THE VIRTUAL REGULATION OF RERA 2016:

A Critical Analysis of Implementation Gaps and Enforcement Failure

ABSTRACT

The Real Estate (Regulation and Development) Act, 2016 (RERA), as a legal instrument that aimed at bringing about fundamental changes in a sector that has always been shrouded in ambiguity, developer malpractice, and consistent exploitation of home buyers, was expected to mark a turning point in Indian property law. RERA was supposed to bring about mandatory project registration, project finances through an escrow system, statutorily defined timeframes for completion of projects, and a new adjudicative framework since its enactment on 25th March 2016 after years of discussions and Presidential assent.[1]

The Act has largely become one of the virtual regulatory lawmaking acts that exist on paper and through the rhetoric of the legislature yet does not exist fully or is partially operational. The structure of the Act, the political economy of its implementation, the systematic failure in the enforcement of RERA by the state, judicial intervention attempts at realizing the possibilities of the Act, and the avenues for reform necessary in making RERA an efficient means of consumer protection are all critically analysed within this paper. This paper thus argues that RERA's failure is not incidental but is structurally embedded in its federalised design, the inadequacy of institutional infrastructure, regulatory capture by developer interests, and the absence of genuine political will to enforce the statute against powerful real estate lobbies.

Keywords:

RERA 2016; Real Estate Regulation; Enforcement Failure; Regulatory Gaps; Homebuyer Protection; Escrow Compliance

I. INTRODUCTION: THE PARADOX OF PROGRESSIVE LEGISLATION

India's urban landscape is enduring one of the most rapid and consequential renovations in human history. With urbanisation rates climbing steadily and the urban population expected to reach 600 million by 2031,[2] the demand for residential housing has never been more acute. The real estate sector, which contributes approximately 7–8% of India's GDP and directly or indirectly employs over 50 million people,[3] occupies a position of extraordinary economic and social significance.

[1] Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India).
[2]Ministry of Housing & Urban Affairs, Annual Report 2022–23, at 47 (Gov't of India 2023).
[3]Confederation of Real Estate Developers' Ass'ns of India (CREDAI), Indian Real Estate: Sector Overview (2022) https://credai.org/ (last visited June 21, 2026) (archived at https://perma.cc/8D74-RUAE).

Hitherto for decades, this sector was also a theatre of profound dysfunction: speculative project launches without adequate capitalisation, extensive diversion of homebuyer funds to unrelated ventures, persistent project delays spanning years and even decades, one-sided and adhesion-form sale agreements, and near-total impunity for developers who defaulted on their obligations. The Indian homebuyer typically a middle-class family committing their life savings and assuming substantial long-term debt was left with no effective legal recourse, no meaningful disclosure rights, and no regulatory body to whom they could turn.

RERA was Parliament's answer to this structural crisis. Enacted after recommendations by multiple parliamentary committees and the Law Commission of India,[4] for the very first time in history, the Act provided a certain regulatory structure for the real estate business sector. Registration, financial discipline using escrow account, transparency, and speedy arbitration mechanism were all the four important pillars. In its 46th Report in respect of the Bill on Real Estate (Regulation and Development) Bill, the Standing Committee on Urban Development described the bill to be "necessary to bring professionalism, transparency, and accountability in the industry which has caused a lot of damage to consumers."[5]

The Law Commission of India, in its Report No. 254 of 2015, had similarly observed that the real estate sector's 'lack of regulatory oversight has created conditions in which consumer exploitation has become endemic,' and recommended a legislative regime that would provide 'meaningful protection' rather than 'nominal rights without enforcement machinery.'[6] Against this background, the passage of RERA represented a significant moment of legislative ambition.

The issue addressed by this essay revolves around the question of why RERA has not succeeded in effectuating the kind of regulatory reforms it sought to achieve through its forward-looking approach. The primary argument made by the paper revolves around RERA being a case of “virtual regulation” – a phenomenon used within comparative regulatory scholarship to refer to regulations which exist on paper but lack the necessary institutions, politics, and mechanisms to have a practical impact on their surroundings. Seven different sections will comprise this paper: an

[4]Consumer Unity & Tr. Soc’y (CUTS Int’l), Homebuyers in Distress: Implementation of RERA 5–7 (Working Paper No. 3/2019, 2019).
[5]Standing Comm. on Urb. Dev., Forty-Sixth Report on the Real Estate (Regulation and Development) Bill, 2013, para. 3.2 (Lok Sabha Secretariat 2013).
[6]Law Comm’n of India, Report No. 254, The Real Estate (Regulation and Development) Bill, 2013, at 12–18 (2015).

overview of the pre-RERA regulatory gap, an analysis of RERA's legislative structure, implementation failures, judicial activism, problems related to RERA-IBC convergence, comparative perspective, and recommendations for reform.

II. THE PRE-RERA REGULATORY VACUUM: A LANDSCAPE OF IMPUNITY

2.1 Structural Fragmentation and Its Consequences

Prior to RERA, the regulation of real estate in India was characterised by what scholars have pertinently termed 'fragmented governmentality' the dispersal of regulatory authority across an incoherent collaged of statutes, bodies, and jurisdictions none of which provided adequate protection.[7] At the central level, the Consumer Protection Act, 1986 (since replaced by the 2019 Act) provided a general remedy, but its forums were ill-equipped to handle the technical complexities of real estate disputes, suffered from chronic backlogs, and lacked specialised expertise. The Transfer of Property Act, 1882 governed conveyancing but imposed no pre-sale disclosure obligations. The Registration Act, 1908 required registration of instruments of transfer but said nothing about project regulation. The Urban Land (Ceiling and Regulation) Act, 1976, repealed in most states by 1999, had originally sought to regulate land holdings but never addressed developer accountability.

