



Consumer Rights in Indian Real Estate Market Issues and Challenges in Indian Housing Market

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Over the years, Indian real estate sector has witnessed stellar growth and has established itself as one of the fastest growing sectors in the economy. Robust economic growth and growing urbanisation have been the main catalysts for this growth. About 40% of Indian population, 540 million people is estimated to dwell in urban areas in 2030. However, current housing shortage of about 22 million units is likely to increase to 38 millions in 2030. However, due to low entry barriers and lack of awareness, the market has traditionally been biased in favor of the landlords / developers and property buyers were inundated with several unfair market practices. Due to the lack of adequate regulations in the Indian real estate sector, property buyers are forced to compromise on their rights and are susceptible to violations which can only be redressed through lengthy processes. At present there is no nodal regulatory authority for real estate sector in India. As such, any redressal for violations of property buyers' rights can be achieved using either consumer forum, the Indian judiciary system or through arbitration. To better regulate the sector and to protect the rights of the property buyers, Government of India brought about a bill called Real Estate Regulation and Development Act 2009. The proposed act punctiliously defines the roles and responsibilities of the promoter and the regulator.

Keywords : Development, Promoters, Real Estate Market

Introduction

Indian housing market has historically been lopsided against the property buyers. In the lack of appropriate regulatory framework, developers undertake unfair market practices and benefit at the cost of property buyers. On the other hand, property buyers suffer from inadequate consumer rights and lengthy redressal mechanisms. The paper details out the issues faced by property buyers in Indian Housing Market and various redressal mechanisms available to them. The paper also discusses the two proposed acts by GOI that intends to improve transparency and adoption of best market practices in the sector, namely Real Estate Regulation and Development Act 2009 and Model Land Titling Act 2010. If implemented effectively, these two acts have the potential to significantly improve the organisational efficiency of the sector and ensure a balanced participation of the property buyers in the housing market.

Consumer Rights in Indian Housing Market

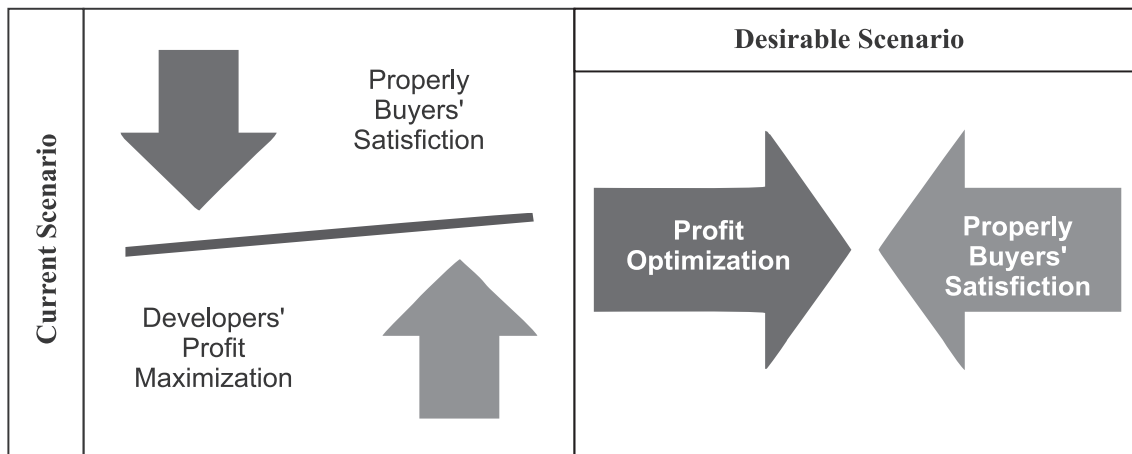
Over the years, Indian real estate sector has witnessed stellar growth and has established itself as one of the fastest growing sectors in the economy. However, due to multiplicity of authorities (due to land being a state subject) and lack of regulations, the sector is infested with lacking operational efficiency. Due to low entry barriers and lack of awareness, the market has traditionally been biased in favor of the landlords/developers and property buyers are inundated with several unfair market practices.

