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From Colonial Transfer to Consumer Protection: The Evolution of Real Estate Law in India and the Unfinished Promise of the Rera Framework a Critical Analysis of Legislative History, Statutory Design, and the Persistence of Homebuyer Vulnerability

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Abstract
The trajectory of real estate law in India traces a path from colonial-era statutes designed for bilateral property transfers between individual parties, through decades of piecemeal regulatory accretion, to the enactment of the Real Estate (Regulation and Development) Act, 2016 (hereinafter RERA or the Act) — the country's first dedicated statute governing the relationship between real estate developers and homebuyers. This article examines that trajectory in three parts. The first part analyses the pre-RERA legislative landscape, identifying the structural inadequacies of the Transfer of Property Act, 1882, the Indian Contract Act, 1872, the Specific Relief Act, 1963, and the Maharashtra Ownership Flats Act, 1963 as instruments of homebuyer protection. The second part examines RERA's statutory architecture and the judicial interpretation of its provisions by the Supreme Court of India, with particular attention to the decisions in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, Imperia Structures Ltd. v. Anil Patni, Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh, and Forum for People's Collective Efforts v. State of West Bengal. The third part draws on primary empirical data from a 2025 field study of 2,458 respondents in Bengaluru to demonstrate that the passage of RERA has not resolved the homebuyer's vulnerability — it has reconfigured it. The article concludes that the implementation gap between RERA's statutory protections and their practical realisation is not incidental but structural, shaped by institutional capacity constraints, geographic information asymmetries, adjudicatory delay, and the unresolved intersection of RERA enforcement with insolvency proceedings.

Keywords: Real estate regulation; RERA 2016; homebuyer protection; Transfer of Property Act; legislative history; Section 18; K-RERA; empirical study; insolvency; adjudicatory delay

I. Introduction

Property — immovable property in particular — has occupied a peculiar position in Indian legal history. Colonial administration generated an elaborate body of law governing the transfer, registration, and documentation of land, and that body of law remains, in its essential architecture, the framework within which real estate transactions are conducted today. The Transfer of Property Act, 1882, the Registration Act, 1908, and the Indian Stamp Act, 1899 were enacted to serve the fiscal and administrative interests of a colonial state: they ensured that transfers of immovable property were documented, authenticated, and taxed. They were not designed to protect the interests of a homebuyer who advances sixty per cent of a property's cost to a developer who has not yet broken ground.

The structural mismatch between these colonial instruments and the demands of modern multi-unit residential development became apparent progressively, and most acutely after the liberalisation of the Indian economy in 1991. Economic growth, urban migration, and the expansion of institutional housing credit combined to produce a residential real estate market of considerable scale. By the early years of this century, residential real estate projects were routinely involving hundreds of individual buyers, each committing substantial portions of their lifetime savings on the basis of brochures, floor plans, and developer promises that no law required to be accurate, disclosed in advance, or delivered on time. The Expert Committee on Real Estate Regulatory Authority, convened by the Ministry of Housing and Urban Poverty Alleviation and reporting in 2013, documented systematically what had become apparent anecdotally: fund diversion, possession delays of two to five years, arbitrary changes in project specifications, opacity in pricing, and the widespread failure of developers to execute conveyances in favour of buyers who had paid in full.[1]

RERA was the legislative answer. Enacted in 2016 and brought into force from 1 May 2017, it established, for the first time, a dedicated statutory framework for the governance of real estate development in India — with mandatory project registration, financial accountability mechanisms, standardised pricing, a codified set of allottee rights, and dedicated regulatory and adjudicatory bodies in each state. The Supreme Court has since interpreted its provisions in a series of decisions that have, on the whole, extended and entrenched its consumer-protective effect.

And yet the empirical evidence from Bengaluru — gathered through a field study of 2,458 respondents across four stakeholder groups between January and November 2025 — indicates that homebuyer vulnerability has persisted in forms that RERA's drafters anticipated but its implementing institutions have not consistently remedied. Sixty-seven per cent of homebuyer respondents reported possession delay. Only twenty-two per cent who had a grievance filed a complaint with K-RERA, and of those, barely one in four was satisfied with the outcome. The statutory target of sixty-day complaint disposal is met for fewer than six per cent of complainants. These are not the incidental failures of a new statute finding its feet; they are the structural failures of an implementation architecture that the statute assumed but did not guarantee.

This article examines that arc — from colonial transfer law to RERA and its aftermath — with the purpose of understanding not simply what the law says but why, in substantial measure, it has not delivered what it promised.

II. THE COLONIAL INHERITANCE: PROPERTY LAW AS AN INSTRUMENT OF ADMINISTRATION

The Transfer of Property Act, 1882 — the statutory bedrock of immovable property law in India — was the product of the Third Law Commission of India, appointed in 1861 under Sir Henry Maine, whose overarching project was the codification and rationalisation of Anglo-Indian law. The Act was brought into force on 1 July 1882, nearly two decades after its first draft, reflecting the legislative caution that accompanied any statutory departure from the common law principles then applied by the Presidency High Courts.[2] The Act's structure reveals its purposes: it codifies the rules governing sale, mortgage, lease, exchange, gift, and actionable claims. Section 54, which defines a "sale" as the transfer of ownership of immovable property in exchange for a price paid or promised, and distinguishes it from a "contract for sale" which transfers no interest in the property, was designed for a world in which property transactions involved the conveyance of identified, existing land between two parties.

