

Architect's Role under the Real Estate Regulation and Development Act, 2016

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Keywords

Architects, RERA 2016, Real Estate, Punishments.

Article History

Received on 12th October 2021
Accepted on 15th November 2021
Published on 30th December 2021

Cite this article

Saini, A., Daddera, S. S., Mondal, D., Sikka, R., & Nagdeve, S. S. (2021). Architect's Role under the Real Estate Regulation and Development Act, 2016. *International Journal of Students' Research in Technology & Management*, 9(4), 16-26.
<https://doi.org/10.18510/ijstrtm.2021.942>

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Abstract

Purpose: In 2016 the Indian society was introduced with the regulation and development act for real estate (RERA) to bring transparency in the dealing of real estate in terms of deals between developers and consumers taking into consideration the welfare of the consumers. This research aims to identify and understand the extent of Architects role in the act focussing on punishments and arbitration for various offenses.

Methodology: An online survey was conducted with practicing architects to understand their perspective and viewpoints to identify what they feel are the biggest positives and negatives of the act.

Main Findings: The results show that 17% of the architects have faced disputes related to RERA and 60% of respondents were not satisfied with RERA's duration to resolve any of the cases, which were not resolved until the date. From the data gathered through the online survey, most of the respondents were unaware of their role they are required to perform as mentioned in the act.

Implications: To perform Architects' tasks correctly, awareness of the RERA, 2016 Act is necessary. The survey shows that many respondents thought that the act had nothing to do with architects and was solely for builders.

INTRODUCTION – BACKGROUND STUDY

The Real Estate Regulation and Development Act, 2016 (RERA), was introduced to facilitate transparency in the real estate industry's home buying process and regulation. The landmark legislation RERA marked the beginning of a new era in the Indian real estate sector and a step towards reforming India's real estate sector, encouraging greater transparency, citizen centricity, accountability, and financial discipline. RERA was passed by the Rajya Sabha on 10th March 2016 and received India's president's assent at that time, Pranab Mukherjee, on 25th March 2016. When RERA came into effect, out of the present 92 sections, only 52 were notified ([Rera Act, 2016, p. 1](#)). All of the other provisions came into effect on 1st May 2017. RERA was introduced to facilitate transparency in the home buying process and regulation in the real estate industry. RERA was needed because the Real estate sector was unregulated. There were issues with transparency, accountability, and governance. Buyers were cheated and often faced quality issues with buildings. Delays in possession of the property. In case of disputes, as in all cases, delays in judgments had to go through courts, which are overburdened with cases. The RERA Act was therefore brought into force; to protect homebuyers and boost investments in the real estate industry; to take steps to ensure that everyone has access to affordable housing; to provide transparency and accountability in the real estate sector; to know the status of building approvals, to enable customers to make accurate decisions; and to establish Real Estate Regulatory Authority in every Indian state to monitor and adjudicate any disputes concerning real estate projects in the concerned state (Rera Act, n.d.). The purview of RERA is applied to; a project of at least 500 sqm or at least with 8 dwellings that are needed to be registered with RERA where the registration is to be done for all projects separately and the builder is required to display such information on their website, advertising, etc. The architect, agents, and structural consultants involved in the building who are required to be listed in the registration documents, as well as any approvals received, such as highway and environmental clearances. A significant benefit is that the builder can receive only 10% of the money as an advance before the consumer's agreement. Furthermore, the builders must validate that they have deposited 70% of the complete payment into an exclusive escrow account instead of using it for other investments. Early bird discounts and pre-launch packages will no longer be available.

RESEARCH FRAMEWORK

Aim

To review the different provisions and applications of the RERA Act, 2016, and understand its role and impact on architects and the architecture profession. This paper aims to recognize the punishments and arbitration for various offenses under the RERA Act, 2016.

Objectives

In order to test this hypothesis and achieve the aim as mentioned above, the objectives of this research are:

- To consolidate data on the definitions, history, and basics of RERA, 2016, focusing on its effect on architects and the architecture profession.
- To review the applicability of the RERA, 2016 on various projects.
- To review the provisions under RERA, 2016 for various situations that tend to arise during the course of a project.
- To review the legalities and penalties for different violations under RERA, 2016.
- To review the role and the impact of RERA, 2016 on architects and the architecture profession.

Scope

The scope of this research will be focussing on:

- The general provisions, applications, and background of the RERA Act, 2016.
- The role and the impact of these provisions of the RERA Act, 2016 on architects and the architecture profession.
- The penalties and adjudication for different violations under the RERA Act, 2016.
- To review the role and the impact of RERA, 2016 on architects and the architecture profession.