However, Real Estate sector in India is still in the process of evolution, witnessing disruptive growth and facing many challenges. Few large developers tend to dominate the market, enjoying certain degree of price-making abilities. Against this backdrop, good economic conditions and robust demand for Grade A properties did not provide any incentives to the developers to focus on customer satisfaction. Consumer rights of property buyers are frequently compromised due to developers' short-sighted fetishism towards profit maximization. Lack of institutional funding in the sector may have further deteriorated the situation as unorganised money lenders typically demand very high returns inducing developers for rent-seeking practices.

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Figure 1: Enhancing collaboration between Property Buyers and Developers



However, any sustainable business strategy can not be exclusively based on profit maximization. Sustaining the profitability requires a competitive market where both buyers and sellers have a fair participation. Historically, as any emerging sector transits from high disruptive growth to a more matured market conditions, consumers take the centre stage and becomes the fulcrum of all the business strategies.

Despite the lessons learned during the property cycle downturn of 2008, Indian real estate is yet to adopt customer-centric business strategies. There are many instances where interests of the property buyers and their rights are compromised as they are stranded in an opaque market with limited and lengthy redressal mechanisms.

Figure 2: Property Buyers' Decision-making Process

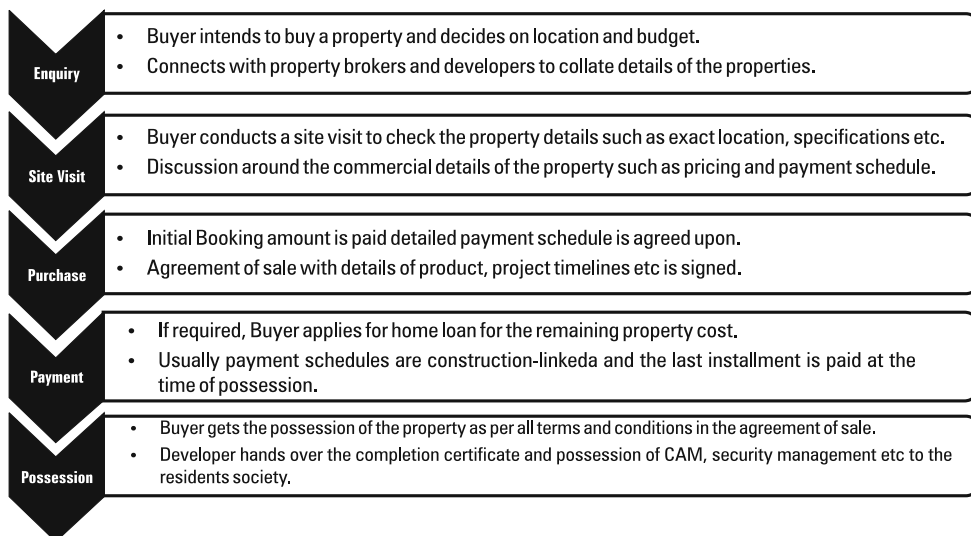


Figure 3: Issues faced by Property Buyers in Indian Real Estate Market

Pre-Purchase	Post-Purchase	Other Issues
<ul style="list-style-type: none"> • Saleable area and carpet area are not clearly defined - double charging for parking space • Developers demand for cash payments for a certain fraction of the property cost. • Developers sell the same unit to multiple buyers and raise funds through home loans. • Developers make false promises for modifications in the promises and then either do not do that or charge extra amount for the same. • Developers do not extend guarantees extended by the suppliers to the property buyers • Terms of the agreements are not clearly communicated to the property buyers. • Details on amenities and specifications are not clearly mentioned in the agreement of sale. • Ownership and rights pertaining to common amenities are not clearly communicated to the property buyers. 	<ul style="list-style-type: none"> • Onerous contractual terms lopsided in favor of the developers. • Developers do not conform to the sanction plan granted by the concerned local authorities. • Developers change the elevation and the floor plans without informing the property buyers. • Construction is delayed, possession not given on time and penalty for delay is not paid to the buyers despite agreeing to the same. • Quality and safety norms are ignored, promised amenities and specifications are not provided. • No post-sale customer service, project progress report is not furnished to the property buyers. • Developers procrastinate to transfer CAM and security management. • Developers collect the statutory charges from the buyers and do not remit it to the concerned authorities. 	<ul style="list-style-type: none"> • Selling a disputed property • Selling a property to more than one party • Selling a non-existing property • Selling an encumbered land ie lands without marketable title. • Selling a government occupied/earmarked to be occupied land. • Selling a land belonging to SCs/STs • Lacking accountability • Details of various redressal mechanisms for resolving issues are not communicated to the property buyers. • Multiplicity of redressal mechanisms reduces the efficacy of the same and increases hassles for the property buyers.