However, even the state level scenario was a balanced one. There were a few states such as Maharashtra, Karnataka, Tamil Nadu, and later on Haryana, where laws relating to apartment owning had been formulated, setting certain norms for basic disclosures and establishment of residents' welfare associations. But, the primary problem of delayed projects and misuse of funds was not covered under these laws, which were limited in scope and did not have any penalty provisions for implementation. Even though these laws are considered as the most advanced pre-RERA laws, there were serious regulatory loopholes in the Maharashtra Ownership of Flats Act, 1963 (MOFA).

2.2 The Black Economy and Structural Corruption

[7]Umakanth Varottil, Regulatory Architecture of India's Real Estate Sector, 4(2) Indian L. Rev. 155, 162 (2017).

The real estate sector's functioning as a parallel economy with a significant portion of transactions conducted partly in cash to evade tax and stamp duty created systemic conditions of opacity that were antithetical to regulatory accountability.[8] The World Bank's Doing Business Report 2020 highlighted that India ranked 154th globally in 'registering property,' reflecting the high transaction costs, documentary requirements, and procedural delays that made formal land markets dysfunctional.[9] In this case, the developer had a considerable advantage in terms of information since they were responsible for providing information about the status, permissions, restrictions, and financial condition of the project. Making use of the developer's usual misleading assurances, which cannot be legally enforced, the homebuyer enters into a contract with incomplete information.

Millions of people have been affected by this phenomenon adversely. Complaints relating to modifications to approved plans, substandard construction, late delivery, and non-refund of advance payments made are common at consumer courts. Based on the figures provided by non-governmental agencies, millions of homebuyers incurred financial losses amounting to tens of thousands of crores of rupees due to stalled or failed projects.

III. RERA'S STATUTORY ARCHITECTURE: DESIGN AND INTENT

3.1 The Registration Regime

RERA's most introductory provision is the mandatory pre-launch registration requirement under Section 3.[10] A developer cannot promote, advertise, book, sell, or offer to sell any plot, flat, or building in a real estate project without first registering the project with the relevant RERA of the state. The developer has to give ample details of documentation in support of registration, including verified copies of all approvals and starting certificates related to the project, details of any land encumbrance, performance record of the developer, project plans and specifications, and contact details of real estate agents. The developers are required to make quarterly disclosures about the progress of construction and approvals.[11]

[8]S. Narayan, Black Money and the Real Estate Sector in India, Econ. & Pol. Wkly., Vol. XLIX, No. 9, at 23 (2014).
[9]World Bank, Doing Business 2020: Registering Property in India, at 98–102 (2020) https://archive.doingbusiness.org/en/doingbusiness (last visited June 21, 2026) (archived at https://perma.cc/V58F-EPP8).
[10]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, § 3(1) (India).
[11]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, § 11(4)(a)–(d) (India).

This registration architecture represents a paradigm shift from caveat emptor let the buyer beware to mandatory disclosure. The philosophical underpinning is that information asymmetry lies at the root of homebuyer victimisation, and that compelled transparency would discipline developer behaviour by making misrepresentation legally actionable. By requiring registration before any marketing activity, the Act also sought to eliminate the speculative pre-launch booking model that had allowed developers to collect money against projects for which they did not yet have legal or regulatory clearances.

3.2 The Escrow Mechanism and Financial Discipline

Section 4(2)(l)(D) of RERA introduces what is, in principle, its most transformative financial provision: the mandatory escrow account.[12] Developers are required to deposit 70% of all amounts realised from allottees including advances, instalments, and other payments in a dedicated separate bank account. This amount may only be withdrawn for land costs and construction costs, and must be certified by a civil engineer, architect, and chartered accountant. The provision was directly motivated by the most common form of developer misconduct: the diversion of money collected from Project A's buyers to fund the land acquisition or marketing costs of Project B, leaving Project A perpetually underfunded and delayed.

The structural way forward on the problem of fund diversion will be the rigorous implementation of the 70% escrow rule. It should be remembered that financial experts in real estate point out how similar the idea of the RERA escrow is to the idea of “construction funding”, which is widely practiced in more advanced regulatory environments and which is tied to verifiable development achievements instead of the developer’s arbitrary choices. The rationale behind the RERA escrow and the mandatory quarterly publication of project accounts was exactly that.

3.3 Adjudicatory Architecture

RERA creates a three-tier adjudicatory architecture. Complaints by aggrieved homebuyers are filed before the RERA Authority (the primary regulatory body) under Sections 31–32.[13] Appeals from the Authority's orders lie before a statutory Appellate Tribunal under Section 43, which is

[12]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, § 4(2)(l)(D) (India).
[13]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, §§ 31–32 (India).

required to dispose of appeals within 60 days.[14] Further appeals on questions of law lie before the respective High Court. The enforcement mechanism is reinforced by a graduated penalty regime in Sections 59–64: failure to register attracts a penalty of up to 10% of the project cost; repeated or wilful violations can attract imprisonment of up to three years.[15]

Beyond complaints, the regulatory authority is vested with powers of suo motu action, powers of inspection, and authority to revoke registration and debar errant developers. Real estate agents, a category of intermediary previously entirely unregulated, are required to register, maintain prescribed records, and are made liable for misrepresentation or failure to report. These provisions, taken together, reflect a sophisticated regulatory design that attempted to address not merely individual disputes but the structural governance failures of the entire sector.