Limitations

- As the globe continues to grapple with and battling against the COVID-19 pandemic and the continuously changing landscape of travel and social distancing guidelines, everyone is confined to their own homes. As a result, all data compiled and used for this research will be from secondary sources, online surveys, or telephone interviews.
- Even though all the data used for this research will be taken from reliable and respected organizations/authors in the field, their findings cannot be cross-checked or verified due to the ongoing pandemic. So, the limitations of their data would also apply to this research.

RESEARCH FRAMEWORK

As per architects role under RERA, we have identified and listed down the methodology and framework we will follow throughout this research. The various stages of the research - the study of existing literature to obtain a firm ground on available knowledge on the topic, data gathering methods, the stages of analysis and findings, and derivation of conclusions have been identified and given below:

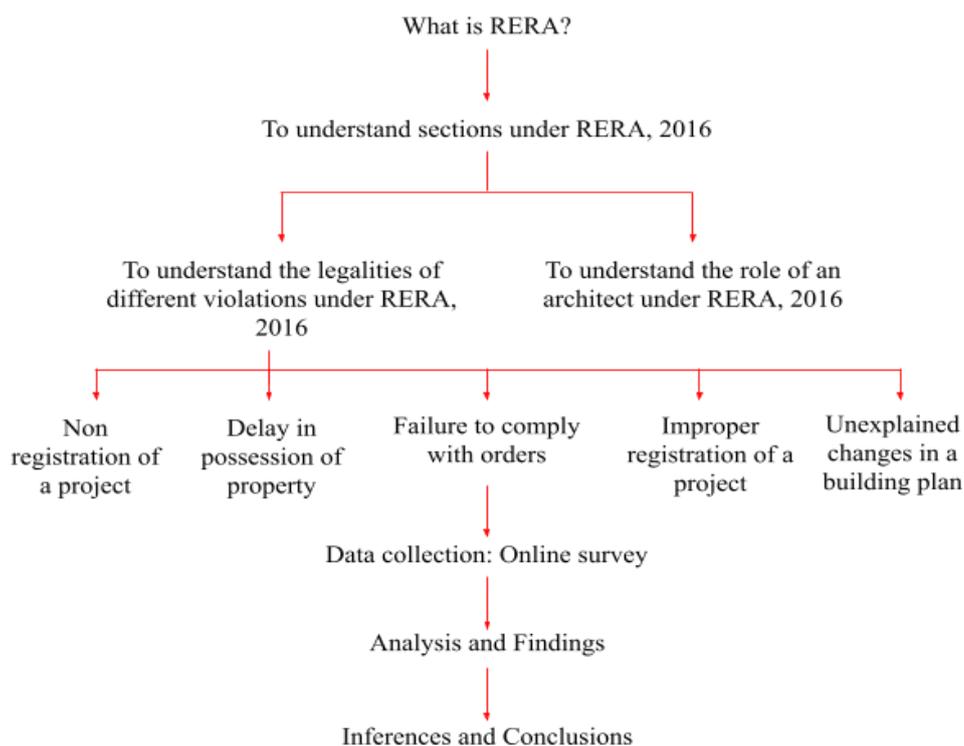


Illustration 1: Research framework (author)

AREAS UNDER RERA, 2016?

The Real Estate (Regulation and Development) Act, 2016 has mandated that developers sell their apartments depending on the carpet area defined by the act and not based on the super built-up area or built-up area. The benefits of such a directive include; ensurance of false advertisements and promoters do not mislead buyers; on the usable area which will help analyse cost per square foot and make the comparison between different projects easier.

RERA carpet area

RERA defines the carpet area as:

The area covered by the internal partition walls of an apartment, excluding the area covered by the external partition walls, areas beneath services shafts, exclusive balcony or verandah area, and exclusive open terrace area, is the net useable floor area of an apartment.



Figure 1: Carpet area of a 2 BHK apartment

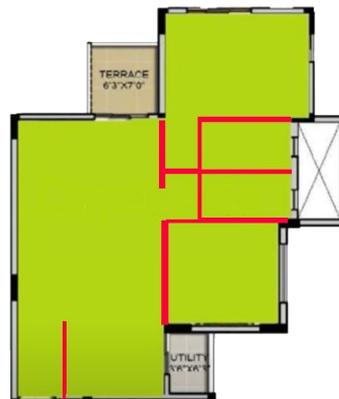


Figure 2: Difference between actual and RERA carpet area

■ Carpet Area ■ Internal

Actual carpet area v/s RERA carpet area

Actual Carpet Area Definition: The area that can be used to spread a carpet inside the apartment.