All the issues faced by property buyers (figure 3) can be divided into the following four categories: product related, services related, information related and redressal related issues (figure 4). Based on the type of issues faced by property buyers, there are few redressal mechanisms available to them. However, lack of information and multiplicity of authorities invariably does not serve the purpose and creates further hassles for property buyers.

During the pre-purchase stage, the property buyers are typically susceptible to information and service related issues. As they make their purchase and sign the agreement of sale, they face issues related to product and services. Redressal related issues typically arise when the property buyers seek redressal for the deficiencies related to their real estate transactions. This is primarily the result of absence of nodal regulatory authority for the sector and the lengthy judicial processes in the country.

Given the procrastination from the concerned authorities, consumer activism is required in order to create a forum which may provide better bargaining power to the property buyers in India. In addition, the existing redressal mechanisms (Figure 5) may be insufficient to facilitate efficient redressal. The sector needs a nodal agency where all the issues related to real estate can be redressed and where rights of the property buyers are fully protected. Also, this nodal agency shall decide the relevant policies for the sector and ensure effective implementation of the policies formulated.

Redressal Mechanism in India

There are more than 30 million pending cases in Indian courts. It is believed that property related disputes accounts for a major share, about 60%, of all the pending cases. Consumer forums also witness high number of property related issues filed for redressal. Typically, due to the complex nature of issues faced, property disputes takes long from 1 year up to 20 years in redressal.

At present, there is no nodal agency regulating the Indian real estate sector, responsible of resolving all issues related to real estate transactions. As such, any issues related to real estate transactions can only be redressed using one of the following four vehicles