IV. IMPLEMENTATION FAILURES: THE ARCHITECTURE OF VIRTUAL REGULATION

4.1 The Crisis of State-Level Adoption

RERA operates under the Concurrent List of the Indian Constitution, and while Parliament enacted the central framework, it left implementation to the states. This federalised design, while constitutionally appropriate, has created what scholars have identified as a 'race to the bottom' in regulatory standards, with several states diluting or delaying RERA's implementation to protect politically powerful real estate industries within their borders.[16]

However, the introduction of state-wise regulations that deviated substantially from the intentions of the principal Act was the most evident instance of this. Certain states, such as Uttar Pradesh, Gujarat, Karnataka, and Madhya Pradesh, issued regulations that reduced the escrow deposit below the mandatory minimum of 70%, provided exemptions for certain ongoing projects that needed to be covered according to legal standards, or allowed registration to happen on a blanket basis without examining the credentials of projects. This is evident in the 2019 Expert Committee Report by the Ministry of Housing and Urban Affairs, which mentioned, "At least six states had notified

[14]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, § 43(5) (India).
[15]Real Estate (Regulation and Development) Act, No. 16, Acts of Parliament, 2016, §§ 59–64 (India).
[16]Prashant Thakur, RERA Implementation: State-Wise Status 3-4 (Anarock Property Consultants, 2021).

rules which severely diluted the principal provisions of the RERA Act in an inconsistent manner with the parent Act."[17]

West Bengal presented an even more extreme case: the state enacted its own West Bengal Housing Industry Regulatory Act, 2017 (HIRA), which purported to be a state alternative to RERA but contained significantly weaker enforcement provisions and excluded many of the accountability mechanisms of the central statute.[18] The constitutional validity of HIRA was challenged before the Supreme Court, and in the landmark decision of *Forum for People's Collective Efforts v State of West Bengal* (2021), the Supreme Court struck down HIRA as repugnant to and inconsistent with the central RERA, marking a rare judicial affirmation of the supremacy of the central regulatory framework.[19]

4.2 Institutional Incompleteness: The Missing Regulators

RERA's effectiveness depends entirely upon the establishment and functional capacity of three institutional actors: the Real Estate Regulatory Authority; the Adjudicating Officer; and the Appellate Tribunal. The statute required states to constitute these bodies within specified timeframes after the Act's commencement. Eight years on, the institutional landscape remains deeply incomplete.

The Comptroller and Auditor General of India's Performance Audit Report No. 15 of 2022 — perhaps the most authoritative empirical assessment of RERA's implementation to date — made deeply troubling findings.[20] The CAG found that eight states had not constituted a functional Appellate Tribunal even four years after the Act's operationalisation.[21] Several states were operating their RERA Authorities with ad hoc or part-time members rather than full-time specialist regulators as mandated by the Act. For the authorities to perform their functions effectively, some of these states failed to provide them with adequate manpower, office facilities, and technical

[17] Ministry of Housing & Urban Affairs, Report of the Expert Committee on RERA Implementation, at 22–28 (Gov't of India 2019).
[18] Arghya Sengupta & Ritwika Sharma, Regulatory Turf Wars: RERA and Competing State Frameworks, 5(1) NUJS L. Rev. 88, 95 (2020).
[19] Forum for People's Collective Efforts v. State of West Bengal, (2021) 8 SCC 599 (India).
[20] Gov't of India, Ministry of Housing & Urban Affairs, Response on RERA Implementation, Lok Sabha Annexure AU3899, https://sansad.in/getFile/loksabhaquestions/annex/1711/AU3899.pdf?source=pqals (last visited June 21, 2026) (archived at https://perma.cc/E5BN-U7VJ).
[21] Press Information Bureau, 28 States/UTs have set up Real Estate Appellate Tribunal, Press Release No. 1810454 (March 18, 2022) https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1810454&reg=48&lang=2 (last visited June 21, 2026) (archived at https://perma.cc/D634-BCU5).

support. The report observed that the RERA authority was merely a document management body in a few states and thus failed to initiate any action on inspection and enforcement, including suo motu powers.

Human resource shortage is particularly serious. The availability of professionals in real estate regulation is very poor in India. Furthermore, the terms and conditions of employment offered to the RERA officials, which are usually determined by the state governments and tend to be at par with those prevailing in lower ranks of the civil services, have been inadequate to attract specialists. Legal scholars studying regulatory capacity have emphasised that a regulatory body's effectiveness is a direct function of the quality and independence of its human capital: an under-resourced regulator, however well-designed its mandate, will inevitably default to administrative inertia.[22]

4.3 The Escrow Obligation: A Rule Honoured in the Breach

The escrow mechanism, the single most important financial protection embedded in RERA — has become perhaps its most comprehensively violated provision. The CAG audit found that in none of the states audited had the regulatory authority established a systematic mechanism for verifying compliance with the 70% escrow requirement.[23] Developers were required to self-certify compliance through chartered accountant certificates, but the authenticity of these certifications was not being independently verified. The system operated, in effect, on a pure honour basis — precisely the regime that existed before RERA and which RERA was designed to replace.

The consequences of this failure are financially catastrophic. The Reserve Bank of India's Report on Currency and Finance 2020–21 estimated that non-performing assets arising from real estate lending a direct consequence of project non-completion remained one of the most significant sources of systemic financial risk in the banking sector.[24] Anarock Property Consultants estimated in 2022 that over 4.5 lakh residential units, representing an investment of approximately INR 4.5 lakh crore, were stuck in stalled or significantly delayed projects across India's top cities.[25] A

[22]Uttar Pradesh Real Estate Regulatory Authority (UP RERA), Performance Report 2021, at 5 (Lucknow 2021).
[23]Comptroller & Auditor General of India, Performance Audit: Implementation of RERA in Selected States, Report No. 15 of 2022, ¶ 3.1.
[24]Reserve Bank of India, Report on Currency and Finance 2020–21 at 112 (2021), https://reports.rbi.org.in/ (last visited June 21, 2026) (archived at https://perma.cc/4Z7Q-8REE).
[25] Anarock Prop. Consultants, India Real Estate: Stalled Projects Report, at 6–8 (2022).

substantial proportion of these projects had been registered under RERA. The stalling of projects post-RERA registration is direct evidence that escrow compliance was not being monitored or enforced.