The doctrinal consequences of the sale/contract-for-sale distinction have been examined extensively. What the early commentators did not anticipate — because the transaction did not yet exist in its modern form — was the structural vulnerability that this distinction would create for buyers of under-construction residential property. A buyer who signs an agreement for sale and pays eighty per cent of the purchase price acquires, under Section 54, no interest in or charge upon the property. The buyer is a contractual creditor of the developer. If the developer becomes insolvent before execution of the registered sale deed, the buyer takes their place in the general queue of unsecured creditors — a position that the Insolvency and Bankruptcy Code, 2016 has since modified but not entirely resolved.[3]

The Registration Act, 1908 and the Indian Stamp Act, 1899 reinforced the colonial framework. Both statutes were concerned with ensuring that completed transactions were authenticated and that appropriate revenue was collected. Neither addressed the pre-execution phase — the period between booking and execution of a sale deed during which buyers make their most significant financial commitments and bear their greatest exposure to developer conduct. The Indian Stamp (Amendment) Act of 1899 and subsequent state stamp legislation imposed substantial duties on executed instruments but created no mechanism to regulate the conduct of parties in the period preceding execution.[4]

The Indian Contract Act, 1872 provides the underlying legal framework for all real estate transactions — agreements for sale, construction contracts, brokerage arrangements, and the suite of collateral agreements that accompany a residential purchase. The ICA was premised, as Pollock and Mulla note in their standard commentary, on the freedom-of-contract tradition inherited from English common law, which assumes a rough equality of bargaining position between the parties to an agreement.[5] That assumption is structurally false in the context of Indian residential real estate, where a developer presents a standard-form agreement for sale with minimal scope for negotiation to a buyer who has already committed to a project through the payment of a booking amount. The Supreme Court acknowledged this imbalance as early as 2008 in Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. when it observed that the relationship between a developer and a flat-purchaser is not one between equals and that the developer holds a systematic informational and bargaining advantage.[6]

The Specific Relief Act, 1963 offered the most direct legal remedy available to a buyer whose developer defaulted: an action for specific performance of the agreement for sale. The SRA was substantially amended in 2018 — moving from a discretionary to a mandatory grant of specific performance for contracts relating to immovable property — but in the pre-amendment period, specific performance was discretionary and could be refused where the court considered compensation adequate. More fundamentally, even a successful action for specific performance required the conclusion of civil litigation that routinely extended over eight to fifteen years in Indian courts, a period far in excess of the financial capacity of a middle-class buyer simultaneously servicing a housing loan on an undelivered property.[7]

Taken together, the colonial inheritance provided a framework that was coherent for its purposes — registering transfers, collecting revenue, resolving bilateral disputes — but was structurally incapable of regulating the multi-party, longitudinal, information-asymmetric transaction that residential real estate development had become by the late twentieth century.

III. PIECEMEAL REGULATORY ATTEMPTS: THE PRE-RERA STATUTORY INTERVENTIONS

The first serious legislative attempt to address the specific problems of the residential real estate market came from Maharashtra. The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — commonly referred to as MOFA — was enacted in the wake of documented complaints about developers' practices in Mumbai and the surrounding region. MOFA required promoters to execute written registered agreements for sale specifying the carpet area and price, to maintain a separate bank account for amounts received from flat purchasers, to disclose title and approval status, and to facilitate the formation of cooperative housing societies and to execute conveyances in their favour.[8]

MOFA's design anticipated several of the mechanisms that RERA would later adopt at the national level. The separate bank account requirement was an early recognition of the fund diversion problem. The mandatory registered agreement addressed the absence of documentation that left buyers without enforceable evidence of the transaction. The society formation and conveyance obligations addressed the widespread practice of developers retaining ostensible control of projects long after buyers had occupied their units.

The limitations of MOFA, however, were as revealing as its aspirations. The Act applied only to Maharashtra. Its enforcement depended on the existing machinery of civil courts and, from 1986, consumer forums — neither of which was specifically designed for real estate disputes, both of which were chronically overburdened, and neither of which had the power to proactively supervise developer conduct, require public registration and disclosure, or impose administrative penalties proportionate to large-scale developer default. The Bombay High Court was required to intervene directly in several instances where cooperative societies complained of developers' refusal to execute conveyances — a symptom of the Act's lack of a dedicated enforcement mechanism.[9]

The Urban Land (Ceiling and Regulation) Act, 1976 represented a different regulatory ambition: the redistribution of urban land holdings to prevent speculative accumulation and to make land available for affordable housing. Its practical effect was the opposite of its intent. By imposing ceiling limits on urban land ownership and requiring government approval for transfers above those limits, ULCRA created obstacles to the assembly of land parcels of the size required for viable large-scale residential development, generated opacity in land markets, and — as the subsequent repeal legislation acknowledged — contributed to the very scarcity it sought to address. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 was itself evidence of the failure of this regulatory approach, though several states delayed adoption of the repeal for years thereafter.[10]

Consumer protection law — the Consumer Protection Act, 1986, substantially re-enacted in 2019 — provided the most widely used pre-RERA avenue of homebuyer redress. The doctrinal basis for its application to real estate was established by the Supreme Court in Faqir Chand Gulati v. Uppal Agencies (2008), where the Court held that a developer who enters into an agreement to construct and sell a flat is a "service provider" and that a failure to deliver or a deficiency in quality constitutes a "deficiency in service" within the Consumer Protection Act.[11] The National Consumer Disputes Redressal Commission and the State Commissions accumulated a large body of jurisprudence on possession delays, construction defects, hidden charges, and failure to provide promised amenities. In Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society Ltd. (2010), the Supreme Court affirmed that a developer's obligation to provide common areas and facilities as specified cannot be reduced or withdrawn without allottee consent.[12]

