their registration has not been extended as required. Projects can of course also be stalled without entering the definition of being lapsed. Projects which are not experiencing any financial or other difficulty are a technical category of lapsed projects that can largely be sorted out by issue of notices and follow up. Stalled projects, whether lapsed or otherwise, require more attention.

There can be two approaches for proactive action to deal with projects that are in danger of lapsing / becoming stressed. First, RERAs should limit themselves to greater transparency and increased availability of information to enable concerned stakeholders to be vigilant and initiate corrective action. Second, proactive action by RERAs may reduce the ambit of future grievances that have to come to the RERAs for redressal. Once lapsed, projects will have to be dealt with under the provisions of the Act and any procedures established in this regard.

(b) Considering Issues of Associations of Allottees (AoA)

Issues of functioning of Association of Allottees is another major common agenda. The Forum identified the various dimensions of the problem and the following issues were discussed and options explored:

- (i) Once an AoA has been constituted, whether representative or not, their actions are no longer in the purview of a RERA and come under the relevant statute governing the AoA. The RERA is of course involved till the first AoA is constituted, after the relevant conditions for this purpose have been met.
- (ii) The requests for AOA to be allowed to sell the unsold inventory of the projects to raise funds and ensure completion could be considered, where relevant.
- (iii) The RERA can enable transfer of title to the AoA under the provisions of the Act.

(b) Project Registration and Effective Monitoring

Discussions during the conferences highlighted two main ways to effectively monitor projects: by tracking the quarterly progress reports, and by monitoring the designated accounts by appointing quality auditors and empaneled physical investigator/surveyor. Best practices were exchanged and it was noted that Maharashtra RERA has even established a counselling cell to help the promoters /agents upload their documents.

(d) Financial Integrity and Forensic Audit under Section 35

The discussions explored the implications of Forensic Audit envisaged under the Act. It was believed that it is a specificity where criminal consequences are envisaged. In most cases as pointed out by Maharashtra RERA, the objective is to ensure that projects are completed and home buyers do not suffer. This does not require a forensic audit but a mechanism for keeping an eye on projects that can stall due to a variety of reasons. A system that monitors the financial actions and physical progress of real estate projects, red flags where there is a danger and enables remedial action, is perhaps more relevant.

(e) Enforcement for Registration under Section 3

There was considerable discussion on the enforcement for registration under Section 3. Many RERAs enforce registration through issuing notices to promoters under section 40 read with section 3 of the Act which states that if any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, issues any order or directs any person to do any act, or refrain from doing any act, then in case of failure by any person to comply with such order or direction, the same shall be enforced using this provision. Discussions also explored the consequences of issuing letters to the sub registrars, to make sure that the registry is not done unless the project is RERA registered.

(f) Creating Public Awareness Jointly

Provisions of Section 33 (3) were also debated at length and best practices explored. Bihar RERA in its presentation highlighted actions taken on awareness generation under Section 33 (3) of the RE(R&D) Act. The section mandates that the Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies. The various attempts for creating awareness by Bihar RERA were through Newspaper Advertisements, Radio Jingles, workshops, TV programs, Bill boards, Social media,

RERA Bihar calendar. The participants felt that there was a need to understand reach and impact by possibly commissioning regular surveys to elicit understanding of RERAs amongst various stakeholders.



7. Financial Situation

The society is in sound financial health and in surplus after meeting expenses. The exact status has been exhibited in the accounts presented separately to the General Body.

8. Conclusion

Over the years, AIFORERA as an organization has evolved into a purposeful body, tirelessly striving to understand and address the challenges presented by the ever-changing developments in the market. Through the collective efforts of its members, AIFORERA has gained valuable insights and innovative approaches from the shared experiences of various RERAs. A pivotal moment was added to its journey when it initiated the annual conference of chairpersons and members, with the first such conference held in Delhi. It brought together experts from both the industry and the legal fraternity, creating a platform for insightful and informative deliberations. The knowledge shared during these conferences has been invaluable to its cause.

(Ajoy Mehta)
Chairman

Background

The Real Estate (Regulation and Development) Act (RERA) 2016 is a landmark legislation that is transforming the real estate sector by bringing greater efficiency, transparency, accountability, customer centricity and financial discipline.