Does not include:

External wall, internal walls, balconies, terraces, shafts in an apartment.

$$\text{Actual carpet area} = \text{Rera carpet area} + \text{Internal walls}$$

Built-up area

Built-up Area does not include:

Exclusive open terraces, common areas like lifts, staircases, lobby, clubhouse, etc. The built-up area is generally 10%-15% more than the carpet area defined by RERA.

$$\text{Built up Area} = \text{Carpet Area} + \text{Balconies} + \text{External walls of apartment} + \text{Shafts}$$

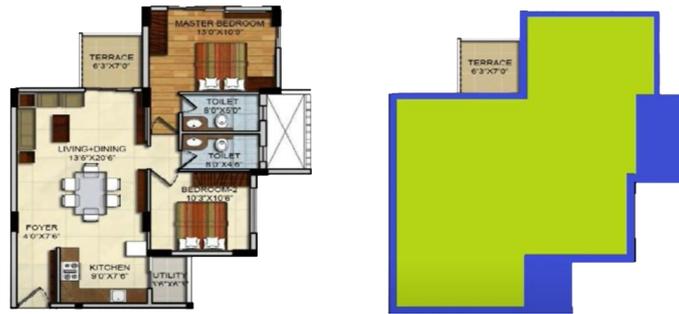


Figure 3: Built-up area of a 2 BHK apartment

Source: Housiey

 Carpet Area +  Area defined in blue

Super built-up area

Super Built-up Area = Built-up area + proportionate share of common areas such as lobbies, staircases, lift shafts, clubhouse, air ducts, pipe ducts/shafts & other covered common facilities.

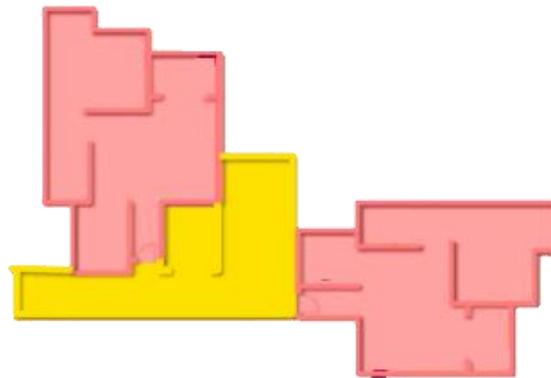


Figure 4: Super built-up area of a 2 BHK apartment.

Source: Housiey

Apartment 1: BUA = 1000 sqm

Apartment 2: BUA = 2000 sqm

Common Area = 1500 sqm

Super Built up Area Apt 1 = 1500 sqm

Apt 2 = 3000 sqm

Excludes - Open areas such as play areas, gardens, parks, driveways & rooftop

Super built-up area = 20 to 40% more than Carpet area

Role of an architect under RERA, 2016

As per the provisions of the Real Estate Regulation and Development Act, 2016 (RERA), an architect's signature is required at each of the following stages in the life cycle of a project, starting from registration of the project, followed by plan approvals from the authority. During the intermediate stages where minor additions or alterations in the sanctioned plans or specifications may be required. During the money withdrawal phase from the bank for the development of the project. Lastly where the architect must certify that the physical condition at the site is constructed following the plan sanctioned by the authorities.

Registration of the project

According to UP RERA, every promoter shall make an application to the authority for registration of the real estate project and shall enclose the following documents; Copy of the Approvals and Commencement Certificate; Layout Plan, Sanctioned Plan, and Specification of the project; Plan of development including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy; Plan of development including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy; With clear demarcation of land and the location details of the project; The carpet area of apartments, number, type, and for sale in the project with balcony

area; Name and addresses of the Architect, Contractors, and other Engineers, along with the application.

Plan approvals from the authority

The promoter takes the development and completes the proposed project by following the sanctioned plans, layout plans, and specifications as approved by the competent authorities. A list of the various plans required to be submitted for approvals are; site plan; building plan; service plan; parking plan; circulation plan; landscape plan; layout plan and zoning plan.

Minor additions or alterations in the sanctioned plans or specifications

A promoter may make small additions or revisions as requested by the allottee, or such minor changes or alterations as may be required by UP RERA, necessary due to Architectural and structural reasons once they are duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to all the allottees. A promoter also requires the consent of at least two-thirds, i.e. 67% of the allottees, for any additions or alterations to the building's plans.

Money withdrawal from the bank for the development of the project

According to UP RERA, 70% of the payment has to be invested in the designated account for the project in a scheduled bank to cover the cost of construction and the land cost. The promoter may withdraw funds from the separate account only if an engineer, an architect, and a chartered accountant in practise certify that the withdrawal is proportional to the project's percentage of completion.

The architect must certify that

The physical condition at the site is constructed under the plan sanctioned by the authorities.

Penalties and adjudication under RERA, 2016

Projects with more than 8 units and a plot of more than 500 square meters are subject to RERA legislation and regulations. A builder must complete RERA registration for each of these projects separately and show the registration information on its website, advertising, and other materials. According to UP RERA, the following penalties apply to a builder, architect, or promoter for a violation of any of the RERA laws or rules:

Non-registration of a project

If a promoter violates section 3, he faces a penalty of up to 10% of the projected cost of the real estate project, as decided by the Authority. If a promoter refuses to comply with the orders, decisions, or directions to get registration, or continues to breach the provisions of section 3, the promoter will be sanctioned. In that instance, he faces a maximum sentence of three years in prison or a fine of up to 20% of the projected cost of the real estate project, or both.

