

## **A Comprehensive Study on the Real Estate Regulatory Authority (RERA) of India and Recommendation of a New Clause**

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**Abstract:** *The Real Estate Regulatory Act (RERA) came into force in 2016 to bolster the dilapidated Real Estate sector of India. The motive of the RERA Act was to eradicate discrepancies and set up a regulatory body to assist the buyers and developers.*

*This paper brings forward the impact of this act on the Indian citizens since its implementation. People's opinions and recommendations were collected through an online survey questionnaire. Two distinctive sets of questions were prepared: one for buyers and another one for developers in the real estate market. Responses have been collected from citizens across the nation which has helped us to get a wider picture of the impact of RERA.*

*The study indicated that many homebuyer's problems were delay in possession which has played a critical role in forming the sections of the RERA Act 2016. On the other hand, the financial struggles of developers have increased due to strict guidelines of RERA. Thus, a new clause has been suggested in the end of this document to alleviate the burden on the builders in India.*

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**Keywords:** *RERA, Real Estate, Niti Aayog, Appellate Tribunal, Possession Delays, Escrow Account, Promoter, Clauses, Section 61 of RERA.*

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## 1. Introduction

Real estate is one of the most globally recognised sectors. The growth of this sector is well complemented by the growth in the corporate environment and demand in office space as well as urban and semi-urban accommodation. With migration being the core idea behind job search in metropolitan cities, the real estate has boomed in the last two decades; attracting around Rs 43,780 crore (US\$ 6.26 billion) in investment in 2019 itself.

The current size of the real estate market in India is Rs 12,000 crore (US\$ 1.72 billion) and is expected to jump over five folds to Rs 65,000 crore (US\$ 9.30 billion) by 2040, as cited by Niti Aayog Vice Chairman Rajiv Kumar in February 2019. The real estate sector is expected to contribute to 13 percent of the country's GDP by 2025.

*[Statistic Sources: 'India Real Estate Industry'-IBEF website, 'Blockchain: The India Strategy'-Niti Aayog]*

Real Estate was widely regarded as an unorganised sector. With the continuous surge in this sector, it had become imperative to bring itself under the ambit of regulation. Unless there were proper consumer protection and close monitoring of processes and practices, it would not be possible for organised funding to take deeper positions in the industry. Eventually, Real Estate (Regulation & Development) Act 2016 took shape, paving the way for establishing regulators at the centre and state levels. Also creating a transparent system to safeguard the interests of buyers.

It has been slightly more than 4 years since the implementation of RERA, in 2016, and presently 24 states/union territories have set up a Regulatory Authority. The crux of creating this research paper is to get an in-depth knowledge of the impact that RERA has created in the Indian real estate market. The data in this research was collected through a survey of Developers and Buyers. The compendium of responses gave us a clear image of how the people of India have taken up RERA. The intensive questionnaire was aligned with the objective of the research; to compare the different phases on specific aspects of the Act.

## **2. Literature Review**

### **2.1. Previous Research**

In the research conducted before RERA implementation, experts have shown an immense desire for a new regulation act to buttress the defaced real estate sector of India. As mentioned by Aggarwal S (2003), the construction industry in developing countries will soon face major challenges if not taken care of. Similarly, Singh Vandana (2009) presents the emphasis of Indian real estate on GDP, employment, per capita income also brings forward the consequences of the lapse of the real estate sector. After all these opinions over the past years, the Government of India finally passed an Act for revamping the real estate of India. Sunil Dhawan (9<sup>th</sup> May 2017) in his article “Will RERA impact real estate prices” published in Economic Times stated that RERA is going to impact real estate in terms of prices. For existing as well as under-construction projects. However, in a case study carried out by Swapnil Shinde and Dr. Sumant Kumar (2016), it is mentioned that the real estate suffered a loss of 5% in the financial year 2016-17. The crux of this loss was the implementation of GST, demonetisation and RERA act. After 4 years of implementation of RERA, Leena Mudbidra (Times of India article published on 21<sup>st</sup> February 2020) cites RERA as an act that brought both transparency and trust in the real estate sector. Financial and real estate experts are quoting RERA as a “One nation one RERA” approach towards a healthy real estate sector of India.