The consumer protection route had limitations that were inherent in its design. Consumer forums could award compensation and direct specific performance, but they could not require a developer to register a project and make its financial accounts publicly available before beginning sales, mandate the segregation of buyer funds, or impose an automatic interest obligation that ran independently of the need to prove loss. Consumer law is remedial; the residential real estate sector needed preventive regulation. The Expert Committee's 2013 report noted that of all the avenues available to homebuyers, litigation before consumer forums was the most accessible but that average disposal times — running to two to five years at the national level — and the complexity of proof requirements around construction defects made even this avenue available primarily to organised, legally sophisticated buyers rather than the typical first-time homebuyer.[13]

The pre-RERA period also saw significant judicial development in the area of works contract taxation — a line of cases that, while not directly addressing homebuyer protection, significantly shaped the legal characterisation of under-construction flat sales. In K. Raheja Development Corporation v. State of Karnataka (2005), the Supreme Court held that the sale of an under-construction flat is a "works contract" attracting state sales tax, because it involves an agreement by which a developer agrees to construct and transfer a flat — a composite transaction involving both a sale of goods (building materials) and provision of services (construction).[14] This characterisation, subsequently qualified by Larsen and Toubro Ltd. v. State of Karnataka (2013), which narrowed the works contract definition to exclude the value of land, reflected the inherent complexity of real estate transactions and the inadequacy of general commercial law categories for their governance.[15]

IV. THE EMERGENCE OF RERA: LEGISLATIVE FOUNDATION AND STATUTORY ARCHITECTURE

The Expert Committee report of 2013 was not the first official acknowledgment that the residential real estate market required dedicated legislative intervention. The Law Commission of India's 166th Report, submitted in 1999, had recommended the enactment of a Central Real Estate (Regulation and Development) Bill, observing that the absence of a sector-specific statute had left homebuyers exposed to malpractices that consumer law and civil courts were ill-equipped to prevent.[16] The Committee's 2013 report translated that recommendation into a detailed legislative blueprint, finding inter alia that developers across India routinely sold units without obtaining commencement certificates, collected funds from buyers for multiple projects simultaneously and diverted them across projects based on internal funding needs, and quoted prices on the basis of super built-up area calculations that bore no transparent relationship to the usable space being sold.[17]

RERA was enacted as Act 16 of 2016 and notified on 26 March 2016, with its substantive provisions brought into force in phased manner culminating on 1 May 2017. Its constitutional basis is primarily the Concurrent List of the Seventh Schedule to the Constitution of India — Entry 6 (transfer of property other than agricultural land), Entry 7 (contracts), and Entry 63 (institutions of higher education). The Act contains a non-obstante clause under Section 84 providing that its provisions have effect notwithstanding anything inconsistent in any other law in force, while Section 88 clarifies that it is in addition to, and not in derogation of, any other applicable law — a drafting choice that preserves the concurrent applicability of consumer protection law, insolvency law, and the general law of contract alongside the RERA framework.[18]

The Registration and Disclosure Architecture

Section 3 of the Act makes project registration a condition precedent to any marketing, advertising, booking, or sale activity. No promoter may invite any person to purchase a plot, apartment, or building in a real estate project unless the project is registered with the state Real Estate Regulatory Authority. The threshold for registration applies to projects where the area of land to be developed exceeds five hundred square metres or where the number of apartments to be developed exceeds eight — a threshold that, while intended to exclude small developments, has been criticised for exempting a significant volume of development activity, particularly in peri-urban areas where smaller projects predominate.[19]

Section 4 specifies the information and documents to accompany a registration application — authenticated title documents, statutory approvals and commencement certificates, sanctioned plans, construction schedules, and completion dates — and requires the promoter to declare that seventy per cent of the amounts collected from allottees will be deposited in a separate designated account and used solely for construction costs and land costs. This is the Act's central financial accountability mechanism. It addresses the fund diversion problem directly and structurally, by ring-fencing buyer funds within a project and conditioning withdrawals on certified construction progress. The withdrawal of amounts from the designated account requires a certificate from an engineer, an architect, and a chartered accountant in practice — a tripartite certification designed to prevent withdrawal ahead of corresponding construction activity.[20]

Section 13 introduces the carpet area standardisation — one of the Act's most consequential and immediately effective provisions. Before RERA, real estate developers uniformly quoted prices on the basis of "super built-up area" — a notional measurement that included proportional shares of common areas, shafts, lobbies, and structural walls, typically exceeding carpet area by twenty-five to forty per cent. Section 13 prohibits any advance payment of more than ten per cent of the cost of the apartment before execution of a written, registered agreement for sale, and requires that agreement to state the price on the basis of carpet area as defined in Section 2(k): the net usable floor area excluding external walls, service shafts, exclusive balconies, and open terraces. This single definitional change eliminated a pricing practice that had systematically obscured the real cost of homeownership for decades.[21]

The Allottee Rights Framework and Section 18

Section 18 is the provision that has generated the most extensive litigation under the Act and the most significant judicial pronouncements. It provides that where a promoter fails to complete the project or fails to give possession by the date specified in the agreement for sale, the allottee shall be entitled — at the allottee's option — either to withdraw from the project and receive a refund of the amounts paid with interest calculated at the rate prescribed under the Rules, or to continue with the project and receive interest on the amounts paid for every month of delay until possession is delivered. The prescribed rate, under the Central Rules, is the State Bank of India's Marginal Cost of Funds Based Lending Rate plus two per cent per annum.[22]

The mandatory character of Section 18 — the use of "shall" rather than "may" — was the subject of direct adjudication in Imperia Structures Ltd. v. Anil Patni (2020), where the Supreme Court held that the interest rate prescribed in the RERA Rules is the applicable rate and cannot be substituted by a lower rate at the discretion of the adjudicating authority, even where the promoter argues that the prescribed rate would produce a disproportionate liability on the facts of the case.[23] The Court further held that Section 18 operates as a no-fault liability: it is not necessary for the allottee to prove that the delay was attributable to the promoter's deliberate default, or to quantify losses arising from the delay, or to show that any particular act of the promoter caused harm. The breach of the contractual date of possession is the trigger; the prescribed interest and refund obligation follow as statutory consequences.