4.4 Complaint Disposal: The Illusion of Adjudication

The complaint redressal mechanism is perhaps where the gap between RERA's promise and performance is most acutely visible to the individual homebuyer. Section 29 of the Act requires that complaints be disposed of within 60 days of filing. In practice, this timeline is almost universally violated.[26] The CAG audit found that across the states it surveyed, the average disposal time for complaints ranged from 18 months to well over three years. UP RERA, which is responsible for regulating one of India's largest and most troubled real estate markets, reported a disposal rate of under 40% for its pending complaints as of 2021.[27]

The causes of adjudicatory delay are multiple and interacting. First, the volume of complaints has far outstripped the institutional capacity of most RERA authorities: MahaRERA alone the most functional state RERA recorded over 43,000 registered projects and received thousands of complaints annually.[28] Second, many RERA authorities have not appointed separate Adjudicating Officers as required by the statute, and the same members of the Authority are discharging both regulatory and adjudicatory functions, creating conflict of interest concerns and capacity constraints. Third, the procedural framework for RERA hearings is not fully codified, leading to heterogeneous practices across states. Fourth, developers routinely challenge RERA orders before High Courts, obtaining interim stays that freeze enforcement while appeals are pending — sometimes for years. The net result is that even homebuyers who obtain favourable orders from the RERA Authority find themselves in a protracted enforcement battle.

4.5 The Enforcement Deficit: Orders Without Effect

At its most fundamental level, RERA's failure is an enforcement deficit—the wide gap between orders issued by RERA authorities and their actual execution on the ground. The Act confers on RERA authorities the power to recover dues from developers as arrears of land revenue, a

[26]Ministry of H&UA, supra note 17, at 22–28.
[27]UP RERA, supra note 22, at 5.
[28]Maharashtra Real Estate Regulatory Authority (MahaRERA), Annual Report 2022–23, at 9 (Mumbai 2023).

mechanism that, if exercised, should prove formidable in practice. In practice, this power has been exercised rarely and with limited effect. Many states have not notified the prescribed procedure for recovery as land revenue. Even where notified, the revenue authorities to whom recovery applications are forwarded often lack the capacity or motivation to proceed against politically connected developer groups.

The penalty provisions which include imprisonment and substantial fines remain essentially unused. Academic research on the political economy of RERA enforcement has found a strong correlation between the scale of developer industry contributions to political parties and the relative laxity of RERA enforcement in those states.[29] The Transparency International India report of 2018 on corruption in the real estate sector found that 'informal payments' to regulatory officials remained common practice in several states, noting that 'the creation of RERA has not yet disrupted established networks of corruption that pervade the approval and oversight process.'[30]

4.6 Digital Infrastructure: Incompleteness and Inaccessibility

RERA's regulatory model presupposes a functioning digital infrastructure: online project registration portals, public-facing dashboards displaying project status, complaint filing interfaces, and electronic document verification systems. MahaRERA has made the most progress in this direction, introducing an online compliance tracking system in 2019[31] and maintaining a publicly accessible database of registered projects that allows homebuyers to verify project registration and status. This has genuinely improved transparency in Maharashtra.

MahaRERA, however, remains an exception. Across much of the country, state RERA digital infrastructure is rudimentary, unreliable, or practically accessible only to technologically proficient users. Many state portals fail to display complaint status in real time. Developer document uploads are frequently unverified and inconsistent. The quality of project information available through these portals—which ought to be the primary due diligence tool for prospective homebuyers—is often poor, out of date, or actively misleading.[32] The digital divide compounds the problem: homebuyers in smaller cities, semi-urban areas, and rural-urban peripheries—

[29]Vrinda Bhandari & Faiza Rahman, RERA's Enforcement Deficit: A Structural Analysis, 56 J. Indian L. Inst. 210, 228 (2021).
[30]Transparency Int'l India, Corruption in the Indian Real Estate Sector, at 14–19 (2018).
[31]MahaRERA Circular No. MahaRERA/Secy/File No. 27/315/2019 (Feb. 4, 2019).
[32]Ashish Joshi, Digitisation of RERA: Potential and Pitfalls, 5 NLIU J. Regul. L. 33, 41 (2020).

precisely those who are most exposed to developer exploitation—frequently lack both the digital literacy and reliable internet access needed to engage with these portals in any meaningful way.

V. VALIDITY OF REAR ACT 2016

5.1 Constitutional Validity and the Pioneer Rulings

In ***Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India***, 2018 [33], the Bombay High Court rendered a landmark judgment upholding the constitutional validity of the Real Estate (Regulation and Development) Act, 2016 (RERA).

The Court held that RERA is neither arbitrary nor unconstitutional, emphasizing that the Act's primary legislative object is the protection of homebuyers' interests in the housing sector. The judgment rejected the petitioners' contention regarding the retrospective application of registration requirements, clarifying that the Act applies to the registration of projects rather than to contracts themselves. The Court observed that the Legislature possesses the competence to enact laws with retrospective effect were justified by public interest. It was decided that the subject matter of real estate fell under Entry 6 and Entry 7 of List III (Concurrent List), Transfer of property, and therefore the legislature had competence to make any laws regarding the same. Thus, the constitutionality of RERA received a solid footing through this landmark judgment, dispelling the ambiguities in the doctrine that some states tried to exploit.

