

A Review on Dispute Resolution under the Real Estate (Regulation and Development) Act, 2016

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Abstract –Housing sector is one of the pinnacle contributors to country's GDP and employment creation though it remains largely unregulated. Real estate customers are controlled by the builders/promoters and they are often misused due to lack of proper knowledge and cognizance of the sector and various applicable laws. It is also observed plenty of money is consumed in construction associated disputes. To overcome such issues, for regulating the Real Estate sector, Government enforced The Real Estate (Regulation and Development) Act, 2016 (REA). In this paper, from literature study, various aspects related to construction related disputes and laws are discussed. Methods used for the prediction of outcome of the dispute between the customer and the builder are also studied.

Key Words: The Real Estate (Regulation and Development) Act, 2016, Dispute resolution, Decision support system, dispute

1. INTRODUCTION

Construction/infrastructure is one of the fastest growing sectors of the world economy, and lots of money is spent in construction related disputes. In India also, rapid globalization and increase in industrial competition has led to growth in commercial disputes. At the same time however, the rate of industrial growth, modernization, and improvement of socio-economic circumstances has in many instances outpaced the rate of growth of dispute resolution mechanisms (Ghulghane and Khandve, 2015).

2. LITERATURE REVIEW

The literature search has focused on The Real Estate (Regulation and Development) Act, use of Decision support system for dispute resolution. Various technical papers, acts, cases related to RERA have been referred for the understanding of various concepts and methodology of research work. Out of various literature, some important and relevant papers are summarized below. Some of the studied research articles and their brief overview are given below.

2.1 Dispute Resolution mechanisms

During the past two decades, serious disputes concerning construction contracts have become increasingly common in construction projects. It is common practice for designers, contractors and owners to negotiate small and

uncomplicated disputes, but larger and more complex ones frequently hinder the project through involvement with lengthy legal issues (Cakmak and Cakmak, 2015).

Khakle and Futane (2015) explained the types of claims related to construction industry. Procedure for claim management also described in their research. Mechanism for dispute resolution are simplified thoroughly by one by one i.e. Prevention, Negotiation, Standing neutral, Mediation, Conciliation, Arbitration and Litigation. Further they also clarified the advantages of Alternative Dispute Resolution (ADR).

2.2 Overview of Indian Real estate sector

Real estate can be defined generally as space delineated by man, relative to a fixed geography, intended to contain an activity for a specific period of time (Graaskamp, 1981). Lack of transparency and non-availability of proper controlling outline has resulted in number of misuses and increasing disputes in this sector. As per the Consumer Complaints Report, large number of complaints of cheating, project delays, and delay in handing of the possession, false assurances about amenities and facilities, sale of disputed properties without clear titles, biased agreements, overcharging and use of substandard materials for construction are filed against builders. Due to the absence of a strong governing framework leading to large number of violations, Indian Real Estate Sector is not reflected as a major real estate market internationally. Government of India is taking positive initiatives to bring in transparency in this sector by minimizing the threat of black money and serious irregularities in the real estate sector by introducing various laws.

2.3 Former measures for consumer protection

Before the introduction of The Real Estate (Regulation and Development) Act, 2016, Indian real estate customers had slight legal recourse. Consumer protection was offered to them under various acts such as: The Indian Contract Act, 1872; The Consumer Protection Act, 1986; MOFA (Maharashtra Ownership of Flats Act), 1963, Credai code of conduct 2011.

2.3.1 MOFA (Maharashtra Ownership Flats Act), 1963

MOFA (Maharashtra Ownership Flats Act), is one of the oldest housing Act. It came into the being in the year 1963 to regulate promotion, construction, management and transfer of flats sold on an ownership basis within

Maharashtra. It laid down the responsibilities of developers and the rights of flat purchasers. MOFA later gets repealed by section 56 of Maharashtra Housing (Regulation and Development) Act 2012 which came into force on 6th Sept 2015.

The long title of MOFA provides that it was enacted to regulate the promotion, construction, sales and management and the transfer of flats on ownership basis.

2.3.2 Consumer Protection Act, 1986

Consumer Protection Act established various Redressal Forum at different levels, District Forum, State Commission and the National Consumer Dispute Redressal Commission "NCDRC". Such Forums/ Commissions have been set up with jurisdictions being defined in terms of territory and the monetary value.

Under the Consumer Protection Act, a complaint may be made by the home buyer regarding delay in possession of the property or deficiency in service of the builder. There is no mandatory requirement to engage an Advocate to file such complaint as the procedures being followed are very simple. The applicant has to file complaint along with necessary documents in support of his complaint. The complaint may be filed by any consumer or group of consumers having same cause of interest.

