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# Preface

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# SAFEGUARDING HOMEBUYERS UNDER RERA, 2016: A STUDY OF PROMOTER DUTIES AND JUDICIAL REMEDIES

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## Abstract

Prior to the introduction of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), there were many issues and uncertainties that arose while purchasing a house. Common issues in the real estate industry include delays in construction, false assurances, misappropriation of funds and unfair conditions in agreement. While certain remedies are available under general laws like the Indian Contract Act, 1872 and Consumer Protection Act, there was no specific law that covered all the issues in the real estate industry. RERA was introduced to deal with the issues mentioned above by creating accountability among real estate promoters. It makes it mandatory to register projects, controls the usage of funds and establishes a dispute resolution procedure. This paper discusses the key obligations on real estate promoters, remedies available to allottees in case of delay in possession and the role of Real Estate Regulatory Authority, Adjudicating Officer and Appellate Tribunal. This paper highlights the judgement of the Supreme Court in Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. 2021, which provided clarity regarding the applicability of RERA to ongoing projects and allowed allottees to claim refunds with interest. However issues still exist in practice. Despite RERA providing great protection to homebuyers, this will only be effective if it is properly enforced and the funds recovered in a timely manner.

## Introduction

For most individuals, purchasing a house is not just an ordinary financial transaction. It involves years of savings and, in many cases, long-term financial commitments. However, before the introduction of RERA, homebuyers frequently faced difficulties in getting what they had paid for. Construction projects were delayed, possession dates were repeatedly extended and some promoters failed to use the money collected from buyers for the intended project. In several cases, the terms of the agreements also favoured the builders, leaving purchasers with

very little bargaining power.

Although buyers could approach civil courts or consumer forums under the existing laws, these remedies did not provide a complete solution to the problems arising in the real estate sector. There was a need for a separate legal framework that could regulate promoters, ensure proper disclosure of project details and provide buyers with effective remedies when their rights were violated. This led to the enactment of the Real Estate (Regulation and Development) Act, 2016. RERA brought several important changes to the way real estate projects are developed and sold in India. It made registration of projects compulsory in most cases, required promoters to disclose relevant information and introduced safeguards to prevent the misuse of funds collected from allottees. More importantly, it recognised the rights of homebuyers and provided remedies such as refund, interest and compensation in cases of promoter default.

The judiciary has also played an important role in strengthening the position of homebuyers. In Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442, the Supreme Court recognised that a purchaser cannot be expected to wait indefinitely for possession of a property. Similarly, in Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725, the Court refused to allow a builder to rely on unfair contractual conditions to the disadvantage of the homebuyer. Against this background, the present paper examines the protection provided by RERA, particularly the obligations of promoters and the remedies available in cases of delayed possession, with special reference to the principles laid down in Newtech Promoters.

## Statutory Obligations of Promoters under RERA

One of the main objectives of RERA is to ensure that promoters do not carry out real estate projects without being answerable to the regulatory authorities and the people investing in them. Section 3 makes registration of real estate projects compulsory before a promoter can advertise, market, book or sell any plot, apartment or building, except in cases covered by the statutory exemptions. The provision also covers ongoing projects which had not received completion certificates when the Act came into force. This requirement was important because buyers in unfinished projects also needed the protection of the new legislation.

The Act clearly defines the persons who are responsible for complying with its requirements. Under Section 2(zk), the term promoter includes developers, builders and other persons responsible for developing or selling real estate projects. Section 2(d) defines an allottee as a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred. By defining these terms, the Act identifies the parties involved and establishes the legal

responsibilities arising from their relationship.

Transparency is another important responsibility placed on promoters. Under Section 4, promoters are required to submit relevant project details while applying for registration. These include sanctioned plans, layout plans, approvals, the proposed completion schedule and particulars relating to the legal title of the land. Section 11 further requires promoters to make the prescribed project information available on the website of the Regulatory Authority and update it periodically. This allows prospective buyers to verify the details of a project instead of depending entirely on the claims made by the builder. Section 12 provides additional protection by making promoters liable when an allottee suffers a loss because of false or incorrect information contained in advertisements or prospectuses. Therefore, the promoter cannot simply make attractive promises to secure bookings and later avoid responsibility for them.