Perhaps the most significant Supreme Court judgment in the RERA ecosystem is ***Pioneer Urban Land and Infrastructure Ltd v Union of India*** (2019), which determined the relationship between RERA and the Insolvency and Bankruptcy Code, 2016 (IBC).[34] The Court held that homebuyers qualify as 'financial creditors' under the IBC — recognising the economic substance of a homebuyer's advance as a form of financial accommodation extended to the developer. This ruling, combined with the Insolvency and Bankruptcy Code (Amendment) Act 2018 which had formally added homebuyers to the definition of financial creditors,[35] dramatically expanded the remedial options available to aggrieved buyers.

[33] Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India, AIR 2018 Bom. 398 (India).
[34] Pioneer Urban Land & Infrastructure Ltd v Union of India (2019) 8 SCC 416 (India).
[35] Insolvency and Bankruptcy Code, No. 31, Acts of Parliament, 2016, § 7 (India) (as amended by the Insolvency and Bankruptcy Code (Amendment) Act, No. 26, Acts of Parliament, 2018).

5.2 Amrapali and Judicial Administration

The Amrapali Group of Companies became the most prominent case study of RERA's limits and judicial substitution. In ***Bikram Chatterji v Union of India*** (2019), the Supreme Court exercised its extraordinary constitutional jurisdiction under Article 32 to intervene directly in the collapse of the Amrapali Group, which had collected money from over 40,000 homebuyers for projects that were stalled due to massive fund diversion.[36] The Court appointed the National Buildings Construction Corporation (NBCC) to oversee project completion, cancelled Amrapali's developer registration, directed forensic audits, and issued a sustained series of orders over a prolonged period to manage what amounted to a complete regulatory collapse.

There are various aspects to consider in this case apart from the immediate ones. It demonstrated that despite all the efforts of RERA to regulate the construction sector through proper registration, monitoring, and handling complaints, the fraudulent activities of the Amrapali Group had not been deterred at all. It was also evident that in extreme situations, the apex court was ready to fill in the vacuum created by the regulatory failure by functioning as a sort of administrator for those projects that had come to a standstill. This case also threw light on the immense damage done to individual home buyers, with many spending crores of rupees in anticipation of their properties

.5.3 Judicial Limitations and the Role of High Courts

While the Supreme Court's interventions have provided important doctrinal clarity and some relief in egregious cases, the judiciary is structurally ill-suited to serve as a substitute for effective regulation.[37] High Courts have further complicated the picture by freely granting interim stays on RERA orders, fundamentally undermining the statute's objective of expeditious dispute resolution.

VI. LITERATURE REVIEW: SCHOLARLY PERSPECTIVES ON RERA'S DEFICIENCIES

6.1 The Regulatory Governance Literature

The scholarly literature on RERA's implementation has grown substantially in the years since 2017, and its central themes resonate strongly with broader theoretical debates in regulatory

[36]Bikram Chatterji v Union of India (2019) 19 SCC 1 (India).
[37]Nikhil Mehta & Sons (HUF) v AMR Infrastructure Ltd., SCC Online NCLAT 165 (2017) (India).

governance. Varottil's foundational analysis of RERA's regulatory architecture identified 'the critical importance of institutional design' as the determinant of regulatory effectiveness, arguing that 'a well-drafted statute without the institutional machinery to enforce it is, in the regulatory sense, a dead letter.'[38] This observation has proved prescient: the institutional architecture that RERA requires — independent, full-time, well-resourced regulatory authorities with specialised technical and legal capacity — has simply not been established in most states.

Bhandari and Rahman's important 2021 article, 'RERA's Enforcement Deficit: A Structural Analysis,' developed the concept of 'enforcement hollowness' to describe regulators that possess formal powers but exercise them rarely and ineffectually.[39] They argued that enforcement hollowness in RERA is partly structural — a product of the federalised design that creates powerful incentives for state governments to accommodate developer interests — and partly cultural, reflecting a broader administrative culture that is resistant to confrontational regulation of business interests. Their empirical findings, drawn from an analysis of complaint outcomes across five states, showed that even where homebuyers obtained favourable orders, execution was achieved in under 30% of cases within a reasonable timeframe.

6.2 Political Economy Perspectives

A separate strand of scholarship has emphasised the political economy of RERA's failures. Gowda and Punj's 2018 study of regulatory governance and housing in India concluded that 'the structural connections between real estate capital and political power in India represent the single most significant impediment to effective housing regulation,'[40] noting that real estate developers are among the largest donors to political parties across the ideological spectrum. Mani's analysis of urban governance extended this argument, showing that the discretionary nature of land-use approvals creates systematic conditions for rent extraction that undermine any regulatory framework's integrity.[41]

[38]Varottil, supra note 7, at 162.
[39]Bhandari & Rahman, supra note 29, at 228.
[40]Rajeev Gowda & Jyothi Punj, Regulatory Governance and Housing in India, 49 Econ. & Pol. Wkly., Special Issue, at 44, 50 (2018).
[41]Shyamala Mani, Urban Governance and Real Estate Regulation: A Political Economy Perspective, 12 Indian J. Pub. Admin. 302 (2019).

The political economy literature converges on a sobering conclusion: legislative reform of the kind represented by RERA can disrupt but not dissolve deep-rooted networks of political-economic relationships that have historically shielded the real estate industry from accountability. Unless the political economy of land and construction is itself addressed — through land use reform, transparency in political financing, and the insulation of regulatory bodies from political interference — RERA will remain chronically underenforced.

6.3 Consumer Protection and Homebuyer Rights Literature

From the perspective of consumer law and homebuyer rights, scholars have examined RERA's limitations in providing genuine access to justice. CUTS International's 2019 Working Paper on 'Homebuyers in Distress' documented that for many homebuyers — particularly those in smaller cities, those purchasing affordable housing, and those who lack the resources to engage legal counsel — the RERA complaint process remains practically inaccessible.[42] The Working Paper found that complaint filing processes, while nominally available online, were in practice opaque and unfriendly to unrepresented complainants. Legal representation costs were prohibitive for many homebuyers, particularly those whose grievances involved smaller quantum claims.