The enactment of the Real Estate Regulatory Act (RERA) has been one of the most crucial changes in the timeline of the Indian Civil Engineering sector. No such authority existed in the past to resolve the buyer-builders dispute. With the continuous surge in the real estate sector of India, erratic amendments will be needed for proper functioning. Four years can be considered as a decent time to analyse the impact RERA has created in India. It begets the motive to produce this research paper

### **2.2. Critical Findings**

RERA is a journey well begun but has a long way to go. The clauses fit perfectly to help the homebuyers, but the biggest concern is whether it has been implemented with efficiency. Transparency is the sole motive of RERA, and it should not be hampered at any cost. Abhay Upadhyay (2018), claims that some states have diluted the act through the rules to favour the

builders. Sunil Dhawan (28<sup>th</sup> April 2018) mentioned in his article in The Economic Times that not much has changed for homebuyers. This research paper deals with the factual responses of homebuyers as well as builders to get a clear picture of the impact of RERA.

### **3. Introduction to RERA**

#### **3.1. Definition of RERA Act**

RERA can be defined as, “An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure the sale of plot, apartment or building or sale of real estate project, efficiently and transparently and to protect the interest of consumers and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

*[Source of definition: legislative.gov.in]*

#### **3.2. Need for Real Estate Regulatory Authority**

For Long, the real estate sector was unregulated and in favour of builders and developers. From getting delayed possession to bearing a huge loss of project cancellation, all must be borne by home buyers. The real estate had no sectoral regulator like there are for other specific sectors like insurance, telecom, stock markets, etc. History is witness to the fact that whenever sectoral regulators like SEBI, IRDAI, and TRAI, etc. have been formed, they have helped in deepening the market and made it more robust. Though the Consumer Protection Act, 1986 was available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. For any of the malpractices, if a home buyer filed a complaint, it took years to get a verdict. However, now to bring transparency and accountability to this sector, Real Estate Regulatory Act, 2016 has come to force.

### 3.3. Stepwise documentation required for registration of the RERA Project are as follows

**Table 2. Stepwise Process for Registration of Project**

Step 1	Firm details – Registration details, PAN no,
Step 2	Developers details – KYC, Photo
Step 3	Landowners details – KYC, Photo
Step 4	Copy of the Legal Title Report
Step 5	Details of encumbrances
Step 6	Copy of Layout Approval (in case of layout) and Building Plan Approval (IOD)
Step 7	Signed Proforma of the Allotment Letter and Agreement for Sale (AFS)
Step 8	Declaration in Form B For landowners and Developers
Step 9	Certificate of Architect (Form 1) [Mandatory for only on-going project]
Step 10	Certificate of Engineer (Form 2) [Mandatory for only on-going project]
Step 11	Certificates of CA (Form 3)
Step 12	Certificates of Supervisor (Form 2A) [Mandatory for only on-going project]
Step 13	Commencement Certificate
Step 14	Sanction Plan
Step 15	Project details – Like Project name, No of buildings, No of Units, RERA carpet areas of each unit.
Step 16	Common area facilities details
Step 17	Project cost details – As per the given format.
Step 18	All above documents scanned copies in 1 MB size
Step 19	Project professional details – Architect, RCC designer, etc.

