

Irregularities in the Real Estate Industry: Issues and Solutions in Perspective of RERA and Twin Towers Case

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Abstract: The real estate industry is one of the most developing and lucrative industries in the world. It impacts the economic growth of any country in a peculiar way. In recent decades, the real estate market in India has hit new heights, which parallelly resulted in the rise of irregularities, malfeasance, and corruption in the sector and created a serious threat to investors as well as consumers. In recent times, the real estate industry in India faced two landmark events, first was the enactment of RERA which was brought to regulate this sector and to make it more transparent, and the second was the demolition of Supertech's Twin Towers which was the emblem of the failure of the existing system to control irregularities and corruption in the real estate industry. Therefore, from the perspective of the RERA and Twin Towers case, this paper comprehensively examines the existing laws and authorities of the real estate sector and highlights some loopholes and shortcomings of the current system. This paper concludes with certain solutions and suggestions to fill the loopholes in the system so that the industry could function better.

Keywords: *Economic Growth, Corruption, Private Sector, RERA, Super-tech, and Twin Tower.*

1. Introduction

The demolition of Spartech's twin towers was a remarkable incident for the building sector in India, which signifies violations, corruption, irregularities, and a need for more regularization of the real estate sector in the country. Apart from this, there were other similar incidences witnessed. Collectively, it questioned the working of the authorities, their activities, existing rules, statutes, and fire safety norms regarding the same. Couldn't the built structures have been given to the government to house the destitute or to establish a hospital or philanthropic institution? The highest court's judgment serves as a powerful warning to those who defraud investors and ignore the rules of the land. The building project cost roughly Rs 500 crore. Can a nation like India, where poverty is still a painful reality, afford such wastefulness? The Supreme Court of India had also imposed a fine of Rs. 5 lakhs on a petitioner seeking stalling of Spartech twin tower demolition who submitted a PIL asking for an alternate course

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of action to the Supertech Twin Towers demolition.¹ The Court observed that it is clear from the petition's purpose that it is intended to stop the directives and judgment of this Court from being put into effect. A clear abuse of the procedure occurs when the jurisdiction under Article 32² is invoked. When this Court's jurisdiction is asserted through frivolous and motivated petitions, costs must be awarded.³

The court exerted on its finality of Supertech's twin Towers judgment⁴. This is manifesting the court's duty to assess the violation committed by builders with the help of authorities so that shortly no such incidents will appear and give a clear message to all miscreants.

The powerful developers' lobby and local politicians might not be receptive to reform in the real estate industry. Consumers from the middle class who spend their entire life savings on a dream home are currently at the mercy of dishonest contractors and officials. Concerns must be raised about the massive loss of resources and labor.

2. Illegal Constructions: Authorities, Laws & Failures

In India, illegal construction has been blamed on a combination of poor planning and crooked politicians working with fly-by-night builders. There have also been cases of opulent towers being built in India, either on intruded land or without proper permissions. By erecting structures on public property, they can break municipal regulations governing urban planning. They might also be prohibited by law because they violate environmental rules. Health requirements, fire laws, parking limits, height limitations, stairway rules, and several other regulations may all be broken. Even so, they can be broadly divided into two categories: **illegal constructions on private lands** and **illegal constructions on public lands**.

Due to the unlawful housing establishments that are strewn throughout the national capital, the Housing and Urban Affairs Ministry has informed the Rajya Sabha that there are approximately 64,300 unlawful and unauthorized buildings in the city⁵. Only 240 of these constructions have been identified by NDMC, while MCD has identified approximately 53,000. 32 properties in the Delhi Cantonment Board region have been sealed, however, just five unapproved projects have been demolished so far.⁶

¹ Sohini Chowdhury, 'Supreme Court Imposes Rs 5 Lakh Cost On Petitioner Seeking Stalling of Supertech Twin Tower Demolition' (*Live Law*, 1 August 2022) <<https://www.livelaw.in/top-stories/supreme-court-article-32-supertech-twin-tower-demolition-cost-imposed-205394>> accessed 25 January 2023

² Constitution of India 1950, art. 32

³ Sohini Chowdhury (n 3)