One of the key milestones in accelerating implementation of this Act was the formation of the All India Forum of Real Estate Regulatory Authorities (AIFORERA). This society has brought together RERAs to discuss best practices, undertake initiatives for furthering RERA formations across the country, seek solutions to common issues and promote a healthy and robust real estate sector across the country.

On the completion of three years of implementation of this Act, AIFORERA decided to undertake a consultative process for deliberating upon amendments in the Act, which are necessary to further the implementation of this Act in letter and spirit. Towards this objective, AIFORERA has held numerous consultations and discussions amongst Chairpersons of State RERAs to understand the key challenges faced by the authorities and secure recommendations to overcome the same through proposed amendments.

In these discussions, AIFORERA received a broad range of viewpoints and perspectives. While some Chairpersons believed that AIFORERA should not, as a forum, suggest amendments needed to be carried out in the Act, other Chairperson elaborated in great detail the issues faced and proposed a varied list of amendments.

It was decided to compile all these suggestions and share the same with MOHUA, requesting the Ministry to deliberate upon the same at the level of the Central Advisory Council (CAC) constituted under the Act, where all stakeholders are represented. Based on the decision of the CAC, AIFORERA would be willing to take on the task of formulation of the required amendments in the body of the Act.

Various suggestions on potential amendments received from the Chairpersons of different RERAs have been grouped into 5 key areas:

- i. Issues relating to jurisdiction (Project registration or Adjudication Officer/ Authority or Authority vis-a-vis other Tribunals)
- ii. Issues relating to fiscal discipline by promoters and others
- iii. Issues relating to completion of registered projects
- iv. Issues relating to sufficiency of powers of Authority, to enable efficient discharge of functions
- v. Issues relating to imposition of penalties, their usage and a consumer's right to have an authorized representative institute and attend proceedings.




Further, each of the issue has been further categorised into yellow, blue and pink, based on the number of RERA Chairpersons expressing concern about the issue and suggesting amendments. It may be noted that in many cases of yellow, green and blue colours, some RERAs may have agreed that there is an issue but opined that no amendment is required to solve the issue.

| | |
|--------|---|
| Yellow | One or two RERAs have highlighted the issue and sought amendments |
| Green | A significant number of RERAs have |

| | |
|------|--|
| | highlighted the issue and sought amendments |
| Blue | Most of the RERAs have highlighted the issue and sought amendments |
| Pink | Where one or more RERAs have not agreed that there is an issue while others have suggested amendments. |

While the key amendments have been proposed in the below sections but consequent upon such amendments in the Act, some other amendments will be required in other sections to make it harmonious with the original amendment. Accordingly other sections may be needed to be rewritten but are not necessarily mentioned here.

I. Issues relating to jurisdiction (Project registration or Adjudication Officer/ Authority or Authority vis-a-vis other Tribunals)

| S. No | Concern | Recommendations | Proposed Amendments | Categorisation |
|-------|---|--|--|---|
| 1. | As per the Act, RERA is applicable to projects in the planning area. Many Authorities either through rules or orders or through other means have made RERA applicable even to projects outside planning areas, on basis of 2nd Proviso to section 3(1). | RERA should be applicable to all real estate projects irrespective of planning area | <p>Option 1: Amend the second proviso of section 3(1) as follows: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, <u>shall apply to such projects from the date of the order of the Authority in this regard.</u></p> |  |
| | | | <p>Option 2: It is suggested that the 2nd Proviso to section 3(1) of the Act may be deleted and the words “in any Planning area” in section 3(1) may also be deleted.</p> |  |
| 2. | <p>It has been observed that while proceedings have been initiated under Section 7/8 of RERA, few stakeholders invoke proceedings under NCLT / Debt recovery Tribunal or any other court / forum under others Act including IBC / SARFAESI Act / DRT Act / MPID Act etc.</p> <p>This stalls the proceedings under RERA as the other Acts take precedence over RERA.</p> | It is proposed that while proceedings are underway in RERA, no other proceedings can be initiated under NCLT / Debt recovery Tribunal or any other court / forum under others Act including IBC / SARFAESI Act / DRT Act / MPID Act etc. | <p>In Section 8 of the Principal Act, the following proviso to be inserted :- “Provided further that no stakeholder in the said real estate project can initiate proceedings under NCLT / Debt recovery Tribunal or any other court / forum under others Act including IBC / SARFAESI Act / DRT Act / MPID Act etc. until 90 days from initiation of proceedings under Section 8.</p> |  |

3. An amendment to remove the dual channel for complaints, some of which go straight to the AO. Clarity required that all complaints should first come to the Authority, which will deal with all issues other than fixation of compensation, and then pass on the case for compensation fixation to AO where required.