**Table 1. RERA Clauses and its Impacts on Buyers & Builders**

<b>Sr. no.</b>	<b>Clause</b>	<b>Impact on Buyer</b>	<b>Impact on Developer</b>
1.	<b>Section 3:</b> Prior registration of real estate project with Real Estate Regulatory Authority.	The buyer is protected as the project is now ring-fenced and less prone to delays	This will eradicate any discrepancies because the buyer will be under the observation of an authority
2	<b>Section 4(2)(I)(D):</b> The promoter shall keep 70% of the amount received from allottees in a separate bank account in a scheduled bank.	Buyer will have the guarantee that his invested capital is safe and is being used for the project in which he invested.	This clause averts the promoter from transferring funds to another project. Thus, emphasizing on 'one project one time, schedule.
3	<b>Section 9:</b> Registration of real estate agents.	Brings in transparency and accountability.	The promoter shall use the services of only registered real estate agents for sale of apartment, plot or building of any registered project.
4	<b>Section 11(1):</b> The promoter shall create his web page on the website of the Authority and enter all the details of the project for public viewing	All details of project are made available for the allottee at any time.	Promoter will be liable to display all the project details and keep those details up to date as project progress
5	<b>Section 11(4)(h):</b> Prohibition on Mortgage or create a charge on any apartment, plot or building after execution of an agreement for sale.	Right and interest of allottee is get protected.	The promoter shall not mortgage or create a charge on any apartment, plot or building after execution of an agreement for sale.
6	<b>Section 13:</b> No deposit or advance to be taken by promoter without first entering into agreement for sale.	Allottees do not required to pay any amount before entering to agreement of sale.	A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building, as an advance payment or an application fee. The promoter shall ensure that the agreement for sale is in prescribed form and contain specified particulars.
7	<b>Section 14(1):</b> Adherence to sanctioned plans and project specifications by the promoter.	Allottees can expect same product as prescribed in project plans	Promoter needs at least two third majority to make changes in plans
8	<b>Section 14(3):</b> In case of structural defects. (Promoter will rectify the defects within 30 days for first five years after handover of real estate project.)	This eliminates the additional expenditure spent on maintenance by the buyer. It also ensures a superlative quality of construction, resulting in a good building life	This prevents any hampering with the construction quality which could result in accidents. A good quality of construction will also boost the reputation of developer
9	<b>Section 18:</b> Compensation if the promoter fails to complete or unable to give possession of an apartment according agreement of sale or fails to justify obligations imposed on him.	Allottee will have option to withdraw his investment or receive interest for every month of delay, till the handing over of the possession.	The promoter shall on demand by the allottees, return the amount received by in respect of that apartment, plot, building with interest and compensation.
10	<b>Section 20(2):</b> Right to know stage-wise time schedule of completion.	Stage-wise progress helps in keeping track of the project and estimating the due date for possession	There is constant burden on promoter to keep various stages of project in accordance with agreement of sale.

## 4. Research Methodologies

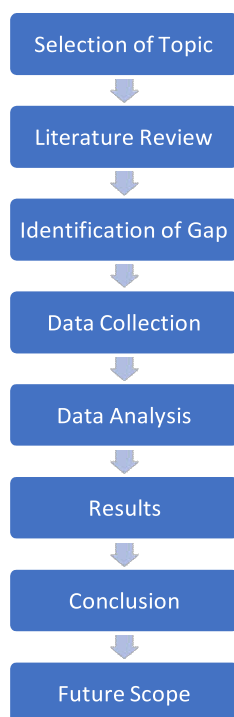
### 4.1 Objective

To compare the pre and post phases of RERA in terms of cost, time and other benefits for clients and builder. To conclude by extrapolating a recommendation of a new clause for promoters.

### 4.2 Importance of Study

This study will be useful in determining the impact of RERA on buyers and developers since its establishment. Under the aegis of two online questionnaires, one for the buyer and another one for the builder, a pluralistic data has been collected from 14 states where RERA is established. With over 150 responses on questions based on the benefits of RERA, data analysis will be done to extrapolate the outlook of Indian buyers and builders. The feedback of surveyees will aid to figure out the loopholes and possibilities of future amendments of the act.

### 4.3 Methodology



**Figure 1. Flow Chart of Project Methodology**

This study was conducted by circulating an online questionnaire across social websites and e-mails. The questionnaire comprised of 25 comprehensive questions for the buyer and 20 for the developer.

**Table 2: List of States in Which the Survey was Conducted**

Questionnaire for Buyers	Questionnaire for Developers
Chhattisgarh	Bihar
Delhi	Delhi
Goa	Karnataka
Gujarat	Maharashtra
Jammu & Kashmir	Rajasthan
Jharkhand	Uttar Pradesh
Karnataka	
Maharashtra	
Telangana	
Uttarakhand	
Uttar Pradesh	

## 5. DATA ANALYSIS OF BUYER'S QUESTIONNAIRE:

Among the 124 responses collected from the buyers, 34.7% have purchased a flat after the implementation (in their respective state) of the RERA act. In this mass of 34.7%, 44 percent of people were charged based on built-up-area. Whereas under section 2(k) of the RERA Act 2016, a builder can only sell a property for its carpet area. However, various small scale builders try to dupe the buyers by circumventing the laws.