⁴ *Supertech Ltd. v Emerald Court Owner Resident Welfare Assn.* [2021] 10 SCC 1

⁵ Paras Rawal, 'Delhi reports over 64,000 illegal constructions in the past seven years, India' (99 acres, 22 July 2022) <<https://www.99acres.com/articles/delhi-reports-for-over-64000-illegal-constructions-in-the-past-seven-years-nid.html>> accessed 5 February 2023

⁶ *Ibid*

3.1. Famous case of Twin Towers in Noida

Having been ordered to be demolished by the Supreme Court last year⁷, the Supertech twin towers (named T-16 and T-17) in Noida, Uttar Pradesh, were reduced to ruins on August 28, 2022. Different building norms and laws were allegedly broken when the Twin Towers were built.

- Supertech Limited (the appellant) received a land allotment from NOIDA (New Okhla Industrial Development Authority) in 2004. Three amended designs overall for this project were approved by NOIDA in 2012, increasing the height of Towers 16 and 17 from 24 to 40 stories.
- Resident Welfare Association (respondent) filed a complaint with NOIDA alleging that the appellants had broken the law.
- The Uttar Pradesh High Court has ruled in favor of demolishing the twin, 40-storey Tower 16 & 17 buildings.⁸ It also ordered the appellant to pay 12% interest on the money it received as payment from apartment buyers.
- The court also found that the appellant had colluded with NOIDA to secure approval. Therefore, it additionally instructed the appropriate authority to provide sanctions for NOIDA officials' prosecution within the three-month time frame stipulated under the UPUD Act, 1973.
- The National Buildings Construction Corporation Limited (NBCL) was designated as an expert agency by the Supreme Court to provide an objective opinion. They argued that the appellant (Supertech Ltd.) had broken the laws and rules of the state.

There has been an increase in unlicensed buildings, mostly in urban areas due to the rising cost and collusion of authorities, the Supreme Court has said. It has become necessary to take harsh actions against such illegal constructions.

2.2. Why was not it possible to use the Twin Towers for other purposes?

Setting basic requirements for the safety, general welfare, and health of a building's occupants is the primary goal of developing building norms. The code includes specifications for a building's overall framework.

Following are the points highlighting violations that were committed in the illegal construction of the Twin Towers in NOIDA from the Super-tech Twin Towers judgment⁹:

2.2.1 Violation of laws and safety norms

The Supreme Court's initial concern was whether the construction of Tower 16 and Tower 17 violated the distance restriction outlined in the relevant building laws.

⁷ *Supertech Ltd.* (n 6)

⁸ *Resident Welfare Association v State of U.P.* [2014] SCC OnLine All 14817

⁹ *Supertech* (n 3)

i. Violation of NOIDA Building Regulations and Directions (NBR 2006, NBR 2010, NBR 2005)

For structures taller than ten meters, the National Building Code 2005¹⁰ mandates the upkeep of open spaces. NBC 2005 was not followed by the second and third updated plans. The minimum open area around Tower 17 should have been 20 meters instead of 9 meters when computed by NBC 2005. According to Noida Building Regulations and Directions 2006¹¹, there should be a minimum of half the height of the highest building between any two neighbouring building blocks. Towers 1 (37 meters) and 17 (73 meters) were close to one another, hence 36.5 meters should have been the minimal space between them. Contrarily, the real separation between these was only 9 meters, which at first glance was against Noida Building Regulations and Directions 2006.

Noida Building Regulations and Directions 2010¹² requires a minimum gap of 16 meters between structures taller than 18 meters. These towers' height was raised to 121 meters in 2012 when the third modification plan was approved. Thus, instead of the actual distance of 9 meters between the two towers, there should have been at least 16 meters between them to be within the Noida Building Regulations and Directions 2010 guidelines.

To ensure safe escape during emergencies, minimal ventilation, and access to natural light, a minimum distance between two buildings must be specified.

Highlighting, *K. Ramadas Shenoy v Chief Officer, Town Municipal Council*¹³ case, the Supreme Court stated that this Court determined that an unregulated development materially interferes with residents' ability to enjoy their property and that the municipal authorities must take steps to prevent the unauthorized building from hurting the neighbourhood.¹⁴

ii. Applicability of U.P. Apartments Act, 2010

No declaration is necessary for this section of the 2010 Act to be in effect. Whether a building is owned outright or leased, it must comply with the Act if it has four or more flats and land linked to it.