Incorrect registration of a project

If a promoter provides incorrect information for RERA registration, the Authority may impose a penalty of up to 5% of the projected cost of the real estate project, as decided by the Authority.

Non-fulfillment to comply with orders of the appellate tribunal

If a promoter fails to comply with or contravenes any of the Appellate Tribunal's orders, decisions, or instructions, as a penalty he may be sentenced to jail for up to 3 years, or to a fine of up to 10% of the anticipated cost of the real estate project for each day that the failure continues, or to both. In case if a homebuyer ignores or disregards any of the Appellate Tribunal's orders or directions, as the case may be. In that instance, he may face up to a year's term in prison or for each day that the default persists, a fine of up to 10% of the plot, apartment, or building cost, or a combination of the two, may be imposed.

Non-fulfillment to comply with orders of the authority

Assume that any promoter or homebuyer fails to follow or contravenes any of the Authority's regulations or directions. In that instance, he will be subject to a penalty of up to 5% of the projected cost of the real estate project, as decided by the Authority, for each day that he is in default.

Violations of any other provision

Suppose anybody contravenes any other provisions of this Act or the rules or regulations made thereunder. In that case, he shall be liable to a penalty **extending up to 5%** of the real estate project's estimated cost as determined by the Authority.

RESEARCH METHODOLOGY

This chapter deals with laying down the methodology, guiding the research being done. Methods chosen for conducting the study are specified and detailed out in this chapter. The various stages of the research- the study of literature to obtain a firm ground on available knowledge on the topic, data gathering methods - listings, surveys, data findings and methods for further analysis and the derivation of conclusion, are also going to be discussed in this chapter.

A brief introduction of the stages of this study is as follows:

1. Study of the RERA act

To understand and obtain a firm grasp on the available knowledge on the topic and understand the act.

2. Data collection: online survey

Gathering data on few exemplifying case examples to understand, evaluate, and assess the effect of kinetic façades on environmental performance.

3. Analysis of data

Evaluating and assessing the effect of kinetic façades on environmental performance based on the identified parameters.

4. Derivation of conclusion

Arriving at an answer to the research question and looking at what the future holds.

DATA COLLECTION: ONLINE SURVEY

To understand architects' involvement in RERA Act, 2016, an online survey of architecture professionals has been conducted to understand their perspective. This was undertaken to understand different viewpoints of working professionals on the topic and identify what they feel are the biggest positives and negatives of RERA, 2016. The online survey informed the research. Getting different viewpoints prevented the study from getting biased and helped get a range of perspectives from self-employed architects and architects working as employees elsewhere. Majorly, the online survey helped understand the general attitude, knowledge, and understanding that people working in the field have towards the regulations, workings, and liabilities of RERA, 2016. The questions asked in the online survey were specific to the architecture profession, and a detailed account of the online survey has been provided:

Q. 1 - Identify yourself

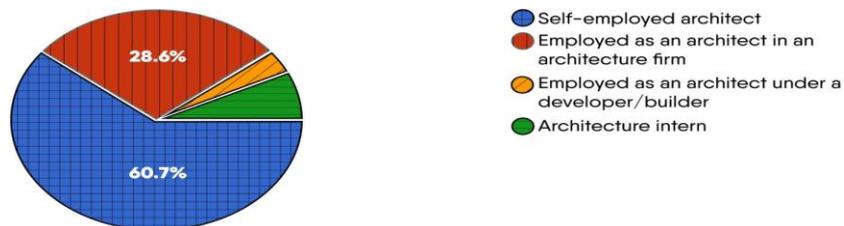


Illustration 2: Identification Chart (author)

Q. 2 - How many years of architectural experience do you have?

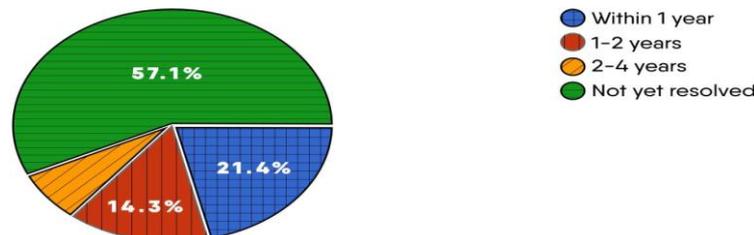


Illustration 3: Work experience (author)