### 5.1 Possession Delays:

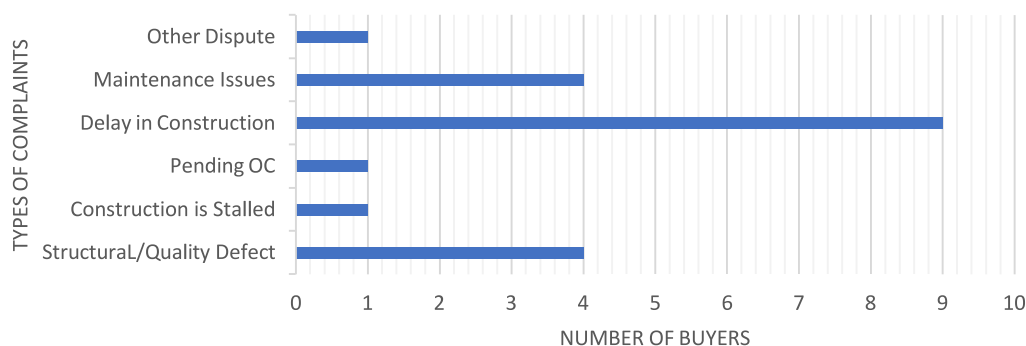
Apart from being overcharged, buyers frequently suffer from possession delays and the statistics for the same are mentioned below:





**Figure 2(a). Pie Chart Representing Time Frame of Possession**

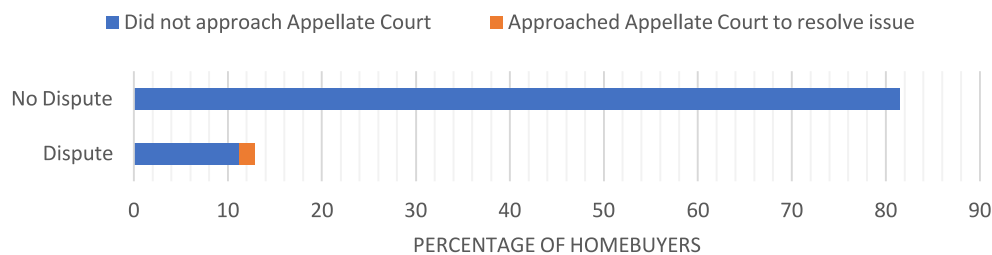
**Figure 2(b). Pie Chart Representing Possession Delays**



**Figure 3. Bar Graph Representing Types and Number of Complaints Filed to RERA**

As seen, incomplete construction is a substantial issue for the delay in possessions and to avert this, section 61 of the RERA Act 2016 states that the builder will have to pay 10% interest as a penalty on the value of the property for delayed possession of flats.

**5.2 Appellate Tribunal:**

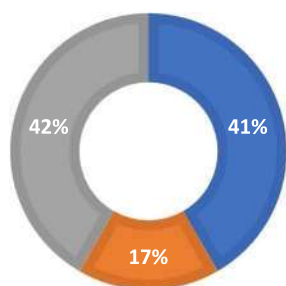


**Figure 4. Bar Graph Representing Percentage of People Approaching RERA for Disputes**

Appellate Tribunal is an appeal court where any homebuyer can apply for help in case of any dispute with the developer. This authority was set-up to provide speedy justice to suffering buyers. However, just 1.7% of buyers had to approach RERA so sort out their problems. Out of the remaining 11.23% homebuyers with disputes, most of them did not approach RERA as they find the legal process ‘tedious and time-consuming’.

Although 41% of the complaints get attended within a month. Most of the hearing takes more than 3 months to initiate. This is the dominant reason why people avoid filing complaints.

■ <1 Month ■ 1-3 Month ■ >3 Month



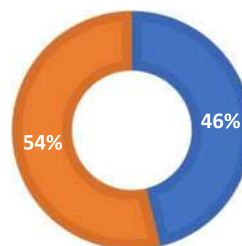
**Figure 5: Pie chart representing first hearing time of cases**

RERA has disposed of 48,556 cases since its implementation, of which 57% were resolved last year itself. Uttar Pradesh RERA has been the most efficient in solving disputes and other housing cases.

[Source: The Economic Times article by Sobia Khan, 14<sup>th</sup> July 2020]

The pie chart in figure-6 reflects the efficiency of RERA. According to the conducted survey, a large portion of the buyers returned empty-handed from the RERA appeal court. Although few of the cases have a verdict pending, RERA is has failed to provide efficiently and dispatched justice.