RERA also attempts to address the problem of diversion of funds, which was one of the major concerns in the real estate sector. Under Section 4(2)(l)(D), promoters are required to deposit 70 per cent of the amounts realised from allottees in a separate bank account. The money in this account can be used only towards the cost of construction and the cost of land for that particular project. Withdrawals must be proportionate to the percentage of completion and supported by certificates from an engineer, architect and chartered accountant. This requirement ensures that the money collected from buyers is not freely diverted towards unrelated projects or other purposes. Section 13 provides another financial safeguard by preventing promoters from accepting more than 10 per cent of the cost of the apartment, plot or building as an advance without first entering into a written and registered agreement for sale.

The responsibilities of a promoter do not end with registration or the collection of money. Section 11(4) requires the promoter to comply with the agreement for sale, obtain the completion or occupancy certificate, as applicable, and hand over the necessary documents to the allottee. Section 14 requires construction to be carried out according to the sanctioned plans and restricts major alterations without the consent of at least two-thirds of the allottees. Section 15 regulates the transfer of majority rights and liabilities in a project, while Section 17 requires the execution of registered conveyance deeds in favour of allottees. In addition, Section 14(3) protects buyers against structural defects and defects in workmanship, quality or services that are brought to the promoter's notice within five years from the date of handing over possession. The promoter is required to rectify such defects within 30 days, failing which the allottee becomes entitled to compensation. These provisions make it clear that the promoter remains

responsible for the project even after the initial sale has taken place.

## Delay in Possession: Refund, Interest and Compensation

Delay in handing over possession is one of the most common problems faced by homebuyers. A purchaser may have paid a substantial part of the property price and may also be paying loan instalments, yet the promised possession date may pass without the property being completed. Section 18 of RERA specifically addresses this situation and provides an important remedy to allottees.

Under Section 18(1), where a promoter fails to complete the project or is unable to give possession of the apartment, plot or building in accordance with the agreement for sale or the stipulated date, the allottee has two choices. The first is to withdraw from the project and claim a refund of the amount paid, together with the prescribed interest and compensation. The second is to continue with the project and receive interest for every month of delay until possession is handed over. This distinction is important because a buyer who has lost confidence in the promoter should not be forced to remain invested in the project. At the same time, a buyer who still wishes to obtain the property can continue with the agreement and claim interest for the period of delay.

The Act also deals with other situations in which homebuyers may suffer losses. Section 18(2) provides for compensation where an allottee suffers loss because of a defective title to the land. Section 18(3) deals with compensation for a promoter's failure to fulfil other obligations under the Act, rules or regulations. Section 19(4) also recognises the allottee's right to claim a refund with interest and compensation in cases where the promoter fails to comply with statutory obligations or deliver possession in accordance with the agreement.

It is important to understand that interest and compensation are not exactly the same. Interest is payable at the prescribed rate for the period of delay, whereas compensation is determined by considering the loss suffered by the allottee and other relevant circumstances. Section 72 provides the factors that the Adjudicating Officer must consider while deciding the amount of compensation, including the amount of disproportionate gain or unfair advantage made by the promoter and the loss caused to the allottee. Section 2(za) also provides for the rate of interest payable by the promoter and the allottee in cases of default, thereby maintaining a degree of equality between the parties.

The Supreme Court has repeatedly recognised that homebuyers should not be made to suffer because of unreasonable delays by builders. In Fortune Infrastructure v. Trevor D'Lima, (2018)

5 SCC 442, the Court observed that a purchaser cannot be expected to wait indefinitely for possession and recognised that a period of three years was reasonable in the circumstances of that case. In Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725, the Court held that a builder cannot force a purchaser to accept possession after an unreasonable delay by relying on one-sided contractual terms. The Court also treated such unfair terms as an unfair trade practice. These decisions reflect the judiciary's approach towards preventing builders from taking undue advantage of homebuyers who have already invested their money.