Section 31 to be amended as follows:

(1) Any aggrieved person may file a complaint, including the claim for compensation with the Authority, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

Provided that in matters where an adjudication regarding compensation under section 12, 14, 18 and 19 of the Act is to be made, such matters shall be referred by the Authority to an adjudicating officer, who shall decide the matter as far as possible within sixty days, in a manner as provided under this Act.



4. Restricting competing jurisdiction of other Tribunals or Forums or Commissions

Sec79: Like bar of jurisdiction of Civil Courts, other Tribunals, Forums and Commissions should also be barred





5. Clarity and updating of registration details



Section 3/4.







II. Issues relating to fiscal discipline by promoters and others

| S.No | Concern | Recommendations | Proposed Amendments | Categorisation |
|------|---|--|--|--|
| 1. | The Act stipulates a separate account where seventy percent of the amount collected from the allottees from time to time shall be deposited, to cover the cost of construction and the land cost. In order to implement it. amount from the allottees as well as money received from the financial institutions for the project is received in some other account(s). Therefore, there is an uncertainty about the exact amount transferred to the separate designated account where seventy percent of total amount received from the allottees and 100 percent amount received from financial institutions should have been credited. | Promoter should transfer all 100% of amount in designated account of which 70% needs to be utilised for construction | Section 4(2)(1)(D) to be amended as follows: (D) The promoter will collect all the money from the allottees only in the separate account of the project given by him on the RERA portal and that seventy percent of the amount collected from the allottees since the inception of the project will be utilized for the purposes of meeting the cost of construction and land of the project. Provided that any amount raised as debt against the project would be deposited only in this separate account and would be utilized only for construction of the project. |  |
| 2. | The banks are creating a lien on the separate designated account in contravention of the provisions of the RERA Act. | | After the second proviso of section 4(2)(1)(D) the following provisions will be added: “Provided that the bank will not have any lien on this account nor will it permit any other lending agency to have such a lien.” |  |

III. Issues relating to completion of project

| S.No | Concern | Recommendations | Proposed Amendments | Categorisation |
|------|--|---|---|--|
| 1. | The registration of the project cannot be extended by RERA beyond aggregate period of one year. Stipulation of a maximum period of one year for extension of registration granted to a project is considered unrealistic as depending on circumstances the project may be needed to be extended beyond one year without prejudice to the rights of the Allottee/s under this Act and Agreement/s for sale entered between the Allottee and the Promoter. | It is suggested that authority may grant further registration on basis of written consent of more than fifty percent of total allottees | Section 6, After the first proviso the following proviso to be added: Provided further that the authority may grant extension of registration for an additional period of not more than one year on the written consent of more than fifty percent of the allottees with such terms and conditions it may think proper subject to the validity of the sanctioned plan |  |
| 2. | There is general lack of clarity around Section 7 and 8. Few issues include: The section only provides that upon the revocation of the registration of the project or the lapse thereof, the authority may consult the appropriate government to take such action as it may deem fit including the carrying out of the remaining work by the competent authority or the association of allottees, as may be determined by the authority. It also provides that the association of the allottees will have the first right of refusal. The section is extremely wide and requires some guiding principles to be incorporated to achieve the objective of carrying out the remaining development works or taking any other action as needed deemed fit. The Act does not provide for – | | |  |
| | A) Dealing with the charge of the financial creditors, development authorities, refund due to allottees by virtue of orders by RERA or other forums, treatment of an allottee who wants to withdraw during the period of the completion of the project. | | | |
| | B) issues relating to the obtaining of required approvals and certificates including CC/OC, executing the conveyance deed and giving possession in case the promoter is not willing to discharge these obligations | | | |
| | C) the process of appointing a new developer or to assess the proposal given by Association of allottees (AoA), | | | |
| | D) the methodology of mobilization of the required resources to complete the project | | | |