■ Yes ■ No

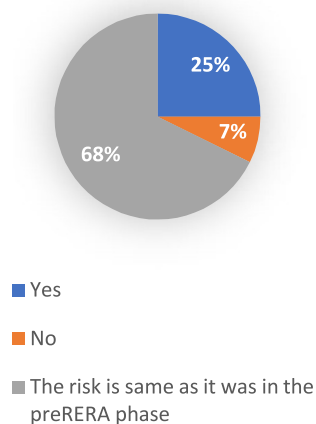


**Figure 6: Pie Chart representing the efficiency of Appellate Tribunal RERA**

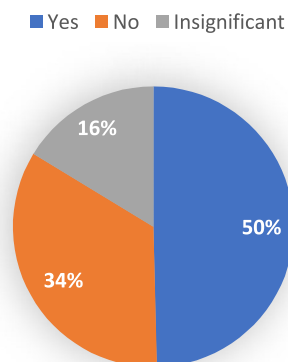
**5.3. Buyer’s Perceptions**

The final set of questions (4 questions) were regarding the opinions of homebuyers and this compendium of responses has been helpful to draw out the conclusion. The opinion is highly substantial as it can be helpful to augment the current sections of RERA.

Do you feel your money is safe in the hands of the developer after the enactment of RERA Act?



Has RERA played an important role in the purchase/sale/lease of your property?



**Figure 7(a). Pie Chart Representing Trust of Buyers in Builders after RERA**

**Figure 7(b). Pie Chart Representing the Importance of RERA to Homebuyers**

Figure 7(a) is a highly crucial representation as it gives us a clear picture of the impact of RERA. Even after three years of the proper functioning of the Act, the safety of buyer's money is obscure. Although the focus of RERA was to rebuild the trust of buyers in builders, the goal has not been achieved. Nevertheless, according to Figure 7(b), people agree that RERA has been pivotal during the purchase/sale of the property.

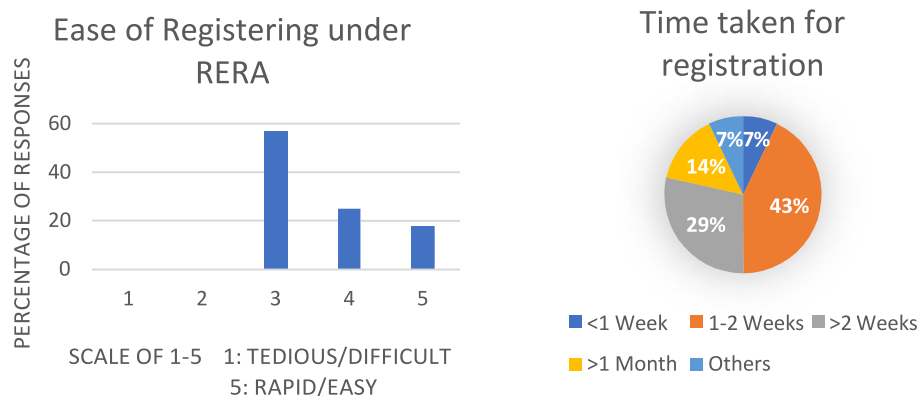
## 6. Data Analysis of Developer's Questionnaire

### 6.1. Ease of registering a project on RERA

The impact of RERA from the perspective of builders is also important as the Act was introduced to support both, buyer as well as the builder. Therefore, a separate set of questions were prepared for Developers to answer and share their opinion on the act.

The following two questions give a firm understanding that RERA has been successful in creating a swift and uncomplicated process for the registration of a project.

In a fast-moving generation, RERA has made sure that time is not squandered.



