Opinion: Real Estate Act — Overcoming The Domino Effect Of Delays & Legal Ambiguities To Reinvigorate Sector

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On March 4, the Supreme Court remarked that the functioning of the Real Estate Regulatory Authority (RERA), established to protect the investment of homebuyers and promote the real estate sector, has been disappointing. This has triggered questions surrounding the transparency, accountability, and efficiency of the RERA, and the need for regulatory improvements in its functioning. RERA was established under the Real Estate (Regulation and Development) Act of 2016 to protect homebuyers and promote growth in the real estate sector by boosting investor confidence. While the law has standardised real estate practices — streamlining approvals, reducing malpractices, and adoption of digital tools — there have been numerous challenges. The lack of streamlined processes in real estate projects has caused unnecessary delays, inconsistent enforcement, fragmented regulatory environment and further complications, and the absence of clear SOPs has resulted in bureaucratic inefficiencies, ill-defined project timelines, and potential bottlenecks, triggering financial losses for developers and a slowdown in sectoral growth that prompted the Supreme Court to make such a remark.

The Indian real estate sector, which has been the backbone of the economy, has long been plagued with a lack of transparency, leaving homebuyers vulnerable to fraudulent practices. Since the passage of the Real Estate (Regulation and Development) Act, 2016, to instil accountability and attract investments, its implementation has encountered significant obstacles, leading to inefficiencies that have spread across the entire sector, as highlighted by the Supreme Court. The domino effect refers to how changes in one part of the market can trigger a chain reaction that impacts multiple areas, such as fluctuation in interest rates impacting housing demand, which affects prices. The law's stringent provisions and requirements, such as depositing 70% of the project funds in an escrow account and penalty for project delays, have placed a significant financial burden on developers. While the provision was intended to protect the buyers, it has led to larger market consolidation in favour of the more prominent players. Further, an economic slowdown has led to the loss of jobs, affecting the purchasing capacity of the buyers. The higher costs resulting from the necessary compliances are also passed onto the buyers, adversely affecting the affordability of the houses.

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Adding to this is the absence of effective oversight of the RERA judicial appellate rulings, the exclusion of members from redevelopment projects, and inadequate compliance measures, which have led to legal ambiguities, project delays, and declining investments affecting the broader goal of a self-reliant and sustainable real estate industry.

In this light, one of the critical gaps in the law is its exclusion of redevelopment projects. This omission has left many homebuyers without the protective framework that RERA provides. By including redevelopment projects under its purview, the Act can ensure fairness, mitigate risks, and prevent malpractices that disproportionately affect urban homebuyers relying on redevelopment schemes. Furthermore, since redevelopment projects are essential for urban transformation, their members must find a voice in the judicial appellate process, which will promote collaboration, strengthen regulatory decisions, and ensure policies are more inclusive.

Committee Of Experts

Establishing a committee of experts is of utmost importance to overcome these bottlenecks. Such a committee of legal and industry experts must be formed to evaluate and monitor RERA's judicial decisions independently. This structured review mechanism by impartial experts would enhance transparency, ensure legal compliance, and reinforce faith in the real estate judiciary. However, executing these steps requires well-trained judicial officers and access to legal precedents that will improve the credibility of rulings, and eventually facilitate the progress of the real estate sector.

It's crucial to recognise that real estate disputes often intersect with environmental, contractual, and urban development laws, necessitating a holistic approach. This approach involves integrating allied legal frameworks into dispute resolution, leading to more comprehensive and enforceable decisions. The absence of such an approach has further complicated dispute resolution and project completions in the real estate sector. The delayed dispute resolution and the consequential backlog undermine the Act's objectives of protecting consumer interests.

The Indian real estate sector stands at a crossroads, and there is an urgent need to address these regulatory gaps to create a sustainable and investor-friendly market. By filling the existing loopholes and preventing the effects of inefficiencies, the domino effect of delays and legal ambiguities can be stopped. There is a need to strengthen state-level regulatory authorities by engaging capacity-building initiatives with states and central authorities. The small developers may be provided with tax incentives, easier access to credit, and the provision of phased compliance with the requirements. The government may also introduce targeted incentives and faster regulatory compliance for affordable housing projects, considering the housing needs of lower-income households.

It's imperative to revisit and periodically review the provisions of the law and their impact to help identify gaps in implementation. This should be followed by amendments to address the emerging challenges in India's increasingly dynamic and ever-evolving real estate market. By doing so, India can pave the way for a sustainable, transparent, and investor-friendly real estate market that truly serves its citizens and supports economic growth towards a developed India by 2047.

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