Section 19 enumerates twelve specific rights of allottees, including the right to all material information relating to the project, the right to possession by the agreed date, the right to have structural defects rectified within five years of possession, and the right to withdraw from the project with refund and interest in cases of false or misleading representations. Section 14(3) implements the structural defect warranty, requiring the promoter to rectify any defect in workmanship, quality, or provision of services appearing within five years of possession within thirty days of notice, without additional charge. These provisions collectively represented, at the time of RERA's enactment, a qualitative shift in the statutory status of a residential homebuyer — from a contractual creditor with only the general law of contract and consumer protection for support, to the holder of specific statutory entitlements enforceable before a dedicated regulatory authority.[24]

The Regulatory Machinery

RERA's institutional design rests on three pillars: the Real Estate Regulatory Authority, the Adjudicating Officer, and the Real Estate Appellate Tribunal, each established or appointed at the state level. The Authority, under Section 20, exercises registration, monitoring, and enforcement powers — it can call for information, conduct inspections, issue directions, revoke registrations, and take suo motu action. The sixty-day statutory target for complaint disposal under Sections 31 to 34 was calibrated against the experience of consumer forums, where disposal periods extending to years had become the norm. The Appellate Tribunal under Section 43, to be headed by a retired High Court judge, was designed to provide a specialist appellate forum capable of both legal and technical analysis.[25]

V. JUDICIAL INTERPRETATION: EXTENDING AND ENTRENCHING THE RERA FRAMEWORK

The body of judicial decisions interpreting RERA since 2017 is substantial and has been, on the whole, purposive and consumer-protective in its orientation. Several decisions merit particular attention for the legal principles they establish.

The question of which entities are bound by RERA's obligations was addressed in significant depth in MahaRERA's order in Gauri Thatte and Others v. Nirmal Developers and Others (2023). In that matter, homebuyers in a project marketed under the Shapoorji Pallonji brand sought to hold the development manager — which exercised exclusive control over marketing, branding, and sale — jointly liable as a promoter under Section 2(zk). The Authority held that the development manager was a co-promoter within the Explanation to Section 2(zk), because it was, in substance, a person who sold apartments in the project — regardless of how the internal contractual relationship between formal developer and development manager characterised their respective roles. The order applied a substance-over-form analysis that has significant implications for the structuring of real estate development arrangements designed to limit regulatory accountability.[26]

The mandatory applicability of RERA to projects underway at commencement was confirmed in Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh (2021). The promoter had argued that, having failed to register under the proviso to Section 3(1), it stood outside the RERA framework and could not be subjected to Section 18 obligations. The Supreme Court rejected this argument with a clarity that forecloses the argument as a strategy. The Court reasoned that a promoter who fails to comply with a mandatory registration obligation cannot invoke that failure as a source of legal immunity: to hold otherwise would mean that a promoter who violated the statute enjoyed a more favourable position than one who complied with it — a result that the statute's mandatory language cannot be read to permit.[27]

The concurrent operation of RERA and the Consumer Protection Act was affirmed in Imperia Structures and in Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd. (2020), where the Supreme Court upheld compensation awarded by the National Consumer Disputes Redressal Commission for construction defects and held that pursuing a complaint under consumer law does not preclude subsequent or concurrent invocation of RERA, and vice versa. The Court's reasoning rested on a harmonious reading of Section 88 of RERA, which expressly provides that the Act is in addition to and not in derogation of other applicable law.[28]

The most constitutionally significant decision in this body of case law is Forum for People's Collective Efforts v. State of West Bengal (2021), in which the Supreme Court struck down the West Bengal Housing Industry Regulatory Act, 2017 in its entirety. The Court held that HIRA was repugnant to RERA under Article 254(1) of the Constitution because it contained provisions that were materially less protective of homebuyers than RERA's corresponding provisions — including a narrower definition of "promoter," weaker financial accountability requirements, and a less robust penalty structure. The Court further held that the Article 254(2) route — Parliamentary assent — cannot be used to create a state regime that undermines the consumer protection objectives of the central legislation. The decision establishes that RERA's consumer protection floor is constitutionally entrenched against state dilution.[29]

The interface of RERA with insolvency law has generated the most complex jurisprudence. In Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019), the Supreme Court upheld the constitutional validity of the 2018 amendment to the Insolvency and Bankruptcy Code that classified homebuyers as financial creditors under Section 5(8)(f), holding that the advance payments made by homebuyers under agreements for sale carry a time value of money element and constitute financial debt. The Court confirmed that RERA and the IBC are complementary statutes operating in different fields, but that a moratorium declared under Section 14 of the IBC on the commencement of insolvency proceedings operates to stay RERA proceedings against the corporate debtor.[30] The Amrapali insolvency proceedings — Bikram Chatterjee v. Union of India (2019) — revealed the limits of this complementarity: where systematic fund diversion had occurred across multiple registered projects, and the insolvency framework produced no viable resolution plan, the Supreme Court was compelled to exercise its plenary jurisdiction under Article 142 to direct the National Buildings Construction Corporation to take over and complete the projects and to order attachment of the personal assets of the promoters. This intervention, extraordinary in its scope, reflected a recognition that neither RERA nor the IBC, individually or together, provided adequate remedies for insolvency at that scale.[31]