**Figure 8(a). Bar Graph Explaining the Ease of RERA Registration**

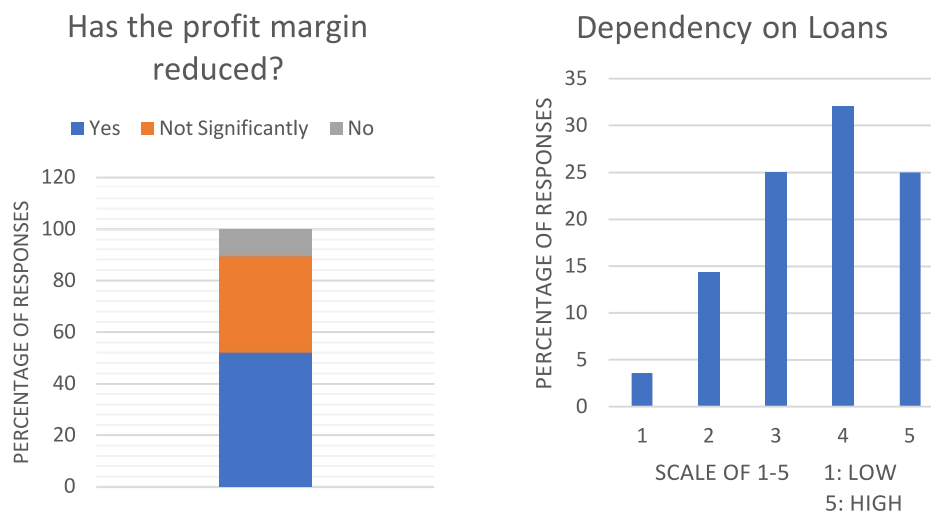
**Figure 8(b). Pie Chart for Swiftness in RERA Registration**

## 6.2 Financial Aspects

Financial characteristics of a project have been a key point of discussion since the implementation of RERA. In the pre RERA stage, various cases of builder's duping owners had come into the picture. To terminate such cases and to protect the hard-earned money of buyers, RERA adapted various strategies as mentioned:

- I. **Escrow Account:** The developer will have to transfer 70 percent of the money received from customers to an escrow account. This will ensure the builder does not spend the money on other projects. Also, it will uplift buyer's safety concerns.
- II. **Maximum 10% of cost of project as advance payment: A builder cannot accept a sum of more than 10% of cost of project as advance before a written agreement.**
- III. **Carpet Area:** A builder cannot trick the buyer by charging him based on the built-up area. It is mandatory to disclose the carpet area of an apartment since RERA

According to the data collected from the questionnaire responses, an accurate image can be extrapolated of the effects of Financial conditions on developers. The profit margin has reduced due to the obligations of builders. In addition to this, developers are tending to rely on bank loans to bolster their financial requirements. The schematic representation of the same is shown in figure 9(a) and figure 9(b).



**Figure 9(a): Ratio of opinion on profit margin**

**Figure 9 (b): Bar graph scaling dependency on loans**

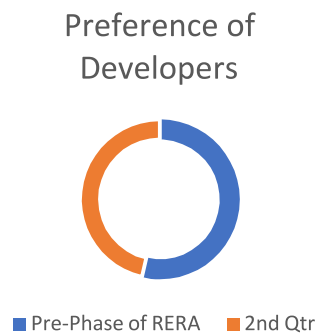
Close to 52% (in figure 9(a)) of developers reply that their profit margin has reduced compared to the pre-RERA phase of real estate. On the contrary, only 11% of the responses show that there has been a significant rise in profits. The distribution of responses in figure 9(b) reflect that, 82% (scale response 3+4+5) of the developers are more dependant on loan in the post RERA phase as compared to pre RERA.

### 6.3 Developer's Perception

The following pointers mention the personal responses of developers on the benefits of RERA in the real estate sector of India

- I. Enhancement in housing demand as buyers feel more secure to invest in property
- II. Transparency developed between buyers and developers resulting in a healthy relation between them
- III. Penalties on payments from buyers if they fail to pay the installments on time
- IV. Extention of project registrations and relaxation in penalty norms

#### 6.4 Comparison between Pre & Post Phases of RERA



The representation in figure 10 exudes that developers prefer the preceded phase of RERA. 53.6%, which forms the majority, would opt to construct a project before the year 2016, as it would give better returns (according to figure 9(a)) and more convenience in comparison to post RERA.