Supertech argued that the proviso in Section 4¹⁵ of the Planning and Development (Planning and Development) Act applied only to those who intend to buy apartments in Towers 16 and 17, not the existing 15 towers. The Court said that this interpretation would go against the statute's explicit provisions where the proviso was put in place to safeguard those who received designs and specifications when they were the "intending purchasers."

¹⁰ National Building Code, 2005

¹¹ NOIDA Building Regulations and Directions, 2006

¹² NOIDA Building Regulations and Directions, 2010

¹³ *K. Ramadas Shenoy v Chief Officer, Town Municipal Council* [1974] 2 SCC 506

¹⁴ *Supertech* (n 3)

¹⁵ Uttar Pradesh Planning and Development Act 1973, s 4

iii. **Applicability of U.P. Ownership of Flats Act, 1975**

According to Section 5(2)¹⁶ of the Act, the percentage of each flat owner's undivided interest in the facilities and common areas as stated in the Declaration may not be changed without the agreement of all flat owners. SuperTech Ltd. in this instance did not get permission before starting to build the Towers.

iv. **Need for RWA's Approval**

The height of Towers 16 and 17 in Tower 1 has been increased. The garden area in front of Tower 1 was also encroached upon, contradicting the promise made to the flat owners when they bought their apartments. It was against the terms of the 2010 Act and 1975 Act. Supertech argued that it was not possible to obtain the consent of each unit owner even though the third updated plan had previously been approved in 2012. When the first group of unit buyers moved in, the RWA officially began. This was factually untrue, according to the court.

v. **Violation of Fire Safety Norms**

For the construction of Towers 16 and 17. The Chief Fire Officer gave a temporary fire NOC after a request from Supertech, indicating that it would be responsible for making NBC 2005-compliant fire safety precautions. The side and rear area surrounding the structure must be 16 meters, according to NBC 2005 as a whole. The distance between Tower 1 and Tower 17 was only 9 meters, which was less than the necessary 16 meters.

2.2.2. To teach a Harsh lesson to violators of the law

No question that demolishing the building does not accomplish the main goal of meeting the basic need for shelter. However, there are urban planning aspects related to the environment, constructed density, and safety that are equally important and require regulation. The developer, who is the main offender, must pay a high price for the despicable behaviour, and infractions will not be permitted, which is another message that will be conveyed by demolition. A risky argument that would destroy any form of urban administration would be one that demanded that the state seize all unauthorized structures for alternative uses. Unfortunately, people who are in charge of overseeing construction regulations frequently go unpunished, which is unacceptable. Using excellent governance tools of accountability and transparency is the best way to handle such situations. All approved building permits must be shared with the public and made available on each municipality's website. If a breach is discovered, the punishment doled out to developers and those who helped them must be severe for deterrence to have real teeth.

3. RERA: tackling the irregularities in the Real Estate industry

3.1 Need for RERA

¹⁶ Uttar Pradesh Ownership of Flats Act 1975, s 5(2)

As the preceding section shows, the real estate sector was completely unregulated, and business methods and transactions were not uniform. Before the Real Estate (Regulation and Development) Act, of 2016, Indian real estate consumers had few legal options and were granted consumer protection under a few acts such as the Indian Contract Act, 1872 Transfer of Property Act, 1882, Registration Act, 1908, Urban Land (Ceiling and Regulation) Act, 1976 and the Consumer Protection Act, 1986. However, these statutes were unable to address real estate issues. There was no centralized regulating authority for the real estate sector and therefore, the real estate buyers had to approach different authorities, such as Consumer Courts and Civil Courts to resolve problems. Some common irregularities that consumers faced were delays in project completion, lack of complete and authentic information about the property, multiple registrations for the same property, lack of accountability on the side of developers and builders, project failures, and so on. Developers, on the other hand, had to deal with concerns such as delays in permission from the authority, late payments by homeowners, and lack of transparency in operations and consequently huge generation of black money was there in this industry. Recently demolished Super tech's Twin Tower was a big example of irregularities and corruption in the real estate industry.