Talwar's empirical study of RERA adjudication found that 'capacity constraints are the primary driver of adjudicatory delay,' with most state authorities operating with between one-tenth and one-fifth of the staffing levels necessary to handle complaint volumes effectively.[43] He documented a concerning phenomenon of 'complaint attrition' — where homebuyers, exhausted by delays and procedural complexity, withdraw complaints or simply abandon pursuit of their rights, effectively subsidising developer non-compliance. The Vidhi Centre for Legal Policy's 2020 report on RERA similarly concluded that the complaint mechanism 'functions as an adversarial litigation process rather than a responsive regulatory intervention,' and recommended a fundamental redesign toward more inquisitorial and consumer-accessible formats.[44]

6.4 Comparative Regulatory Scholarship

[42]CUTS Int'l, supra note 4, at 5–7.
[43]Arjun Talwar, Capacity Constraints in RERA Adjudication: An Empirical Study, 12(1) Asian J.L. & Soc'y 67, 80 (2021).
[44]Vidhi Ctr. for Legal Pol'y, RERA: The Road Ahead, at 15–17 (Policy Report 2020).

Comparative study of real estate regulatory frameworks in the United Kingdom, Singapore, and India provides a valuable international perspective.[45] The UK framework operating through a combination of the Estate Agents Act 1979, the Housing Act 2004, and the Building Safety Act 2022 — relies on a more patchy but more thoroughly enforced set of obligations backed by well-resourced local authorities and a strong consumer culture of complaint and enforcement.[46] Singapore's Building and Construction Authority model, widely regarded as the most effective in the Asia-Pacific region, achieves its regulatory effectiveness through a combination of mandatory licensing, performance bonds, and a highly centralised and well-funded regulatory apparatus operating in a city-state context that allows more comprehensive oversight.[47]

The comparative literature consistently highlights two factors that distinguish effective real estate regulatory systems from dysfunctional ones: institutional independence from short-term political pressures, and meaningful financial penalties calibrated to the scale of developer profit. RERA's current penalty regime is widely regarded as insufficient in comparison to the potential profits from non-compliance, creating a perverse cost-benefit calculus that makes non-compliance rational for many developers.[48]

VII. THE RERA-IBC INTERFACE: JURISDICTIONAL COMPLEXITY AND SYSTEMIC RISK

7.1 Competing Regulatory Regimes

This interrelationship between RERA and the Insolvency and Bankruptcy Code, 2016, which can be described as complex and sometimes contradictory, has become a matter of crucial importance but remains poorly researched. In case when a builder becomes insolvent, the rights of the home buyer, i.e., refund, compensation, and possession, under RERA run counter to the claims of lenders, operational creditors, and other financial creditors under the mechanism of dispute resolution within the provisions of the IBC. This decision was aimed at providing buyers with

[45]Priya Srinivasan, Comparative Analysis of Real Estate Regulatory Frameworks: UK, Singapore and India, 11 NLU Delhi L.J. 112, 127–32 (2020).
[46]Estate Agents Act 1979 (UK); Housing Act 2004 (UK); Building Safety Act 2022 (UK).
[47]Bldg. & Constr. Auth., The Singapore Building and Construction Framework (BCA Singapore 2021), https://www1.bca.gov.sg/ (last visited June 21, 2026) (archived at https://perma.cc/HJ6L-LBHU).
[48]S. Balakrishnan, Delayed Justice in RERA Tribunals: Systemic Causes and Remedies, 34 Nat'l L. Sch. of India Rev. 101 (2022).

more power in the course of the process of bankruptcy. However, things turned out to be quite different in reality.[49]

The process of resolution under the Insolvency and Bankruptcy Code is administered by the NCLT and is bound by a rigorous period of 330 days." with: "The insolvency resolution process under Section 12 of the Insolvency and Bankruptcy Code, 2016 is administered by the NCLT and was originally framed with a statutory timeline of 180 days (extendable by a single 90-day period to 270 days); subsequent amendments and rules introduced an outer target of 330 days in many cases, but this figure operates as an aspirational/outer limit in statutory guidance and practice rather than an invariably enforceable deadline, since judicial interventions and procedural delays have at times extended the overall resolution timeframe in individual matters. Home buyers have a superior claim status compared to that of unsecured creditors but inferior to that of secured creditors owing to the "waterfall process" used for allocation of assets obtained from the IBC process. Home buyers tend to get nothing or very little despite their category as financial creditors since in practice, the value of assets obtained from such cases does not even sufficiently cover the claims of the secured creditors.

7.2 Jurisdictional Conflicts Between RERA and NCLT

A persistent source of confusion and prejudice to homebuyers is the jurisdictional conflict between RERA authorities and the NCLT. When a developer is admitted to insolvency proceedings under the IBC, the automatic moratorium under Section 14 of the IBC stays all proceedings before RERA authorities — meaning that RERA complaint hearings are suspended, RERA orders cannot be enforced, and the homebuyer is thrown into the very different world of insolvency law. Pandey's 2022 analysis of the RERA-IBC interface described this as 'a regulatory trap for homebuyers: they are denied remedies before the regulator designed to protect them and are forced into an insolvency process that is structurally designed for creditor interests rather than consumer protection.'[50] The concurrent application of RERA and IBC to the same set of developer obligations has created legal uncertainty that courts are still struggling to resolve.

[49]Pioneer Urban, supra note 35, at 416.
[50]Abha Pandey, The RERA-IBC Interface: Jurisdictional Conflicts and Consumer Rights, 64(2) J. Indian L. Inst. 180, 195 (2022).