**Figure 10: Pie Chart representin Preference of Developers**

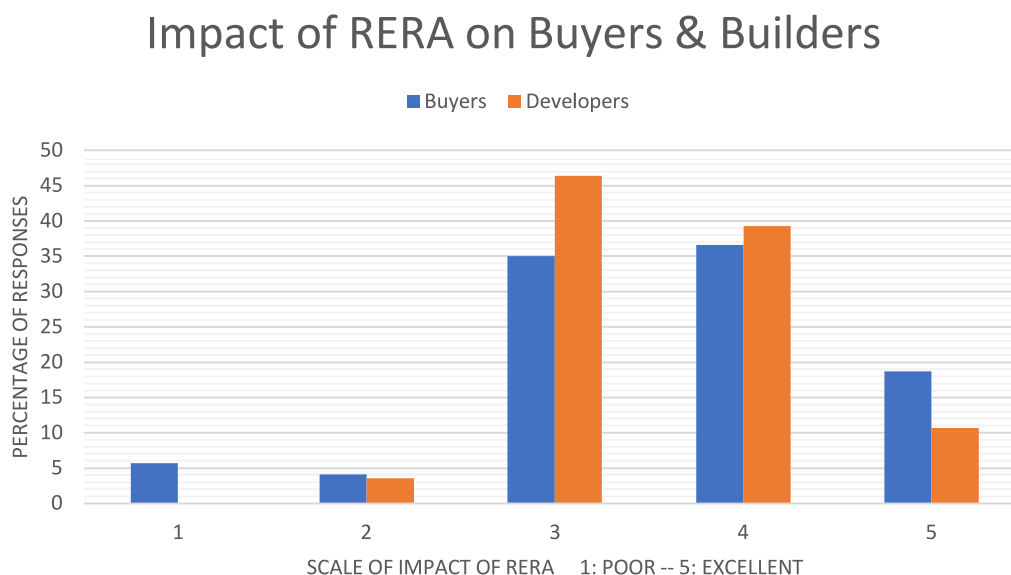
#### 6.5 Developer's Suggestions for future Amendments in RERA Act

In the rearmost division of the questionnaire, personal responses from developers were collected to understand their tribulations. Their suggestions can highlight the possible loopholes in the RERA Act 2016, which can be ensured by recommendations for future amendments. The suggestions are as follows:

- I. A builder should be allowed to advertise the project before the registration of the same. It is important to understand whether the project is saleable before registering it.
- II. The norms for builders should have some flexibility in the future, unlike the current laws. This will help during a period of recession and low demand (e.g. During the COVID-19 Pandemic)
- III. Reduction in the registration fee
- IV. Should give clear notification and decision for property transfer through conveyance deed considering the society act and apartment act.

## 7. Impact of RERA

The research objective of circulating a questionnaire across India was to deduce the impact that RERA has made in the real estate sector of India. The data analysed from the responses of surveyees derive the following explanation regarding the impact of RERA.



**Figure 11: Scaling of the impact of RERA**

## 8. Conclusion and Recommended Amendment

The survey performed among the Indian homebuyers and developers cast some light on the factors affecting the real estate sector of India. The homebuyers participating in this study contend with the Real Estate Regulatory Act 2016.

- i. According to the analysis, delay in possessions was the single major problem among the homebuyers which was mainly caused due to unsteady construction on site.
- ii. However, due to escrow account law and hefty penalties on delays, the developer obliged to provide on-time possession.
- iii. The study also indicated that even after 4 years of implementation, several buyers do not trust their builders. Hence, there is a lack of transparency.

- iv. But, the majority of the buyers believe that this act was necessary and its enactment has helped the purchase/sale/lease of properties. Due to the new set of rules, finance is being dealt with care and a homebuyer's money is utilised for the construction of it's project. This plays a significant role in improved quality of construction as well as timely possessions.
- v. On the other hand, it was found that Developers believe this act to be stern and express their need for flexibility. The study indicates that the net profits of builders have come down since RERA execution and their dependency on financial loans have increased. This reduces their liquidity and increases the liability of a builder which gives impetus to focus on one project at a time.
- vi. For RERA to be even-handed, some future amendments should be considered such as: Allowing builders to publicize a project before registering on RERA.

### **8.1 Suggested Clause:**

Due to the fettered laws of the RERA act for the promoters, a recommended amendment is drafted which provides the latitude to advertise the project without the approval of the development from Real Estate Regulatory Authority. This will allow the builder to save time and publicise the project until the registration is approved. The recommended clause is as follows:

1. Promoter shall advertise, market, or invite persons to present any plot, apartment or building, as the case may be, in any real estate project or a part of it, after applying for the registration of the real estate project.
  - a) Provided that the documents, plan, layouts, specifications are legitimate and authentic.
  - b) The promoter will not be allowed to sell or offer for sell any plot, apartment or building, as the case may be, without the approval of the development from the Real Estate Regulatory Authority.
  - c) Any promoter that does not comply with the directions mentioned in the section (1) and sub-section (a), (b) or continues to violate the provision shall be punishable with imprisonment for a term or with fine which may be some percent of the estimated cost of the real estate project, or with both.



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