Thus, there was a need for a comprehensive regulatory authority to deal with the failing real estate sector. This Act established several state-level Real Estate regulatory authorities to protect consumers and ensure the regulation of real estate transactions. It provided transparent and efficient real estate supervision and development.

3.2 Establishment of Real Estate Regulatory Authority (RERA)

As it has been discussed above there was a need to be a regulatory authority in the real estate industry, the Real Estate Act mandated the establishment of a Real Estate Regulatory Authority (RERA) in each Union territory or state. As per the provisions of the act RERA would monitor, adjudicate, and arbitrate any issues involving real estate projects in the concerned state. This Act also established a detailed list of the functions of RERA. To adjudicate the matter under the Act,¹⁷ RERA will appoint a judicial officer who is a District Judge,¹⁸ to conduct an inquiry. The aggrieved person can file a complaint with RERA or the adjudicating authority, depending on the situation.

3.3 Establishment of Tribunal: Speedy Justice

In the pre-RERA era, homebuyers who had issues with developers had to approach the existing judicial mechanism—consumer courts or civil courts—if meetings with the developer failed. Obtaining justice in this way

¹⁷ Real Estate (Regulation and Development) Act 2016, s 34

¹⁸ Real Estate (Regulation and Development) Act 2016, s 71

was a time-consuming and lengthy process. They provided for the establishment of the Real Estate Appellate Tribunal.

REAT (Tribunal) has the authority to accept appeals from RERA directions, decisions, and orders of RERA (Authority). No appeal shall be allowed after the expiration of 60 days from the date on which a copy of the RERA or Adjudicating Officer's order, direction, or decision is received. When the promoter or builder files the same appeal, he must deposit the amount decided by the Tribunal to REAT itself.¹⁹

3.4 How RERA deals with corruption in the real estate industry

i. Mandatory Registration: More transparency

The Act mandates that any real estate project (with a land area of more than 500 square meters or 8 flats) must be registered with their respective state's RERA.²⁰

Any project that has not received a certificate of completion or a possession certificate is required to comply with all Real Estate Act registration requirements. Furthermore, to apply for registration under RERA, promoters must provide detailed information about the ongoing project, such as the status of the land, necessary details of the promoter/developer, all necessary approvals from the concerned authorities, and the projected completion date.

Once all required registration is completed and other construction-related approvals are resolved, the project can only be promoted by the concerned developer/builder.

The most significant benefit of the Real Estate Act is that builders/developers now require clearance from the relevant authorities, and without proper registration of developers, builders, and real estate agents with the relevant regulator and providing every detail of the ongoing project, necessary clearance will not be provided, preventing the developer/builder from selling their project to any consumer/buyer.

ii. Reserve Account: Timely completion and delivery

The primary reason for delays in any building project is that the funds received from one project are significantly diverted by the builders/developers to begin a new project. On multiple fronts, it has been observed that diverting such cash by the developer to another project results in a lack of funds, causing the project to be delayed. To prevent such misappropriation of funds, the promoters/developers are now bound by law to hold 70% of the project collections in a separate reserve account, which ensures that the funds are not diverted in any way.²¹

¹⁹ Real Estate (Regulation and Development) Act 2016, s 43

²⁰ Real Estate (Regulation and Development) Act, 2016, s 3

²¹ The Real Estate (Regulation and Development) Act, s 4

iii. Fixing liability for defects: Better Quality buildings

This act provides that the builder will be held liable for any defect within 5 years of handing over the possession.

iv. Consent for any modification in the project: an obstacle for illegal construction

v. Developers are not permitted to make changes or additions to the approved plans and designs of the project without the consent of two-thirds of the buyers. This rule ensures that homebuyers receive the same apartment for which they paid.

Continual Disclosures by Promoters

One of the serious concerns with buyers was that they felt cheated or misled at times by builders since buyers are not made aware of or kept in the loop about the project's ongoing progress. With the adoption of the Real Estate Act, buyers/consumers can now track the progress/development of their project on the internet (RERA Website) since developers/promoters are now obligated to make timely submissions to the appropriate authority regarding the project's progression. Thus, mandatory disclosure will provide greater transparency and responsibility in the real estate industry from the consumer's perspective, and consumers will be in a stronger position before making any such investment.