Figure 4: Different types of issues faced by property buyers

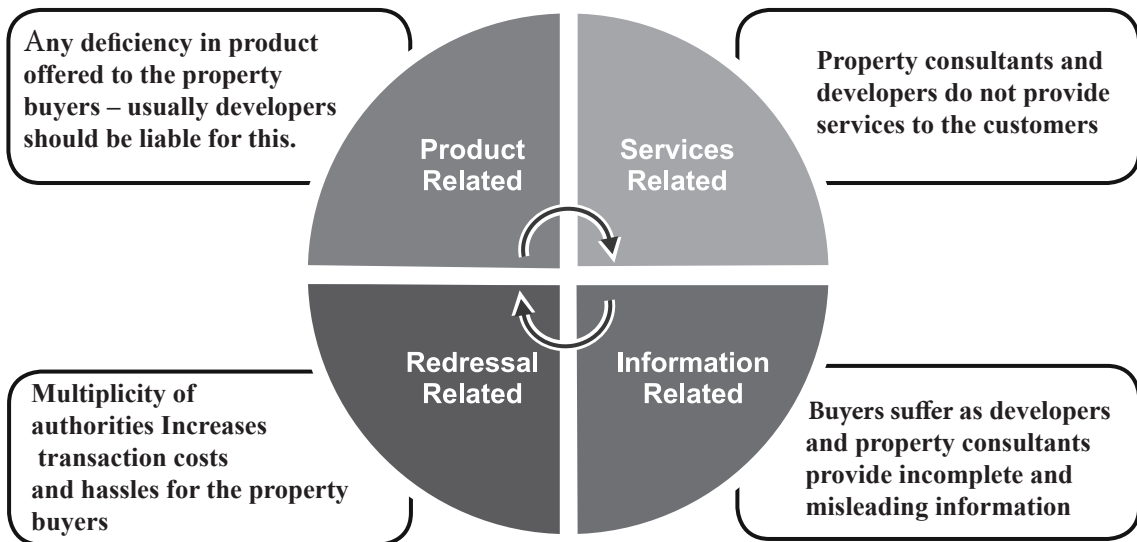
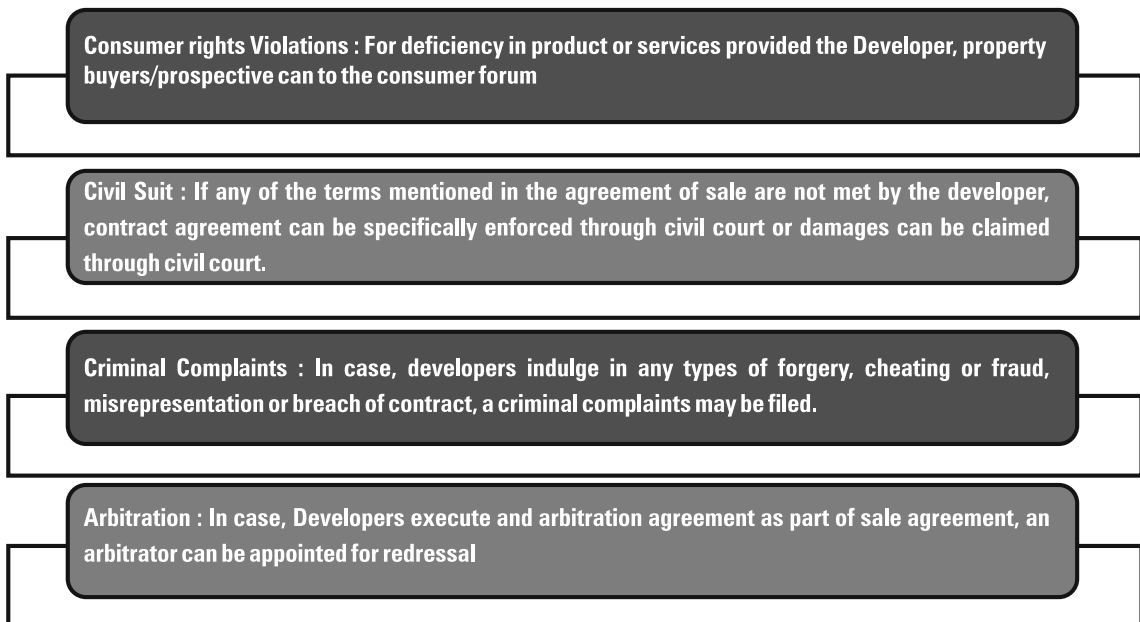


Figure 5: Major Redressal Mechanisms available to Property Buyers / Prospective Buyers in India



Any property buyer / prospective buyer can file a complaint against the developer by submitting the details of the issues faced by him online on Indian Consumer Forum website. The basic tenets for this forum are to protect against any product or services related violations of consumer rights. While it is convenient to file a complaint in consumer forum, redressal takes 2-5 years. Property buyers / prospective buyers can also approach Indian judicial system to resolve their issues with the developers. Depending on the nature of violation committed by the developer, they can file a case in either civil court or criminal court. In case of