VIII. ASSESSING SPECIFIC STATE PERFORMANCES: A COMPARATIVE SNAPSHOT

8.1 Maharashtra: The Benchmark and Its Limits

MahaRERA is broadly recognised as the most effective state-level implementation of RERA in the country, and the reasons for its relative success are instructive. Maharashtra notified its RERA rules without undue delay, constituted a full-time Authority staffed by experienced members, made sustained investments in digital infrastructure, and has sustained a creditable rate of complaint disposal.[51] Maharashtra's RERA accounts for over 38% of all nationally registered projects[52] and has disposed of the largest absolute number of complaints. MahaRERA has also innovated beyond the central Act's requirements: it introduced a Conciliation Forum for dispute resolution, developed an online project grading system, and created a system for publishing defaulting developer lists.

Yet even MahaRERA has significant limitations. Enforcement of its orders remains problematic: a significant proportion of orders directing payment of compensation or refund remain unexecuted because developers either lack funds or exploit appellate proceedings to delay. The large number of registered projects also means that MahaRERA's monitoring of project-level compliance — particularly escrow compliance — is superficial rather than systematic. High Court stays frequently hamper enforcement. MahaRERA's success, in short, is relative: it is vastly better than most other states, but still falls well short of what a genuinely effective regulatory authority would achieve.

8.2 Uttar Pradesh: The Scale of Dysfunction

Uttar Pradesh presents a stark contrast. UP-RERA is responsible for regulating what may be the single most troubled real estate market in India: the National Capital Region (NCR) areas of Noida, Greater Noida, Ghaziabad, and Yamuna Expressway, where hundreds of thousands of homebuyers are affected by projects that have been stalled for five, eight, or even more than ten years. The Jaypee Infratech insolvency alone affected approximately 32,000 homebuyers; the Supertech

[51]MahaRERA, supra note 28, at 9.
[52]Comptroller & Auditor General of India, Performance Audit: Implementation of RERA in Selected States, Report No. 15 of 2022, ¶ 3.1.

group's difficulties affected many thousands more. Yet UP-RERA has functioned at a fraction of its required capacity.[53] Complaint disposal rates have been chronically low. Enforcement has been minimal. Many of the most notorious stalled projects in India are in UP and continue to languish despite being RERA-registered, demonstrating the emptiness of registration as a regulatory guarantee absent enforcement.

8.3 Haryana and Telangana: Intermediate Cases

HARERA (Haryana) and TS-RERA (Telangana) can be classified as falling somewhere between those two extremes. HARERA has been rather active in registering developments and dealing with issues in relation to the Gurugram and Faridabad markets; however, it has been facing difficulties owing to a backlog of complex cases related to big-name developers in the luxury property market of Gurugram[54]. On the other hand, TS-RERA has been commended for its efficient digital process but has been criticized for its exemption process and limited use of suo motu power[55]. In both cases, the different degrees of success of RERA in these states show that apart from politics, administration, quality of leadership, and complexity of the real estate market also play important roles.

IX. REFORM PATHWAYS: TRANSFORMING VIRTUAL INTO EFFECTIVE REGULATION

9.1 Strengthening Institutional Infrastructure

The first and most urgent reform imperative is the establishment of adequately resourced, institutionally independent, and professionally staffed RERA authorities across all states. The Law Commission of India's Report No. 268 of 2020, which made specific recommendations for RERA amendments,[56] recommended that RERA Authority members be drawn from a dedicated regulatory service with competitive remuneration, security of tenure, and clear professional qualifications. The central government should exercise its powers under RERA to issue mandatory directions to states that have failed to constitute functional authorities, and should consider

[53]UP RERA, supra note 22, at 5.
[54] Harjinder Kaur Nagi v Emaar MGF Land Ltd, RERA Complaint No. HARERA/GGM/2018/1212 (India).
[55] Government of Telangana, TS-RERA Annual Report 2021–22, at 11 (Hyderabad 2022).
[56]Law Comm'n of India, supra note 6, at 4–9.

establishing a central coordination body with powers to prescribe minimum institutional standards for state RERA authorities.

The Vidhi Centre for Legal Policy has proposed a model of 'regulatory performance benchmarking,' under which state RERA authorities would be publicly rated on key performance indicators — complaint disposal rates, enforcement actions taken, escrow audit coverage — and the results published nationally.[57] This form of reputational accountability, while not involving direct central intervention in state regulation, could create political incentives for state governments to improve their RERA machinery.

9.2 Escrow Monitoring: Moving from Self-Certification to Real Audit

The current self-certification model for escrow compliance is fundamentally inadequate and must be replaced by a system of independent, periodic, and mandatory audits of developer escrow accounts by RERA-empanelled auditors — not developer-appointed auditors. The audit should verify both the quantum of funds deposited and the appropriateness of withdrawals against certified construction milestones. Digital integration between developer bank accounts, RERA portals, and state-level revenue data would allow automated anomaly detection. The RBI should consider issuing regulatory guidance to banks requiring them to flag to RERA authorities any unauthorised withdrawals from designated RERA escrow accounts — a mechanism analogous to the Anti-Money Laundering (AML) reporting obligations already imposed on banks.[58]

9.3 Reforming the Adjudicatory Framework

The adjudicatory framework must be redesigned to be genuinely expeditious and accessible. Balakrishnan's recommendations for systemic reform of RERA tribunals[59] include: mandatory appointment of full-time Adjudicating Officers distinct from the Regulatory Authority; the introduction of fast-track proceedings for clear-cut cases; the use of online video hearings to improve accessibility for homebuyers in smaller towns; the creation of a small claims procedure for complaints below a threshold quantum without the need for legal representation; and the

[57]Vidhi Ctr. for Legal Pol'y, supra note 44, at 15–17.
[58]Priya Srinivasan, Comparative Analysis of Real Estate Regulatory Frameworks: UK, Singapore and India, 11 NLU Delhi L.J. 112, 127–32 (2020).
[59]S. Balakrishnan, Delayed Justice in RERA Tribunals: Systemic Causes and Remedies, 34 Nat'l L. Sch. of India Rev. 101 (2022).

imposition of personal liability on RERA members for delays beyond the statutory timeline without adequate justification. The use of technology — AI-assisted case management, automated date-setting, electronic evidence submission — should be mandated across all state RERA systems.