Thus, the most notable and positive outcome of the Real Estate Act is the compulsion of builders to duly register under this Act, no promoter or developer can sell, purchase, advertise, or invite any customer to invest in their projects without first properly registering with the regulatory authority. As a result, all potential actions of builders and promoters are thoroughly scrutinized, and now every buyer and consumer have access to pertinent information such as the time required for project completion, a step-by-step plan of the major development to be undertaken, as well as minor modifications being made in their respective project.

4. Loopholes in existing laws and regulatory authorities of the Real Estate industry**4.1 No single window mechanism**

Section 3 of the RERA mandates the registration of any planned project. It also restricts pre-launches in the absence of approval from regulatory authorities. This unavoidably leads to the formation of difficulties during several phases, including the construction of a real estate project and then gaining approval for each project. It ultimately affects project efficiency because the development of the project would be delayed due to the lack of a single-window approval and be delayed. For example, if a property is being developed in Delhi, the developer needs to obtain 41 approvals or clearances within 60 days. In contrast, Section 32 of the Act requires RERA to propose

to the appropriate government or competent authority a proposal for the establishment of a single-window system to ensure that the project is completed on time.

4.2 Delay in setting up of the Regulators in States

The RERA Regulatory Authority and Tribunals were supposed to be established by April 30, 2017, but according to the latest information available from the Ministry of Housing & Urban Affairs, 28 states/union territories (UTs) have established the Real Estate Appellate Tribunal and 30 states/UTs have established the Real Estate Regulatory Authority under the Real Estate (Regulation & Development) Act, 2016. (RERA).²²

Due to the delays in some states, promoters and buyers have been left in the dark concerning RERA compliance. Buyers have lost faith in the Regulators' efficiency and speedy resolution of their complaints, while promoters are confused about how to respond to the Regulators' notifications of default.

4.3 Net usable area

RERA has defined the Carpet Area.²³ But the net useable area also needs to be defined for clarity. It should also include the space sold to allottees for their personal use, such as the living room, bedroom, cooking area, and lavatory. Such undefined key terms open the backdoor to unethical practices in the practical application of RERA.

4.4 Black Money

Due to its vulnerability, the real estate sector has long been a haven for black money holders. Since real estate transactions are generally unreported, it opens the door for illegal money holders to use real estate as a means to fabricate their black money. However, the 2015 amendment to the Income Tax Act penalized cash transactions in immovable property of Rs. 20,000 or more, which had a substantial impact on reducing unlawful property transactions. A similar provision dealing with the elimination of unaccounted wealth generation techniques should have been included in the new Act to enable an effective legislative move against black money.²⁴

4.5 Withdrawal Permission

Although the Act requires that certain certificates from engineers, architects, and accountants must be obtained before money can be taken out of an escrow account, this requirement is of limited consequence because there will always be questions about the validity of the certification. There are very low chances that these individuals will

²² 'States/UTs have set up Real Estate Appellate Tribunal and 30 States/UTs have set up Real Estate Regulatory Authority under RERA Act, 2016' (*PIB Delhi*, 28 March 2022) <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1810454>> accessed 4 February 2022

²³ Real Estate (Regulation and Development) Act 2016), s 2(k)

²⁴ Finance Act 2015

provide any reports or decisions that are detrimental to the promoter because the promoter himself hired and paid for them.

4.6 No restriction on delays by the Government Authority

Despite promoters having been required to obtain multiple approvals from various competent local authorities and agencies, no fixed timeline for obtaining such approval is provided. Furthermore, the authorities have not been held accountable for the project's project delays due to their negligence or unnecessary delays in granting approvals. Many times, authorities withhold their permission due to personal biases, causing promoters to confront difficulty in moving forward with the project. The Act only penalizes the promoter for delays, even if he is not responsible for the delays.

4.7 Collusion between real estate builders and officials

The most dangerous issue in the real estate industry is collusion between builders and authorities, The Supreme Court also made strong remarks regarding the collaboration of development officials and developers while ordering the demolition of the Noida twin buildings. The apex court observed that the Twin Towers case has shown the planning authority's nefarious complicity in the developer's violation of the law. The Twin Towers are no longer standing, but the 'collusion' is still there in the industry²⁵. In the Twin Tower case itself, 26 officials were found guilty in a report submitted by SIT²⁶. In recent times, the Amrapali case has been the most infamous case of recent real estate fraud, the Supreme Court also found "total non-monitoring by bankers" and detected a chain of fake firms set up by the Amrapali Group to divert funds.²⁷ In another recent case of Red Apple Residency, State Bank of India (SBI) officers have been arrested in connection with a Rs 100-crore fraud committed by a Ghaziabad developer.²⁸ These incidents highlight the involvement of government authorities in irregularities that happen in the real estate industry.