IV. Issues relating to sufficiency of powers to enable efficient discharge of functions

| S.No | Concern | Proposed Amendments | Categorisation |
|------|---|--|---|
| 1. | a) Power to issue directions to all stakeholders In order to ensure comprehensive implementation of the Act and its objectives, it is important that all stakeholders of a Real Estate Project are under the ambit of RERA. RERA should be able to hold each of the stakeholder including Financial Institutions, Contractors, Professionals (Architect, CA. Engineer etc), Landowners, Government Officials etc. accountable for their role and responsibility towards the real estate project. | Section 37: The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, <u>to the promoters or allottees or real estate agents or any stakeholder of the project,</u> as the case may be, as it may consider necessary and such directions shall be binding on all concerned |  |
| | b) Power to impose penalties on delinquent project professionals or delinquent officials of Competent Authority | Section 38: The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents or competent authority or contractors or engineers or architects or chartered accountants engaged by the promoter for the project, under this Act or the rules and the regulations made thereunder. |  |
| 2. | More Power to RERA in policy making | Sections 32 and 33: Securing greater importance for RERAs in policy making in relation to real estate matters |  |
| 3. | Power to recall orders | Section 39: provides for rectification of orders but does not provide for recall of ex-parte orders and passing of a new order after hearing both the parties which is necessary for imparting justice to the parties. |  |

4. Power to ensure prompt execution of Orders

Section 40: The mode of implementing orders as arrears of land revenue or as a decree of the civil court by RERA itself or through the concerned civil court defeats the purpose of speedy justice enshrined in the Act.

The provision under Section 40 should confer clear powers upon the Authority to enforce its orders.



5. Absence of a scheme to penalise other 'parties' not following RERA directions

Section 67:





Penalty for failure to comply with orders and directions of Authority by allottees, competent authorities or the contractors, engineers, architects and chartered accountants:

(a) If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Authority, he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent of the plot, apartment or building cost, as the case may be, as determined by the Authority.

(b) If any competent authority or the financial institution or the land owner or the contractor or the engineer or the architect or the chartered accountant fails to comply with or contravenes the directions of the Authority issued under section – 37 of this Act, the Authority can impose against them a penalty of five thousand rupees for every day during which such default continues. However, such penalty may not cumulatively extend beyond ten lakh rupees.



V. Miscellaneous Issues relating to imposition of penalties and their usage, right to represent in complaints

| S.No | Concern | Proposed Amendments | Categorisation |
|------|--|--|---|
| 1. | Penalties to be credited to such account as the Appropriate Govt. may specify | Section 76(2): The Authority has limited sources of revenue and since the state government is providing only marginal budgetary support to the Authority and since the expenditure of the Authority is constantly increasing because of multifarious functions assigned to the Authority, it is desirable that the amount realized by way of penalty is credited to the funds of the Authority |  |
| 2. | Consumer's right to authorized representative. Under Section 56 an applicant or appellant can appear either in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers | In Section 56, the term "any of its officers" may be substituted by "any authorized representative" |  |
| 3. | Interpretation of 'or' in relation to advertisement / prospectus | The Section-11(2) will be slightly modified and read as follows: The advertisement and prospectus, as the case may be, issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto. |  |
| 4. | Punishment for non registration If a promoter does not register project under section-3, even after order of the Authority for the above, the | Section 59 |  |

Authority should be vested with the powers of declaring such promoter as “defaulter” under the provisions of the Act. Presently there are no provisions in the Act to declare such promoters as defaulter.

5. Imprisonment as punishment

A streamlined procedure, prescribing that on reference from RERA the PP will follow up the case in court, and that the court will not look into the justification of the order of penalty/fine (since this is already appealable in the Tribunal and then in the High Court), but only to its implementation, and awarding of imprisonment in the absence of compliance.



6. Redefining the concepts of interest, compensation, and compensatory interest