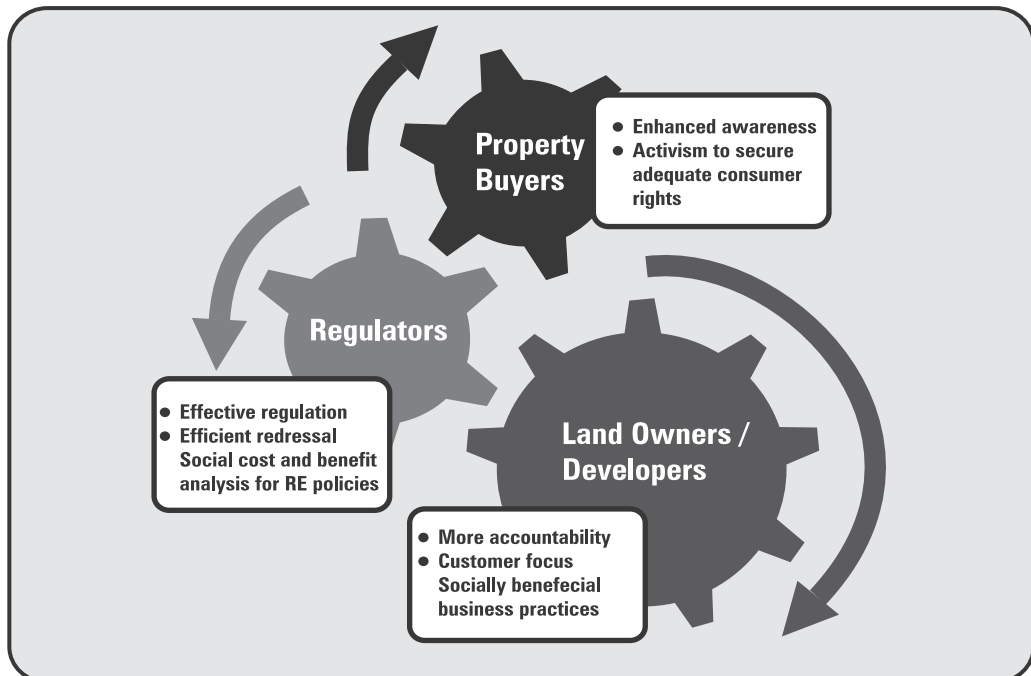
general breach of contract which does not comprise of any criminal offence, property buyers may register a case in the civil court of the relevant jurisdiction. However, this may be time consuming and difficult to manage for non-residents property buyers. Usually, it takes 10-20 years to get an effective redressal for property disputes in civil court. On the other hand, if the developer indulges in any serious criminal offence such as forgery, cheating or fraud, property buyers / prospective buyers have the option to invoke criminal proceedings against developer. Both these courts can either ensure fulfilment of the terms of contract or levy award penalty / compensation for the damages. Moreover, in case of criminal offence, the developer may be convicted. Criminal complaints usually take 5-10 years for redressal in Indian Judiciary system.

Normally, developers execute an arbitration agreement as part of sale agreement with buyers / property buyers. This provides for appointment of arbitrator in event of disputes. Once appointed, arbitrator works as a judicial authority and decides the disputes between the parties. Arbitration is a very effective mechanism to resolve disputes if practised fairly, usually takes 1-2 years for redressal, the least among the various mechanisms available to property buyers / prospective buyers.

Real Estate Regulation and Development Bill, 2009

In September 2009, Government of India came up with a model bill called Real Estate regulation and Development Act. The primary objective of the act is to create a nodal agency to regulate and redress all the issues related to the fast-emerging but highly unorganised real estate sector in India. If implemented effectively, this act comprise of all the required provisions that can remove many of the notorious inconsistencies that infest the real estate sector in India. The act is equipped to enhance the transparency in the sector by bringing out best industry practices. Also, the proposed act protects the rights of property buyers and empowers them to get a fair deal from the developers. The proposed act details the roles and responsibility for different stake holders in order to facilitate better services for the property buyers.

Figure 6: Key stakeholders in Indian Housing Market



Responsibility of the Regulatory Authority

The nodal regulatory authority would be responsible for formulating laws and ensuring compliance with those laws. In this regard, the authority has to execute the following responsibilities:

- to ensure compliance of the obligations cast upon the developers and the property buyers
- to cause an inquiry to be made into compliance of its orders or directions
- to host and maintain a website of records of all real estate projects within its jurisdiction as database
- to render advice to the concerned governments in matters relating to the development of real estate industry;
- to make recommendations for protection of the interests of property buyers, measures to improve approval processes and bring about efficiency in construction management, and to promote competition and efficiency in the real estate sector