5. Conclusion

²⁵ Shalabh, 'Twin towers: Two ex-Noida CEOs among 26 named in SIT's 'collusion' report' (*The Times of India*, 4 October 2022) <<https://timesofindia.indiatimes.com/city/noida/twin-towers-2-ex-noida-ceos-among-26-named-in-sits-collusion-report/articleshow/86741110.cms>> accessed 8 February 2023

²⁶ *Ibid*

²⁷ Amit Anand Chaudhary, 'Amrapali group diverted Rs 3,000 crore of homebuyers' money: Auditors to Supreme Court' (*The Times of India*, 29 March 2019) <<https://timesofindia.indiatimes.com/business/india-business/amrapali-group-diverted-rs-3000-crore-of-homebuyers-money-auditors-to-supreme-court/articleshow/68622583.cms>> accessed 5 February 2022

²⁸ Akash Sinha, 'Idea Builders-Manju J Homes Red Apple Projects: A tale of deceit and an alleged builder-bank nexus' (*Money Control*, 24 August 2022) <<https://www.moneycontrol.com/news/business/real-estate/idea-builders-manju-j-homes-red-apple-projects-a-tale-of-deceit-and-an-alleged-builder-bank-nexus-8918201.html>> accessed 8 February 2022

As it is evident from the above discussion since the RERA has been implemented, government officials have become more careful in sanctioning building plans, and after the twin tower judgment builders have also been cautious of the law. But, at the same time, there are certain problems and loopholes in the real estate system, for which there is a need to review and reform the laws and regulations of the industry.

In the pre-RERA era, since there was no proper law to regulate the real estate sector, the industry and buyers have conflicted for a long period. RERA helped them and made the functions of the industry easier and more effective. It is a big step towards promoting transparency in the real estate industry, establishing the accountability of promoter and developer, and developing effective grievance redressal mechanisms for different issues related to the real estate industry. However, on the critical examination of regulations and authorities, certain recommendations could be given, so that the industry could function better. Recommendations are as follows:

- **Creating Awareness**

Even after 6 years of RERA, Home buyers still believe that RERA's role is simply to register promoters, developers, and agents in their database, which is accessible to the public via the website. At the same time, home buyers also should be aware that it is their responsibility to pay all bills and charges to the promoter on time, as this indirectly delays the completion of the project and hence ownership in the long run.

- **Provision Redevelopment Projects**

Though the Act was enacted particularly for new projects and to prevent legal complications that arise between promoters and home buyers, a reconstruction project is also considered a new project that could become a part of the RERA Act. As metro cities like Mumbai and Delhi run out of open land areas for development, many redevelopment projects are going on in their metro cities, which the RERA Act has not addressed and which will be necessary shortly. The dangers in redevelopment projects are increasing as numerous conflicts arise between society members and promoters, resulting in financial loss for both parties.

- **Solution for stalled projects**

When the promoters' and developers' licenses are canceled, or if there is a dispute between the parties, the matter is brought to the authority, and the core project is ignored. Construction works are stopped, and in most cases, even if compensation is paid, the construction is neglected. A provision in the statute is required to revive such projects so that the parcel of land, money, and construction materials do not go to waste and can be repurposed to give home buyers more options for occupancy.

- **Mechanism to monitor escrow fund**

RERA act simply allows funds to be used for both building and land costs. This may cause ambiguity in implementation because, most of the time, land costs are the primary part of the entire project cost, which may result in fund allocation problems. A precise mechanism for monitoring fund allocation for land acquisition, as well as building cost, must be devised.

It could be concluded that in half a decade, there has been a remarkable improvement in the real estate industry. Even though the function has been improving day by day, some modification and refinement in the regulation and its implementation are necessary for the growth of this industry and to make its functions more transparent and corruption-free.