2.3.3 CREDAI- Code of contract, 2011

Confederation of Real Estate Developers' Associations of India (CREDAI) is the apex body of private real estate developers, established in 1999 with a vision of transforming the landscape of Indian real estate industry. CREDAI's code of conduct promotes ethical practices and is adopted proactively by all its members.

The aim of code of conduct for developers, promoters and builders is to maintain the honor and dignity of developers, promoters and builders in general, to secure the spirit of friendly co-operation between the developers, promoters and builders and their customers in the promotion of highest standard of promotion, development and building activities and to establish transparency, and fair dealing between the developers, promoters and builders with their customers; and to establish a spirit of brotherhood within the Associations of Developers, Promoters and Builders to try and ensure that Developers, Promoters and Builders discharge their responsibilities to the community in general.

Indian consumers had to approach various authorities such as, Consumer Courts and Civil courts, to get their grievances addressed. Before the act, no single regulatory authority existed for regulation of real estate sector and buyers were facing problems like delay in delivery of projects, possession not being handed over by the developer, high rate of interest being charged on late payments, multiple bookings for the same property, misselling of project. Likewise, the developers were facing issues like delay in construction permits, late payments by homeowners and operations in a non-transparent environment (Thakur, 2018).

Due to the absence of a robust regulatory framework leading to large number of violations, Indian Real Estate Sector is not considered major real estate market globally. To promote transparency and protect the consumer interests, The Real Estate (Regulatory and Development) Act, RERA was passed in May 2016 (Merchant and Pednekar, 2018).

2.4 The Real estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) Act, 2016 is an Act of the Parliament of India which seeks to protect home-buyers as well as help to boost investments in the real estate industry. Rajya Sabha and the Lok Sabha passed the bill in March 2016. The REA Act came into force from 1 May 2016. In Maharashtra state, it is come into force from 1 May,2017. Under this act, Government of Maharashtra established Maharashtra Real Estate Regulatory Authority (MAHARERA), vide notification No. 23 dated 8 March, 2017. The Real Estate (Regulation and Development) act, 2016 act has 10 chapters. Table 2.1 contains titles of the chapters of the REA. The each chapter has several section to elaborate the purpose of section title.

- Chapter I- preliminary
- Chapter II-registration of real estate project and registration of real estate agents
- Chapter III-functions and duties of promoter
- Chapter IV-rights and duties of allottees
- Chapter V-the real estate regulatory authority
- Chapter VI-central advisory council
- Chapter VII-the real estate appellate tribunal
- Chapter VIII-offences penalties and adjudication
- Chapter IX-finance accounts audits and reports
- Chapter X-miscellaneous

This Act has constructed a regulatory framework for the efficient functioning of the real estate sector. It protects home buyers, ensures timely completion of project and promotes increased investments. The Real Estate Regulatory Authority (RERA) which is established under the Act, is the adjudication authority set up to resolve disputes in a speedy manner, considering the perspectives of various stakeholders. It also provides a single repository for all real estate data. A general framework has been established by the Centre while the States and Union Territories must notify their own within their respective jurisdiction. According to the Act, all new real estate projects must be compulsorily registered with the respective state's RERA, if the project exceeds 500 square meter or is more than 8 apartments, or for those projects that haven't received occupancy or completion certificates. There is also a provision of continuous updating of accountability of the developers and promoters and effects transparency in the transaction process. The builders also need to disclose the size of apartment based on the carpet area and not on super built up area. A reserve account has been set up to ensure that 70% of project funds are spent

solely for the development of the project. This ensures timeliness of project completion with adequate financial backing. Title statements of promoters are appropriately regulated and can be used against them in case of frauds. A monetary penalty and imprisonment are also laid on the defaulter, as punishment for non-conformity.

REA makes it mandatory to register projects and agents with the authority. It prohibits the promoters to book or sell the projects without registering with RERA. The repair and redevelopment work of a project may also be not registered with RERA. Registration helps both buyers and builders to negotiate the terms in case of dispute and the decisions given by the adjudicatory Authority can be challenged before the Appellate Authority.

The Act under Chapter V specifies the establishment of a Real Estate Regulatory Authority in each state to perform functions assigned to it 8. The qualifications and experience of the Chairperson and Members are also provided for. Currently, 28 states have notified rules under RERA. 28 States/UTs have set up Real Estate Regulatory Authority with 20 states having regular authority and 8 states with interim authority. 21 States/United territories have set up Real Estate Appellate Tribunal.