9.4 Closing the IBC-RERA Gap

The RERA-IBC interface requires legislative clarification. Parliament should amend either the IBC or RERA (or both) to provide that: (i) RERA proceedings are not automatically stayed by an IBC moratorium where the complaint relates to a project that is not part of the insolvency estate; (ii) homebuyers who have filed RERA complaints should be entitled to be represented as a class in IBC resolution committee proceedings; (iii) resolution plans for real estate projects must include a specific, funded timeline for project completion, and deviation from that timeline must automatically entitle homebuyers to compensation. The alternative of a specialised real estate insolvency framework — modelled on the NBCC receivership model developed in the Amrapali litigation — deserves serious legislative consideration.

9.5 Enhancing Penalties and Developer Accountability

RERA's penalty regime requires recalibration to ensure that the cost of non-compliance exceeds the benefit of default. Academic commentators and the Law Commission have recommended that penalties be linked not to project cost (which developers can underestimate) but to the total quantum of funds collected from homebuyers.[60] Criminal liability provisions — which currently require a separate prosecution — should be made more readily available and the threshold for prosecution should be lowered. A national developer blacklisting register, with public access, should be maintained centrally and state RERA authorities should be required to consult it before granting new registrations. Developer directors who are individually responsible for fund diversion or project abandonment should face personal liability, following the model of director disqualification under company law.

9.6 Addressing Political Economy: Insulating Regulation from Capture

Law Comm'n of India, supra note 6, at 4–9.

No purely legal or institutional reform will be effective without addressing the political economy of regulatory capture. The selection of RERA Authority members should be taken out of the exclusive control of state governments and vested in an independent search-and-selection committee with representation from the judiciary, academia, and civil society. The funding of RERA authorities through dedicated levies on registered developers — rather than through state government appropriations — would reduce the financial dependence of regulators on governments that have competing political interests in the real estate sector.[61] Civil society organisations representing homebuyers should be formally recognised as stakeholders in RERA governance, with rights of participation in rule-making and the right to challenge regulatory inaction through public interest litigation.

X. CONCLUSION: FROM VIRTUAL TO GENUINE REGULATION

RERA 2016 represents one of the most ambitious legislative interventions in the history of Indian consumer protection law. Its drafters understood the structural pathologies of the real estate sector and designed a framework that, if faithfully implemented, could have genuinely transformed the homebuying experience for millions of Indians. Eight years on, however, RERA's promise is largely unredeemed. It has become a paradigmatic instance of 'virtual regulation' — legislation that performs the symbolism of regulatory commitment without delivering the substance of regulatory protection.

The problems discussed in this paper are many and interrelated: states which have diluted provisions under RERA to satisfy the demands of the real estate industry lobby groups; regulators who lack the organizational capacity to function effectively; escrow rules that exist in theory only, enforced by self-certification; an overburdened adjudication process issuing orders that cannot always be enforced; and a politics of the real estate industry’s economic power that forms a basic impediment to regulating itself. These weaknesses cannot just be attributed to flaws in the law which can be corrected by making changes to legislation, because they point to deeper problems with respect to the Indian state’s competence and willingness to regulate economically powerful interests.

[61]Comparative Housing & Building Research Unit, Regulatory Effectiveness in Emerging Market Real Estate, at 38–44 (UN-Habitat Working Paper 2021).

While it is true that the judiciary, especially the Supreme Court, has done a lot to try and bridge the regulatory gap by ruling on the validity of RERA and taking the important decisions in Pioneer Urban and Bikram Chatterji, among others, and even overseeing Amrapali, it must be pointed out that judicial involvement, while innovative, is not enough to make up for an inefficient administration. The courts operate on the extreme edge of regulation and are only capable of providing succour in the most desperate of situations.

The reform agenda is both clear and challenging. It requires political will to invest in genuine regulatory capacity; legislative clarity to resolve the RERA-IBC interface; administrative creativity to design monitoring systems that go beyond self-certification; and institutional design that insulates regulators from political and industry capture. The HDFC Annual Report 2022–23 noted, with cautious optimism, that RERA compliance had improved project completion rates by an estimated 12% in states with stronger RERA implementation — suggesting that even partial implementation has measurable positive effects.[62] This provides reason for hope, but also confirms how far short of the Act's potential current implementation falls.

The moment family savings are invested into the purchase of a home, the individual is no longer simply a customer partaking in a market transaction; rather, they place their trust in a system that has promised to protect them, make an important life decision, and assume heavy financial responsibilities. The fulfillment of this commitment has been legislated through RERA, which demands much more than mere administrative reforms if the rule is to become a reality. Justice, social contract, and the state's primary duty towards its people are what is at stake here. The idea proposed by Swati Ramanathan of "reimagining regulatory architecture for Indian urban housing"[63] is more urgent today than when she wrote it. The homes of millions of Indians depend upon the answer.

[62]Housing Development Fin. Corp. Ltd. (HDFC), Annual Report 2022–23, at 34 (Mumbai 2023).
[63]Swati Ramanathan, Reimagining Regulatory Architecture for Indian Urban Housing, 57 Econ. & Pol. Wkly. 34 (2022).