VI. THE PERSISTENCE OF HOMEBUYER VULNERABILITY: EVIDENCE FROM BENGALURU

Eight years after RERA came into force — a period sufficient to assess whether a statute's implementation is delivering its intended effects — empirical evidence from Bengaluru suggests that the homebuyer's practical vulnerability has persisted in forms that the Act's drafters anticipated but its implementing institutions have not consistently addressed. The data discussed in this section is drawn from a field-based study of 2,458 respondents across four stakeholder groups — homebuyers (n = 1,586), developers (n = 347), legal professionals (n = 468), and government officials (n = 57) — conducted between January and November 2025 across the five administrative zones of the Greater Bengaluru Authority.[32]

The Awareness-Comprehension Gap

One of the foundational premises of RERA's architecture is disclosure: the Act requires developers to register projects and make extensive information publicly available, and it confers specific statutory rights on allottees. The practical utility of both mechanisms depends on homebuyers being aware of and understanding those rights. The survey data reveals a substantial and structured gap between formal protection and actionable awareness.

Of 1,586 homebuyer respondents, 1,175 — 74.1 per cent — confirmed awareness of RERA as a statute. This figure, while higher than might be expected for a statute that is less than a decade old, conceals a more significant finding: of those who were aware of RERA, only 492 — 31.0 per cent of the full homebuyer sample — reported understanding its provisions well enough to exercise their rights under it. The gap between knowing that a statute exists and knowing what it entitles you to do is the practical protection gap. An allottee who does not know that Section 18 entitles them to a refund with interest computed at MCLR plus two per cent — regardless of the developer's reasons for delay — will not invoke that entitlement.[33]

The geographic distribution of awareness within Bengaluru is particularly instructive. The Central Zone recorded the highest homebuyer RERA awareness at 82.3 per cent; the West Zone the lowest at 61.8 per cent — a gap of over twenty percentage points within the same city, under the same statute, administered by the same regulatory authority. This variation correlates with the density of legal professionals in each zone, the proximity to K-RERA's offices, and the socioeconomic profile of the buyer population. Disclosure-based consumer protection statutes operate on the assumption that disclosed information reaches and can be acted upon by those for whom it is disclosed. The zone-wise variation in Bengaluru suggests that this assumption is significantly over-optimistic for buyers in information-poor environments.

The Possession Delay Problem and Its Financial Consequences

The most fundamental objective of RERA — ensuring timely delivery of possession — has not been achieved for a substantial majority of the homebuyers surveyed. Of 1,586 homebuyer respondents, 1,063 — 67.0 per cent — reported that they did not receive possession by the date specified in their agreement for sale. This data point must be contextualised. These respondents were surveyed in 2025, eight years after RERA's commencement. Many were buyers in projects registered after 1 May 2017 — projects that were initiated under RERA's framework and should therefore have been subject to its full disciplinary apparatus from inception. The persistence of a 67 per cent delay rate among buyers in a RERA-regulated market indicates that registration and the associated escrow and disclosure obligations have not yet produced the project delivery discipline that the statute was designed to create.

The North Zone of Bengaluru recorded the highest delay rate at 73.0 per cent, attributable to the concentration of large township projects in the Devanahalli-Yelahanka corridor whose completion depends on external road and utility infrastructure controlled by agencies outside K-RERA's jurisdiction. The East Zone recorded a 72.1 per cent delay rate — a function of the Whitefield-Sarjapur-KR Puram corridor's very high volume of pre-RERA projects carrying forward under the ongoing-projects registration requirement. These zone-specific patterns indicate that project delay is shaped not only by developer conduct but by infrastructure externalities that RERA's framework does not address.

The financial consequences of delay are quantifiable and severe. Of the 1,063 homebuyer respondents who reported possession delay, 68.4 per cent — 727 persons — were simultaneously paying rent on occupied accommodation and servicing housing loan EMIs on their undelivered unit. The average duration of this dual burden across the respondent group was 2.3 years. Depending on the property value and the rental market in the relevant zone, this dual burden translates to out-of-pocket costs of between eight and eighteen lakhs of rupees over the delay period. Section 18's interest remedy partially compensates for this burden, but it compensates only the amounts paid to the developer — it does not compensate for rent, for opportunity cost, or for the psychological and practical disruption of an extended period of residential uncertainty.

The Complaint Mechanism: Access, Utilisation, and Efficacy

RERA's complaint mechanism — specifically designed to be more accessible and expeditious than civil courts or consumer forums — has not achieved the access and efficiency its designers intended. Of 1,586 homebuyer respondents, only 349 — 22.0 per cent — had filed a formal complaint with K-RERA. The remaining 78 per cent either attempted informal resolution directly with the developer (31.0 per cent) or did not pursue their grievance at all (47.0 per cent). The reasons given by non-complaining buyers included uncertainty about outcomes (cited by 54.3 per cent of those who did not file), concerns about the time involved (cited by 48.7 per cent), the cost of legal representation (cited by 38.2 per cent), and fear of complicating an ongoing home loan arrangement (cited by 29.6 per cent).[34]

Of the 349 who filed complaints, only 24.1 per cent reported satisfaction or strong satisfaction with the outcome or process. The dominant source of dissatisfaction — identified by 78.0 per cent of legal professional respondents as the principal problem with K-RERA's adjudication — was delay in disposal. The statutory target of sixty days was met for only 5.2 per cent of complainants. A further 14.0 per cent reported resolution in one to three months. The majority — 52.4 per cent — reported that their complaint had taken more than twelve months to reach resolution or remained pending at the time of the survey.