## Role of the Regulatory Authority and Adjudicating Officer

RERA does not merely prescribe duties for promoters; it also establishes authorities to ensure that those duties are followed. The Real Estate Regulatory Authority is one of the central institutions created under the Act. Sections 20 and 34 deal with its establishment and functions. The Authority is responsible for registering projects, maintaining records, monitoring compliance and making relevant project information accessible to the public. It also plays an important role in addressing complaints relating to violations of the Act.

Section 31 allows an aggrieved person to file a complaint before the Regulatory Authority or the Adjudicating Officer, as applicable. Under Section 37, the Authority can issue directions to promoters, allottees and real estate agents to ensure compliance with the Act. Another important provision is Section 40(1), which provides for the recovery of amounts directed to be paid under the Act as arrears of land revenue. This provision is particularly relevant because obtaining a favourable order is of little practical value if the homebuyer is unable to recover the money.

The Act also provides for an Adjudicating Officer under Section 71. Unlike the Regulatory Authority, whose functions include issuing directions and ordering refunds with interest, the Adjudicating Officer is responsible for determining compensation under Sections 12, 14, 18 and 19. While deciding compensation, the Adjudicating Officer must consider the factors mentioned in Section 72. This division of responsibility was later clarified by the Supreme Court in Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.

A person dissatisfied with an order of the Regulatory Authority or the Adjudicating Officer can approach the Real Estate Appellate Tribunal under Section 43. Further appeals to the High Court are provided under Section 58 on the grounds specified in the Act. One important safeguard is found in the proviso to Section 43(5). When a promoter challenges an order

directing payment to an allottee, the promoter must deposit the prescribed amount before the appeal can be entertained. This requirement prevents promoters from using appeals merely as a way of delaying the payment of amounts due to homebuyers.

Section 79 bars civil courts from entertaining matters which the Regulatory Authority or Adjudicating Officer is empowered to determine under the Act. However, this does not mean that RERA completely removes the other remedies available to consumers. Section 88 makes it clear that the provisions of RERA operate in addition to, and not in derogation of, other laws in force. In Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783, the Supreme Court confirmed that the availability of a remedy under RERA does not prevent homebuyers from approaching consumer forums under the Consumer Protection Act. This is significant because it allows buyers to choose the remedy that is more suitable to their circumstances.

## Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. (2021)

The judgment in Newtech Promoters and Developers Pvt. Ltd. v. State of U.P., decided on 11 November 2021 and reported as 2021 SCC OnLine SC 1044, is an important decision in understanding the scope and application of RERA. The case mainly concerned the application of the Act to ongoing real estate projects and the powers of the authorities established under it. The promoters challenged the applicability of RERA to projects that had commenced before the Act came into force. They argued that applying the new legislation to existing projects would interfere with agreements already entered into with buyers and would violate their constitutional rights under Articles 14 and 19(1)(g). They also questioned whether the Regulatory Authority had the power to order refunds and challenged the requirement under Section 43(5), which requires promoters to make a deposit before filing an appeal.

The Supreme Court rejected these challenges and upheld the validity of the relevant provisions. It held that RERA applies to ongoing projects which had not received completion certificates when the Act came into force. The Court explained that the legislature intended to protect not only people purchasing properties in new projects but also those who had already invested their money in projects that were still incomplete. Applying RERA to such projects was therefore not arbitrary or unconstitutional. This interpretation was particularly important because excluding ongoing projects would have left a large number of homebuyers without the protection that the legislation was intended to provide.