Q. 3 - In which state of India do you practice architecture predominantly?

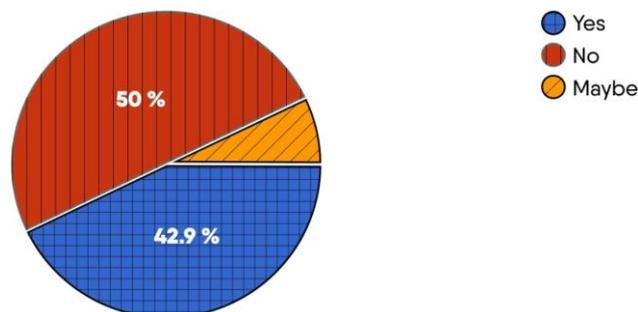


Illustration 4: State Chart (author)

Q. 4 - Have you worked on any projects that come under the purview of RERA, 2016?

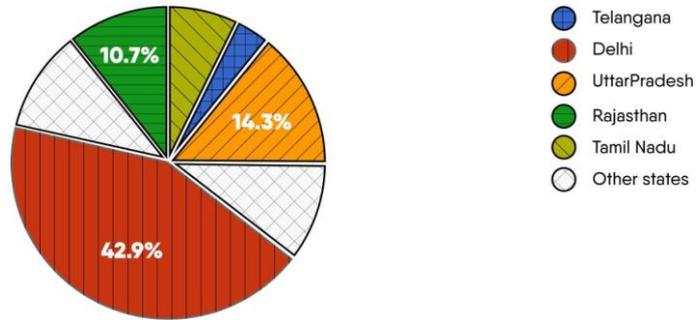


Illustration 5: Project classification (author)

Q.5 - Have you ever faced any disputes related to RERA, 2016?

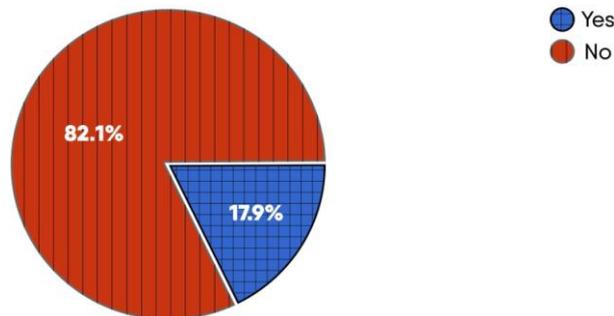


Illustration 6: Dispute Chart (author)

Q. 6 - If yes, how long did it take for the disputes to be resolved by the RERA appellatetribunal?

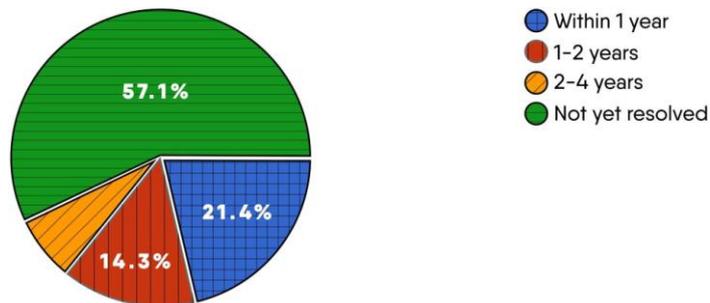


Illustration 7: Dispute year chart (author)

Q. 7 -

For which of the following approvals required under RERA, 2016 have you signed for? If any at all
28 responses

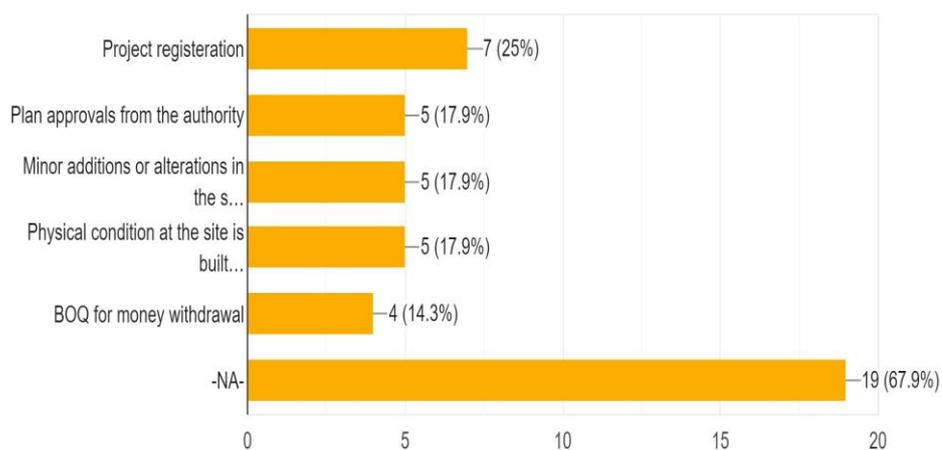


Illustration 8: Approval's list (author)

Q.8 -

Based on your knowledge and understanding, at which of these stages do you think an architect needs to sign for a project under the purview of RERA, 2016?