The enforcement dimension compounds the utilisation problem. Legal professional respondents identified enforcement of K-RERA orders as inadequate in 69.0 per cent of cases — meaning that obtaining an order in one's favour was frequently only the first step in a multi-stage process that could prove as protracted as the underlying dispute. A developer who ignores a K-RERA compensation order can be proceeded against under Section 40, which provides for recovery as arrears of land revenue, and Section 63, which imposes penalties. But the initiation of these enforcement mechanisms requires additional filings, further adjudication, and coordination with revenue authorities — a process that is, in practice, beyond the capacity of most individual complainants without legal assistance.

Developer Compliance and the Escrow Paradox

The developer respondents identified the seventy per cent escrow requirement as the most significant compliance challenge, cited by 62.0 per cent of the developer sample. The mechanism's design creates a structural tension. The certificate-based withdrawal process — requiring contemporaneous certification from three professionals — is calibrated to prevent withdrawal ahead of construction progress. But it also means that developers cannot access funds even for legitimate construction expenditure on a timeline that matches actual construction cash flows. Contractor payments, bulk material purchases, and labour costs do not align neatly with project completion milestones.

The scale disaggregation is instructive: 74.1 per cent of small developers (fewer than five K-RERA-registered projects) reported significant cash flow impact from the escrow requirement, compared to 41.7 per cent of large developers. Large developers can draw on institutional credit lines, diversified project cash flows, and internal treasury functions to bridge timing mismatches; small developers cannot. The consequence — acknowledged by 38.0 per cent of developer respondents — is that the escrow requirement has in some cases contributed to construction slowdowns, creating the possession delays that the escrow mechanism was itself designed to prevent by ensuring the project remains adequately funded. This structural paradox within RERA's financial accountability framework merits sustained regulatory attention.

Institutional Capacity as the Binding Constraint

Government official respondents identified the ratio of K-RERA regulatory officers to registered projects as approximately one to twelve hundred — a ratio confirmed by K-RERA's published annual data and acknowledged by officials as insufficient for the proactive oversight function that the Act assigns to the authority. RERA's Section 20 confers on the authority powers of suo motu action, inspection, and investigation that are preventive rather than reactive. A regulator with a one-to-twelve-hundred officer-project ratio is structurally incapable of discharging preventive oversight of any meaningful scope; it can only respond to complaints that reach it.[35]

This institutional capacity gap has a distributional consequence that the survey data makes visible. Buyers in well-served zones with high legal professional density and proximity to the authority's offices are more likely to know about RERA, more likely to file complaints when they have grievances, and more likely to navigate the complaint process effectively. Buyers in peripheral zones — where the West Zone's 61.8 per cent awareness rate contrasts with the Central Zone's 82.3 per cent — face a compounded disadvantage: lower awareness, less access to legal assistance, and a regulatory mechanism whose effective reach is, in practice, limited by staffing and geography.

VII. ANALYSIS: WHY THE IMPLEMENTATION GAP IS STRUCTURAL

The empirical data from Bengaluru, read alongside the statutory and judicial analysis in the preceding sections, points to a set of structural explanations for the gap between RERA's formal protections and their practical realisation — explanations that go beyond the familiar observation that new statutes take time to bed in.

The first structural explanation is the mismatch between a disclosure-based regulatory model and an information environment in which disclosure does not reliably reach or equip those for whom it is made. RERA's registration and quarterly updating requirements generate substantial amounts of information about each project, but that information is available on the K-RERA web portal in a form that is accessible principally to buyers with the literacy, connectivity, and capacity to navigate it. The 43-percentage-point gap between awareness and comprehension in the homebuyer sample is evidence that information availability is not equivalent to information utility. Disclosure regulation requires not only that information be published but that its intended recipients have the background knowledge, legal literacy, and institutional support to translate it into effective action — conditions that are systematically more available in the Central Zone than in the West Zone of the same city.

The second structural explanation is the adjudicatory architecture. The sixty-day disposal target was not an arbitrary figure; it reflected the Expert Committee's finding that the chronic delay of consumer forums was the primary barrier to effective post-breach redress. But a statutory target cannot be met by an authority whose staffing level does not permit compliance. The one-to-twelve-hundred officer-to-project ratio, combined with the volume of complaints that the Act's accessibility was intended to generate, produces precisely the disposal timeline — four to eight months in practice, more than twelve months in a majority of cases — that the statute was designed to replace. Correcting this requires resource allocation decisions at the state level that are outside the authority's own control.

The third structural explanation is the IBC interface. When a developer becomes insolvent — and the Amrapali, Jaypee Infratech, and related cases indicate that large-scale developer insolvency is not a remote contingency in the Indian residential market — the moratorium under Section 14 of the IBC stays all RERA proceedings. The buyer who has a valid Section 18 entitlement has no ability to execute it against a corporate debtor in insolvency. The formal recognition of homebuyers as financial creditors under the IBC, while an important doctrinal advance, does not give them priority over secured lenders in distribution — and in several large insolvency cases, the value of the developer's assets has been insufficient to satisfy even the secured claims, leaving homebuyers with neither their flats nor the equivalent of their invested amounts.[36]

The fourth structural explanation is the gap in the Act's own coverage. The threshold exemption — projects below five hundred square metres and eight apartments — removes a significant volume of residential development from RERA's regulatory perimeter, particularly in smaller cities and peri-urban areas where development activity is characterised by numerous small projects rather than large integrated townships. The rental housing market is entirely outside the Act's scope. And the ongoing-projects provision, while important, did not capture every pre-2017 project: the Supreme Court's intervention in Newtech Promoters was necessary precisely because a significant number of promoters had not complied with the registration obligation for ongoing projects and were exploiting that non-compliance as a basis for avoiding RERA obligations.