Another major issue considered by the Court was the right of an allottee to withdraw from a project and seek a refund. The Court clarified that where a promoter fails to deliver possession

within the period agreed upon, the allottee's right to seek a refund under Section 18(1) is unconditional. The allottee can either withdraw from the project and claim the amount paid with prescribed interest or continue with the project and claim interest for every month of delay until possession is handed over. The choice between these remedies belongs to the allottee, and the promoter cannot decide which option the buyer must accept. This clarification strengthened the position of homebuyers by ensuring that they are not forced to remain in a project simply because the promoter is unwilling to return their money.

The judgment also settled an important question regarding the respective powers of the Regulatory Authority and the Adjudicating Officer. The Supreme Court held that the Regulatory Authority has the power to direct a refund of the amount paid by the allottee along with interest under Section 18. However, the determination of compensation under Sections 12, 14, 18 and 19 falls within the jurisdiction of the Adjudicating Officer under Section 71, who must apply the factors prescribed under Section 72. This distinction is important because it clarifies which authority a homebuyer must approach depending on the relief being claimed.

The Court also upheld the pre-deposit requirement under Section 43(5). It recognised that the requirement serves a legitimate purpose by ensuring that promoters do not unnecessarily delay the implementation of orders passed in favour of allottees. Further, the judgment clarified the Authority's power under Section 40(1) to issue recovery certificates for amounts payable under the Act.

Overall, Newtech Promoters addressed several uncertainties surrounding the interpretation of RERA. It confirmed that ongoing projects could not escape the requirements of the Act merely because they had commenced before its enactment. It also strengthened the allottee's right to withdraw and receive a refund in cases of delayed possession and clearly distinguished the powers of the Regulatory Authority from those of the Adjudicating Officer. The decision therefore remains an important authority for understanding how RERA is intended to protect homebuyers.

## Critical Appraisal and Conclusion

Despite the improvements brought about by RERA, there are still several difficulties in putting its provisions into practice. In many cases, homebuyers obtain favourable orders but face problems when it comes to actually recovering the money. Delays in executing refund orders, limited administrative capacity of State Regulatory Authorities and difficulties in dealing with promoters who have insufficient funds continue to affect the effectiveness of the Act. This

shows that providing a legal remedy alone is not enough; the remedy must also be enforced within a reasonable period.

Another concern is the division of responsibilities between the Regulatory Authority and the Adjudicating Officer. A homebuyer who seeks both a refund and compensation may have to approach different authorities for different forms of relief. Although this division was clarified in Newtech Promoters, it may still create additional procedural difficulties for allottees. The problem becomes more complicated when a promoter faces insolvency proceedings. Although homebuyers are recognised as financial creditors under the Insolvency and Bankruptcy Code, 2016, their status as financial creditors does not guarantee that they will recover the entire amount invested in the project.

RERA has undoubtedly brought a significant change to the legal framework governing real estate transactions in India. Before its introduction, homebuyers often had to depend on general legal remedies without a dedicated regulatory mechanism to monitor promoters and protect their investments. The Act has addressed several of these concerns by making project registration compulsory, regulating the use of funds, requiring proper disclosure and providing remedies against delays and other defaults. The Supreme Court's decision in Newtech Promoters further strengthened this framework by confirming the applicability of RERA to ongoing projects, recognising the allottee's right to refund with interest and clarifying the powers of the authorities.

However, the real success of RERA cannot be measured only by the rights it provides on paper. A homebuyer who wins a case but is unable to recover the money in time may still face the same financial hardship that the Act was intended to prevent. Therefore, effective enforcement, timely recovery of dues and better functioning of State Regulatory Authorities are essential. RERA has provided a stronger foundation for homebuyer protection, but its objectives can be fully achieved only when the rights recognised under the law are translated into actual relief for purchasers.

## References

Statutes:

- Real Estate (Regulation and Development) Act, 2016;
- Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016;
- Consumer Protection Act, 2019;
- Insolvency and Bankruptcy Code, 2016.

Cases:


- Newtech Promoters and Developers Pvt. Ltd. v. State of U.P., 2021 SCC OnLine SC 1044;
- Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783;
- Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725;
- Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442;
- Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India, 2017 SCC OnLine Bom 9302.


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