28 responses

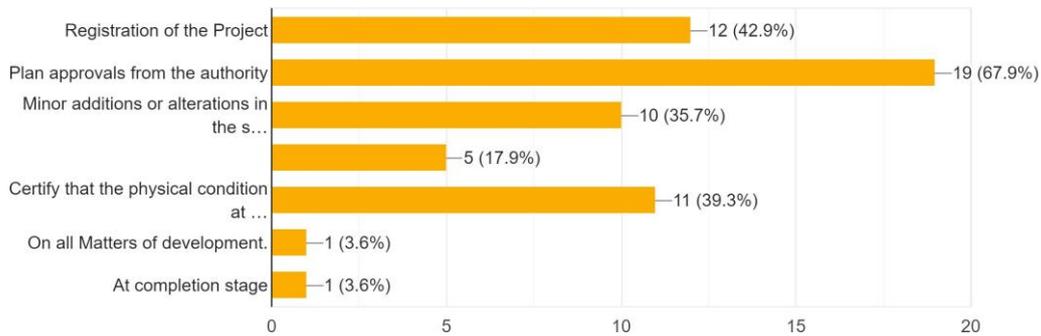


Illustration 9: Approval's list (author)

Q.9 -

Based on your knowledge and understanding, how successful has RERA, 2016 been in addressing and improving the following aspects of a project? (1 being very bad and 5 being very good)

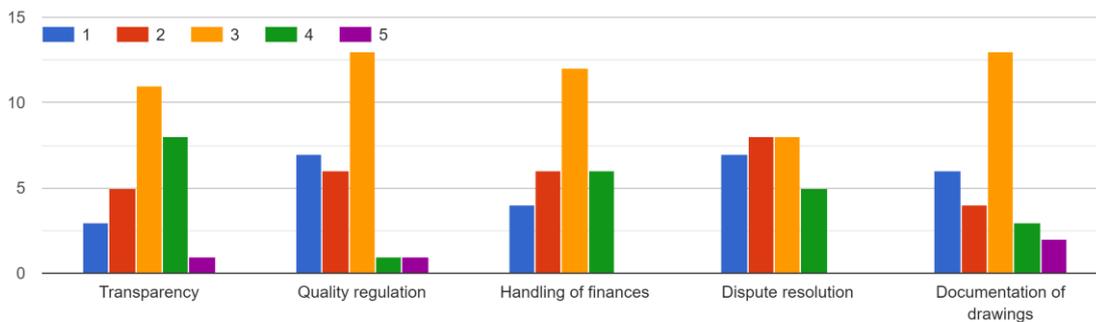


Illustration 10: Influence of RERA on project aspects (author)

Q.10 - (1 being 'very lenient' and 5 being 'very strict')

Based on your knowledge and understanding, how are the various regulations under RERA, 2016 being implemented?

28 responses

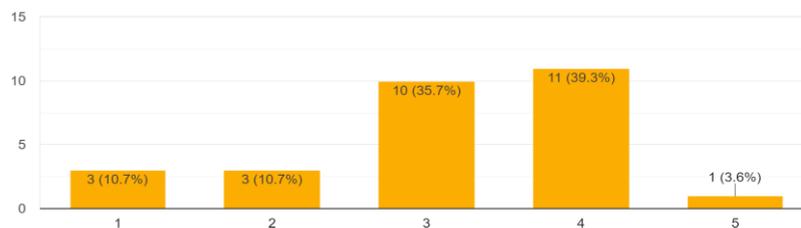


Illustration 11: Implementation of Rera Act bar graph (author)

Q.11 - (1 being 'not at all' and 5 being 'extremely')

Do you think that RERA, 2016 has made an architect's life easier?