Responsibility of the Promoter

The proposed act, if implemented properly, is capable to resolve all issues related to above, would not arise in case this act is implemented successfully. The responsibilities assigned to the promoter are quite detailed and effectively safeguards the interests of property buyers in Indian housing market:

- To ensure protection and safety of property specified in rules framed by concerned authorities
- All accounts of sums taken from and on behalf of property buyers to be audited
- During the project life cycle, the promoter has to furnish:
 - Site plans, structural designs and specifications approved by the local authority
 - Nature of fixtures, fittings and amenities including the provision for one or more lifts
 - Stage wise time schedule for project completion
 - Time schedule for connecting the project with the municipal services
 - Details of specification designs and materials to be used for construction and the details of architects, structural engineers and contractors and duly signed certificates of compliance from them
- Completion certificate from the concerned local authorities along with the exclusive ownership of the apartment or building or plot and the undivided interest in the common areas and facilities to the residents in the project to the property buyers
- Compensation to the promoter for any loss sustained

- ✓ **No development of land without Registration with Regulatory Authority.**
- ✓ **Approval and sanction from the Competent Authority**
- ✓ **Bank guarantee of 5% of the estimated cost furnished to the Competent Authority**
- ✓ **To complete the development work in accordance the conditions of the registration and to payment of external development charges**
- ✓ **No sale of property without registration and without submitting the brochure on the website of the regulatory authority**
- ✓ **The complete project details on the website of the Regulatory Authority**
- ✓ **The registration valid for a period of three years from the date of registration**
- ✓ **In case of violation of any provisions of the Act by the promoter, the registration may be cancelled and such promoter may be listed as defaulters**

consequent to untrue information from the promoter

- No deposit or advance without agreement of sale which shall mention the following:
- No unilateral cancellation of the agreement of sale by the promoter without due notice, and without tendering a refund of the full amount collected together at prevailing interest rates
- No alterations in the structures indicated in the agreement without prior consent of the property buyers, project architect, project engineer and the Regulatory Authority
- The promoter to rectify/compensate the property buyers for any defect in the building or apartments or in the material used in the construction within the initial two years of project completion
- No mortgage of any property without taking prior consent of the buyers of such plots/properties

The Road Ahead

Indian real estate sector was on the cusp of serious downturn during 2008, primarily due to inappropriate business model. With adaptive strategies and the subsequent upturn in economic sentiments, the sector avoided any irreversible damage and is back on the path of recovery. As we march ahead towards robust recovery, the long term growth of the sector would significantly hinge on customer-centric strategies. Identifying the customer preferences and protecting their rights with superior services are the keys for sustainable growth of the real estate sector in India. The sector has been witnessing high growth and has potential to sustain this growth due to the availability of a large untapped market. With appropriate regulatory environment and improving organisational efficiency and transparency, this growth story can be sustained.

However, the sector is infested with poor customer services, as witnessed in numerous instances of dissatisfaction of property buyers with the services offered by developers. Developers typically are short-handed to see the long term benefits for the sector and undertake unfair market practices. As such, quality standards are invariably compromised and property buyers are stranded with less than optimal services with limited redressal options. Along with the improved regulatory framework, property buyers also need to manifest proactiveness with regard to fulfilment of their consumer rights. The proposed real estate regulation and development act is a right step to address such issues and catalyse the adoption of best industry practices in the sector. With the implementation of the same, general transparency in the sector is likely to improve which in turn will induce substantial capital inflows in the sector both from the domestic sources as well as the overseas funds. These sources of institutional funding such as FDI and PERE funds are likely to introduce the virtuous cycle of positive externalities such as adoption of best market practices and improved execution capabilities.

It may also be desirable to increase the entry barrier for real estate development by introducing minimum quality standards and potential execution capabilities. This mechanism can further be strengthened by periodic evaluation of their development performance and certification from the nodal authority to the same effect. In case of serious deficiency and deviation from regulations, punitive actions such as cancellation of development certificates shall be introduced. With such holistic approach towards regulation and real estate development, the sector is likely to propel another round of high growth for the sector.

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