VIII. Conclusion

The evolution of real estate law in India from the Transfer of Property Act, 1882 to the Real Estate (Regulation and Development) Act, 2016 is, in one reading, a story of progressive regulatory sophistication: from colonial instruments designed for bilateral property transfers, through the first sectoral attempts of MOFA, through the availability of consumer forum redress following the 1986 and 2019 Consumer Protection Acts, to the first dedicated national statute for the sector. In a more cautious reading, it is a story of the persistent lag between the problems generated by a rapidly evolving market and the adequacy of the legal and institutional frameworks deployed to regulate it.

RERA belongs to the first story in its design and to the second in its implementation. The statute's architecture is well-conceived: its registration and disclosure requirements, its financial accountability mechanism, its carpet area standardisation, its Section 18 interest obligation, and its dedicated regulatory and appellate machinery together constitute a coherent and appropriately targeted response to the documented malpractices of the pre-RERA period. The Supreme Court's consistent purposive interpretation of RERA's provisions has reinforced and extended this architecture, closing statutory gaps and resisting attempts to use corporate structure, registration status, or state legislation to dilute the Act's protections.

And yet the empirical evidence from Bengaluru in 2025 — eight years after commencement — documents a homebuyer population in which two in three experienced possession delay, nearly half did not pursue their statutory entitlements at all, fewer than one in four complainants was satisfied with the outcome of the complaint process, and the regulatory authority operates at a staffing ratio structurally inconsistent with the proactive oversight the Act envisages. These findings are not evidence of teething troubles; they are evidence of structural implementation gaps that are amenable to correction through resource allocation, institutional design, and targeted legislative amendment, but are not self-correcting.

The persistence of homebuyer vulnerability after RERA does not negate the significance of RERA's enactment. It qualifies it. The standard against which a consumer protection statute should be assessed is not whether it succeeded in being enacted, or whether its provisions are correctly drafted, or whether courts have interpreted them wisely. The standard is whether the people for whom it was designed are, in practice, better protected than they were before it. The data from Bengaluru suggests that the answer is affirmative in law and equivocal in fact — and that the gap between the two is the central challenge for the next phase of India's real estate regulatory development.

References

1. Ministry of Housing and Urban Poverty Alleviation, Government of India, Report of the Expert Committee on Real Estate Regulatory Authority (2013), pp. iv–vi (hereinafter Expert Committee Report 2013). The Committee documented fund diversion, possession delays, pricing opacity, and failure to convey title as endemic and systematically under-remedied.
2. Sir Frederick Pollock, The Indian Contract Act (3rd edn, Thacker, Spink & Co 1905) p. v; see also B.B. Mitra, The Transfer of Property Act (12th edn, Eastern Law House 1980) at pp. 1–14, tracing the evolution of the draft bill through successive Law Commission iterations from 1861 to 1882.
3. D.F. Mulla, Commentary on the Transfer of Property Act (14th edn, LexisNexis 2023) commentary on s 54, at pp. 341–345. The authors note that the contract for sale creates only a personal obligation enforceable in personam and generates no proprietary interest capable of binding third parties, including a liquidator.
4. N.D. Basu, The Registration Act (2nd edn, Eastern Law House 1992) at pp. 1–8. The Act was designed to prevent fraud in completed transactions through authentication, not to regulate the pre-execution conduct of developers.
5. Pollock and Mulla, The Indian Contract and Specific Relief Acts (15th edn, LexisNexis 2022) at pp. 1–11, tracing the Act's debt to the English common law tradition and its assumption of rough parity between contracting parties.
6. Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. (2008) 10 SCC 345 at para 24, per S.B. Sinha J ("The relationship between a builder and a flat purchaser is not on equal footing. The builder has all the information; the flat purchaser has none.").
7. Law Commission of India, Fifty-Fourth Report on the Code of Civil Procedure (1973) noting average trial duration in civil courts; see also Expert Committee Report 2013 (n 1) at p. 11 noting that specific performance actions routinely took eight to fifteen years.
8. Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (Maharashtra Act 45 of 1963), ss 3, 4, 5, 6, 10, and 11. The Act came into force on 5 January 1964.
9. See, e.g., Maganlal Chaganlal (P) Ltd v. Municipal Corporation of Greater Bombay (1974) 2 SCC 402, in which the Bombay High Court was required to address the enforcement of developer obligations under the MOFA framework in the absence of a dedicated regulatory mechanism.
10. Urban Land (Ceiling and Regulation) Repeal Act 1999 (Act 15 of 1999), Statement of Objects and Reasons: "The Urban Land (Ceiling and Regulation) Act, 1976 has not been able to achieve its objectives and has, in fact, hampered the development of the land market in urban areas."
11. Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. (2008) 10 SCC 345 at paras 21–27, holding that an agreement to construct and hand over a flat is a contract for "services" within the Consumer Protection Act 1986, s 2(o).

12. Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society Ltd. (2010) 9 SCC 536 at para 37, holding that a developer's obligation to provide common areas and specified facilities is an enforceable contractual and statutory duty under MOFA and the Consumer Protection Act.
13. Expert Committee Report 2013 (n 1) at pp. 9–10.
14. K. Raheja Development Corporation v. State of Karnataka (2005) 5 SCC 162 at para 31, holding that the agreement to construct and sell a flat is a "works contract" attracting state sales tax, distinguishing a sale of immovable property from a composite supply of goods and services.
15. Larsen and Toubro Ltd. v. State of Karnataka (2013) 12 SCC 179, refining the works contract analysis and holding that the value of land transferred must be excluded from the taxable value of the composite transaction.
16. Law Commission of India, 166th Report on "The Real Estate (Regulation and Development) Bill" (1999), paras 1.1–1.7, recommending a central statute for the sector following documented failures of state-level legislation.
17. Expert Committee Report 2013 (n 1) at pp. 6–16. The Committee found that in a sample of projects surveyed across five major cities, over 70% had been marketed without a commencement certificate in hand.
18. The Real Estate (Regulation and Development) Act 2016 (Act 16 of 2016), ss 84 and 88. The Statement of Objects and Reasons identifies the Concurrent List as the constitutional basis: "Entries 6 and 7 of List III of the Seventh Schedule to the Constitution."
19. RERA 2016, s 3(2)(b) and (c). The threshold has been criticised: see Arpan Banerjee, "Indian Real Estate Law: What Does RERA Actually Do?" (2017) 5 Indian Law Review 1 at 8, noting that a significant proportion of residential projects in Tier-II and Tier-III cities fall below the threshold.
20. RERA 2016, s 4(2)(l)(D); Real Estate (Regulation and Development) (General) Rules 2016, r 4(2)(l), specifying the tripartite certification requirement for withdrawals from the designated account.
21. RERA 2016, ss 2(k) and 13(1). See also Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. (2021) 17 SCC 60 at para 47, affirming that carpet area pricing is mandatory and that agreements expressing price in super built-up area terms violate s 13.
22. RERA 2016, s 18(1); Real Estate (Regulation and Development) (General) Rules 2016, r 18, prescribing the interest rate as the SBI MCLR plus 2% per annum.
23. Imperia Structures Ltd. v. Anil Patni (2020) 10 SCC 783 at paras 29–35, per Hemant Gupta J: "The rate of interest has been prescribed under the Rules made under the Act. The Authority has no power to reduce the said rate of interest... The liability is absolute."
24. RERA 2016, ss 14(3), 17, and 19(1)(a)–(l).
25. RERA 2016, ss 20–34 and 43–58; Real Estate (Regulation and Development) (General) Rules 2016, rr 20–38.
26. Gauri Thatte and Others v. Nirmal Developers, Dharmesh Jain and Shapoorji Pallonji Real Estate Pvt. Ltd., Order of the Maharashtra Real Estate Regulatory Authority (MahaRERA, 2023), paras 41–49. The Authority applied the Explanation to s 2(zk) RERA 2016 and held that the entity exercising de facto control over sales is a "promoter" regardless of its formal characterisation in the internal development agreement.
27. Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. (2021) 17 SCC 60 at paras 79–84, per A.M. Khanwilkar J: "An obligation which is mandatory in nature cannot be rendered optional by the act of default of the very person who is required to comply with the mandate."
28. Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd. (2020) 16 SCC 523 at paras 46–52; Imperia Structures Ltd. v. Anil Patni (2020) 10 SCC 783 at paras 36–42, holding that s 88 RERA preserves concurrent access to consumer law remedies.
29. Forum for People's Collective Efforts v. State of West Bengal (2021) 9 SCC 692 at paras 103–121, per D.Y. Chandrachud J (as he then was): "A State law which depletes the protection afforded to allottees by the Central Act on matters covered by the Central Act must necessarily yield to it under Article 254(1)."
30. Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416 at paras 78–92, per R.F. Nariman J, upholding the Insolvency and Bankruptcy Code (Amendment) Act 2018 and affirming homebuyers' status as financial creditors; see also s 14(1) IBC 2016 on the moratorium.

31. Bikram Chatterjee v. Union of India (2019) 10 SCC 1 at paras 52–73. The Court exercised jurisdiction under Art 142 of the Constitution to direct the NBCC to complete stalled Amrapali projects, observing that neither RERA nor the IBC individually or conjointly provided an adequate collective remedy for insolvency at that scale.
32. The study was conducted between January and November 2025 using a mixed-methods instrument administered to respondents across the five administrative zones of the Greater Bengaluru Authority established under the Greater Bengaluru Governance Act 2024. Snowball sampling was used for homebuyers; purposive sampling through CREDAI Bengaluru chapter for developers; bar association lists and K-RERA practitioner registrations for legal professionals; and direct engagement for government officials.
33. Survey data on file with the author. Awareness was measured by a binary "aware/not aware" item. Comprehension was measured by a self-assessed item: "Do you understand RERA's provisions well enough to exercise your rights under it?" Both items were validated through follow-up qualitative interviews with a 10% sub-sample.
34. Survey data on file with the author. The reasons for non-filing were gathered through a multi-select checklist administered to all homebuyers who reported a grievance but did not file a formal complaint. Percentages sum to more than 100 because respondents could select multiple reasons.
35. Karnataka Real Estate Regulatory Authority, Annual Report 2023–24 (K-RERA, 2024), recording registered project volumes and approved staffing strength. The ratio of approximately one officer per 1,200 registered projects was confirmed by five government official respondents independently in qualitative interviews.
36. Chitra Sharma v. Union of India (2018) 18 SCC 575 (Jaypee Infratech), paras 44–55, noting the difficulty of protecting homebuyers in large-scale insolvency proceedings where secured creditors' claims absorbed substantially the entirety of available assets; see also Pioneer Urban Land (n 30) at para 90 acknowledging this structural limitation.