28 responses

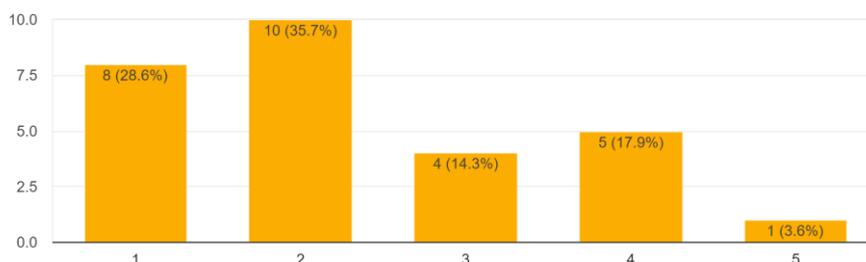
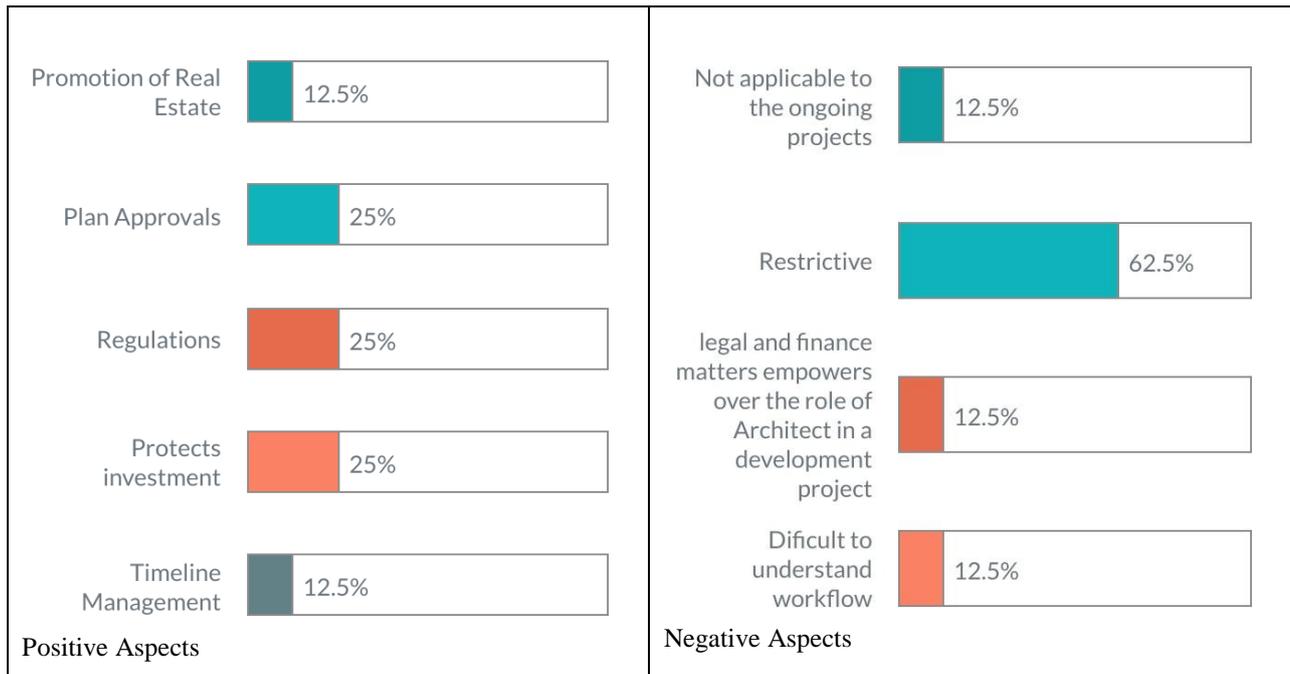


Illustration 12: User based experience graph (author)

Q. 12 - According to you, what are the biggest positives and negatives of RERA, 2016 as an architect?



FINDINGS AND INFERENCES

Based on the data gathered through the online survey and presented in the analysis chapter, an attempt was made to fulfill the objectives of this research and answer the series of smaller questions raised to arrive at an answer for the broader research question.

A sample of 28 from across India has responded to the online survey. The findings and inferences drawn from an analysis of the responses are as follows:

- More than 50% of the respondents were self-employed, while 7% were employed under an architectural firm. Only 3.6 % of the respondents were working under some developer. This depicts that most of the architects preferred to be self-employed.
- Out of the sample set, 40% of the respondents have worked under projects that come in RERA's purview, 2016.
- Almost 17% of the architects have faced disputes related to RERA, which does show that even after a set of rules and regulations have been laid for better regulation in the real estate industry, there are shortcomings in the law.
- The surgery conducted showed that approximately 60% of respondents were not satisfied with RERA's duration to resolve any of the cases and were not resolved until the date. In comparison, 20% of respondents said that the case was resolved in 1 year of time duration.
- A base survey was conducted to understand the architects' knowledge about when architects need to sign and take responsibility under RERA's project. The varying bar graph shows that most architects are unaware of where and when an architect comes into the process.
- Out of the sample of 30, while just 40% have worked under a RERA authorized project, fairly all have signed in all stages. The architect signing up for the BOQ for money withdrawal is comparatively a little less.
- When asked how effectively RERA performs its position as a neutral body in the survey, it was marked as acceptable by 40 percent of respondents. Still, it was marked as below average by 50 percent of respondents.
- The question was posed to understand how much simpler an architect's life has become with RERA's implementation, 2016. The survey conducted showed it was marked as below average by 75% of the total respondents.

To understand how well RERA has addressed and improved various aspects of the projects were put up to the architects. The overall analysis depicts that RERA has moderately achieved its goals of **Transparency**; The survey depicts that almost 64% of the architects think that the transparency in handling the project is average and above, which shows improvement in the Real estate industry. **Quality regulation of the buildings under the project**; The buildings' quality has not improved much even after establishing the RERA act, 2016. Only 14% think that the quality of buildings has been enhanced to a high standard. **Handling of finances**; RERA has not altered much of financial handling. **Dispute Resolution**; A good percentage of respondents believe that dispute resolution has not improved. About 35% of respondents feel that dispute resolution is very bad or below average, implying that the main aim has not been fulfilled.