2.4.1 Redressal Mechanism under MAHARERA

One of the key objectives of enacting the act was to create a specific forum to provide for prompt dispute redressal. This is because consumer forums, though sensitive to the rights of the allottees, still suffered from the delays of litigation in India. The promoters misused this to their benefit and adopted a policy of tiring out the allottee in the hope of paying inadequate settlement, or frustrating the allottee to a point where the allottee withdraws the legal claim. The buyers would have to initially approach the district forum, then the state forum, and finally the national forum, which not only caused delay, but also made the process lengthy, bulky and economically burdensome for the buyers. To enlarge the problem, most builders, especially those considered to be big firms, hired specialized legal counsels to draft lop-sided contracts and as a matter of practice, included arbitration clauses to deter buyers from litigation.

Prediction of dispute gives rough idea about the outcome of the litigation. It assists the manager in decision making. Lots of money and time spent on the dispute resolution. Using prediction technique, it can be saved.

2.5 Prediction techniques used for dispute resolution

After going through various research papers, some prediction techniques used for dispute resolution are found which are explained below.

2.5.1 Flowcharts

Thomas et.al. (1992) has taken 45 court decisions related to misrepresentation of sub soil. From cases, one flow chart is drawn which contains questions which are based on different cases. Then, verification process is carried out

for 10 similar cases and they find out that the outcomes were consistent.

2.5.2 Boosting Decision Trees

The existence of a construction claim potentially affects all parties involved in the construction process including the project owner, the designer, the general contractor, the subcontractors, and others. For predicting outcome of construction litigation, Arditi and Pulekt (2005) used ADABOOST algorithm for boosting decision trees. 41 attributes were found out by studying 115 cases. The prediction rate was 90% after doing trial runs.

2.5.3 Case based Reasoning

Ashley et.al. (1988) described working of Hypo computer program for performing case based reasoning in legal domain. First of all, an attorney organizes the case into neighbourhood (set of similar cases with outcomes). Then, Hypo creates a graph according to their similarities and then suggest the combination of facts which contains new hypotheticals.

Arditi et.al. (1999) used case-based reasoning (CBR) to predict the outcome of construction litigation tried in Illinois circuit courts. From study of these circuit court cases, 43 input features and 1 output feature are identified. The prediction rate is 83% is find out after doing trial runs.

2.6 Use of DSS in dispute resolution

A **decision support system (DSS)** is an information system that supports business or organizational decision-making activities. DSSs include knowledge-based systems. A properly designed DSS is an interactive software-based system intended to help decision makers compile useful information from a combination of raw data, documents, and personal knowledge, or business models to identify and solve problems and make decisions.

Three fundamental components of DSS:

1. The Database
2. The model
3. The user interface.(Wikipedia)

Iyer et.al.(2001) explains the use of DSS as, in practice, almost all decision support systems are viewed as expediting some part of the problem solving process by improving consistency, accuracy and providing better ways of viewing and solving problems. Also one of the main purposes of decision support systems is to provide a common conceptual basis for decision making that is to combine separate potential decisions of various people by filtering these decisions through a single model that would estimate the total results.

The study of Chaphalkar and Patil (2012) focuses on scientific methodology namely Decision Support System (DSS) that can be used as a means to resolve the disputes and help judiciary to check the increasing number of litigations. To study the settled dispute cases related to construction contracts (limited to Indian scenario) was one of the main objectives of this study.

A logical hierarchy of queries can be followed which leads to a decision. The same has been tried in the DSS

developed. Each decision is supported by the features of the dispute which have been used to arrive at the decision. From the DSS developed, certain guidelines can be formed; those can significantly help in drafting a better contract and thus minimize the possible disputes addressed in this study.

3. RESEARCH PROPOSAL

After going through literature, it is observed that, no tool is available to predict the disputes related to MAHARERA. Decision support system for prediction of dispute can be formed which will help promoters as well as allottees to find out whether the dispute stands.

4. CONCLUSIONS

Disputes are common in the construction industry. Before the implementation of The Real Estate (Regulation and Development) Act, 2016, disputes in construction were resolved by Arbitrator or by Consumer Forums. REA establishes an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected there with. Various prediction technique has been used by different researchers for forecasting the outcome of dispute with the help of software. It reduces time, money invest in the process of litigation. Similar technique can be implemented for dispute resolution related to REA.

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