Documentation of drawings; As the process requires submitting the sets or building with the RERA authority, the drawings' documentation has increased averagely. About 65% of the architects feel the documentation process has improved averagely to very efficiently.

According to the respondents, we have analyzed the advantages and disadvantages under RERA, 2016. Where the advantages are that the real estate sector promotes and ensures the effective and transparent selling of plots, apartments, and buildings and protects consumers' interests in the real estate sector. Right to information for the end-users/ customers - Write information about the project that favors buyers. Along with the allotment letter, promoters must provide clear disclosures on the website. Due to the fixation of the timeline, the projects need to be completed forcing the architects to be productive within the time frame. Drawings are fixed with a fixed FAR, limiting the FAR's fudging, which is prominent in India's practice. A regulated flow of the status of drawing improvement. RERA provides a five-year warranty for structural defects, which has helped improve its quality. Restricting its use in other projects helps manage the project finances and the architects' payments better. Few disadvantages resulted from the survey, the process was a little complicated with too many restrictions and many documents to be filled and abided by. This becomes too difficult in an already hectic schedule, decreasing projects and hurting the sector. It does not apply to projects that are already ongoing or even projects that are held up due to any clearance issues that started before the Act came into law. Architects are sidelined, and their authority and power are mostly ignored, and the actual development question is not fulfilled. If the builder does not fulfill any provision, a harsh penalty is implied for the same. This penalty can be up to 3 years of imprisonment or 10% of the total project cost. The implementation of the theoretical laws is not done correctly.

CONCLUSIONS

Through the RERA Act study and the online survey, this research paper attempts to provide a critical understanding of an architect's role in a project that comes under the purview of RERA, 2016. Based on our findings and inferences from the data collected through the online survey we can derive the following conclusions:

Advantages of RERA

- Right to information - Write information about the project which is in favor of buyers. Along with the allotment letter, all promoters are required to give accurate disclosures on theirs.
- Standardization of carpet area: In the earlier days, there was no clarification about the definition of carpet area with the implementation of RERA, 2016 Bill, carpet area would include the Area of the kitchen and Toilets (Rera Act, n.d.).
- A written affidavit stating the timeline of the real estate project should be delivered, which implicitly contributes to avoiding the builders' misleading statements.
- Dispute resolution is faster: RERA, 2016 as a neutral body between buyer and seller will easily discuss and resolve complaints. The buyer, promoter, or agent can file a complaint with RERA if they have any concern about the project, and if they are not happy with the decision, a complaint can also be filed with the Superior Court.
- Warranty: RERA, 2016 offers a 5-year structural defect guarantee conditions. The Builder is responsible to correct the damages within 30 days at no additional cost if there is any structural failure or quality issue.
- Advance payment: The contractor will not cover more than 10% of the project expense.
- Compulsory registration: The builder must register with the RERA, 2016, and submit all the project details (Bakshi, n.d.)

Disadvantages of RERA

- Harsh penalty: If a contractor fails to fulfill any clause, after 3 years or 10 percent of the total project cost, he/she will be responsible for the change (Bakshi, n.d.).
- Hike in property price: due to an increase in the transparency of payments, builders have to look for a source of money to regulate, leading to rising in the price of the property (Bakshi, n.d.).

A basic understanding of the architect's role in a project under the purview of RERA, 2016 was derived through the literature review. A review of the Delhi RERA document helped understand the applicability and the provisions of the act, along with the legalities and the penalties for different violations under RERA, 2016. At the end of the literature review stage it was noted that **an architect's signature is required at five different stages in the life cycle of a project** and the penalties for any violations of the regulations of the act in most cases involves a **fine of 5% of the estimated cost of the project**, also can increase till 10% of the cost plus imprisonment for up to three years in some cases.

With such enormous costs for any violations, architects face significant liabilities and should be aware of before signing off on any of the five mentioned stages. From the data gathered through the online survey, most of the respondents were unaware of their role they are required to perform as mentioned in the act. To perform the tasks required of them correctly, awareness of the RERA, 2016 Act is necessary. The survey also shows that many respondents thought that the

act had nothing to do with architects and was solely for builders.

ACKNOWLEDGEMENTS

We would like to thank our guide **Ravindra Singh Verma** for his guidance, encouragement, and utmost patience as well as for providing the necessary information and support required to go through with this Research. We could not have completed this research without him. We would like to thank our Professional practice coordinator, **Dr. Anil Dewan**, for his inputs and for providing us with this valuable opportunity. We would also like to thank our family for their endless support. As well as our friends for their valuable suggestions throughout this research and for providing constant support.

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