

A Study of the Real Estate (Regulation and Development) Act, 2016 with Special Reference to Personal and Joint Liability

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ABSTRACT

The Real Estate (Regulation and Development) Act, 2016 (RERA) was enacted to address long-standing issues of consumer exploitation, lack of transparency, and weak accountability in the Indian real estate sector. Prior to its implementation, homebuyers often faced unfair contractual terms, delayed possession, and limited legal remedies against developers and promoters. This research paper critically examines the concept of personal and joint liability under the RERA Act, with special emphasis on the legal responsibilities of promoters, developers, landowners, agents, and other stakeholders involved in real estate projects. The Paper analyses various forms of liability recognized under RERA, including personal liability, professional liability, vicarious liability, strict liability, contractual liability, and joint liability. It highlights how RERA adopts a consumer-centric approach by imposing strict and joint responsibility on promoters, irrespective of internal agreements or receipt of consideration. The paper also discusses important judicial interpretations, particularly landmark decisions of the Bombay High Court and the Supreme Court, which affirm that all promoters in joint development projects are jointly liable to refund amounts and pay compensation to aggrieved allottee.

Keywords: Real Estate, RERA, Joint Liability, Stakeholders, Supreme Court.

Introduction

For some time, there has been a lot of rises in demand for residential houses and flats. Keeping this in mind, efforts have been made by government institutions to fulfill the demand for residential houses and flats through government schemes at various places. But in facing increasing demands, these schemes seem to be similar to cumin in the camel's mouth, due to taking advantage of such situation, various private and private institutions, companies and individuals have dominated the real estate sector by the union company and individuals. Those who sometimes show complete introduction to the interests of common consumers, such as forcing consumers to make contracts with inappropriate and one-sided terms, due to which the consumer might feel cheated by himself. Because the problems and disputes between developers and consumers in the field of Indian law real status before 2015 was arising. In relation to him, they could not fulfill the interests of consumers due to the law being ancient. As a result, developers and colonizers were repeatedly reaching the interests of consumers and consumers were not able to ensure the accountability of developers, colonizers, and builders due to lack of proper law. The need for an effective law was felt to solve the above types of problems and to secure and preserve the interests of consumers and to regulate the field of real status, as a result of which the "Real Estate (Regulation and Development)Act was passed by the proper government in year 2016.

After receiving the approval by the President on 25 March 2016, it was implemented on time specified by the central government.

The purposes of the RERA Act

The main objective of this act is to regularize the transactions between houses, flats and plot buyers and promoters under domestic and commercial projects, for which RERA (Real Estate Regulatory Authority) is to be established under each Indian state, which protects the interests of the buyers of the estate and the promoters, colonizers and dwellers, the builders, of the builders. Determines in the article, we will consider what kind of responsibility of promoters and developers will be mainly.

Type of Legal Obligations

The ability of joint liability to guarantee justice is what makes it relevant in Indian jurisprudence, especially when several parties are involved in a legal duty or transgression¹. By keeping one person from being held fully liable, particularly when other parties are equally at fault, it fosters justice. The effective settlement of conflicts and the collective enforcement of legal rights and obligations are further benefits it provides.

The individual-centric approach seen in contemporary criminal law systems is very different from the ideas regulating criminal culpability in ancient Hindu law. According to ancient Hindu jurisprudence, community harmony and the benefit of the whole are more important than the accountability of individual offenders, which is the primary focus of contemporary legal systems. Because people's acts are inextricably linked to their social identities and affiliations, the idea of joint culpability thus reflects a larger society perspective².

The liability under the law method is such a concept. The views of the jurists have been different. In a broader sense, responsibility means judicial bond. The responsibility of a human being arises when he violates his legal duty towards a person. Therefore, the 'Jurists Samand' has said that "The liability is such a bond of need which is in the midst of the crime and the treatment of the abuser made by him" it is noteworthy that the concept of liability is different from obligation. The obligation is related to the duties that are in accordance with the personal right, whereas a person under the liability is responsible for paying or harming the results of any of his objections.

The following types of liability are reported under the law.

- **Personal Liability**

Personal liability means that when an act is done by a person or an act that he is legally bound to do to the person who is illegally omitted by him and as a result of which any other person suffers any kind of damage or loss, then such a person is legally individually liable to fulfil the said damage or loss. This is called personal liability. That is, even if a landowner or developer has a joint venture agreement that outlines distinct roles. According to RERA, landowners are also regarded as promoters, particularly if they have awarded development rights or other contracts that permit the building and selling of real estate. They may therefore be held personally responsible for the debts owed to homebuyers.

Examples.

Under RERA, a promoter may be personal liability fined and forced to reimburse customers who lost money because they advertised a project with inaccurate or misleading information. A promoter may be fined and imprisoned if they do not register a project under RERA.

Such as if a contractor takes a contract to build a house independently and he uses very bad and poor goods to build that house, due to which the house is stagnated and the labourers are damaged, then in such a situation the contractor will be right to fulfil the damage to the labourers and the owner of the building³.

Recently The Supreme Court found Noida officials and Supertech Ltd.⁴ jointly and severally guilty for the illegal construction in the Supertech twin towers demolition case. This implies that Supertech and the accountable Noida officials bear both personal and joint liability for the results of their deeds, including the destruction and related expenses. The court underlined the need of holding people

¹ Sajitha, Principles of Joint Criminal Liability under Indian Penal Code 1860

² Indian Journal of Law and Legal Research Volume VI Issue II | ISSN: 2582-8878

³ <https://isd.law>

⁴ Supertech Ltd. v. Emerald Court Owner Resident Welfare Association... 2021 SCC OnLine SC 648

accountable for breaking rules, particularly when it comes to unapproved building. The Supreme Court upheld the decision of the high court after thoroughly examining the updated and authorized proposals of the project and considering the experiences presented.

It was determined that the applicants had submitted false claims to deceive the court, and that Noida had similarly acted dishonestly in fulfilling its responsibilities. The court ruled that the twin structures must be demolished within three months and that the contractor would bear all associated costs. Furthermore, the details of the case indicate a clear collaboration between the applicant and the officials of Noida during the sanctioning process, which led to the Supreme Court's order regarding the violation of the Uttar Pradesh Industrial Area Development Act of 1976 and the UP Apartments (Promotion of Construction Maintenance and Ownership) Act of 2010, in accordance with the provisions of the Area Development Act of 1973.

- **Professional Liability**

Professional liability means that when a particular person gains special qualification in a particular work area, then in such a situation it is legally understood that he knows all the facts specially to the person in a particular area and then he is done by the person, in such a situation, the person is responsible for the work done by the person, in such a situation.

It's often addressed through professional liability insurance, also known as errors and omissions insurance or malpractice insurance, which helps cover legal costs and potential settlements or judgments.

Under the RERA act also determines the professional liability of the promoters, agents and other interests of a project, in which the provision of proper punishing them is mentioned for not giving them proper information of the entire project, in which the provision of punishment from financial punishment to imprisonment.

Examples.

Required Project Registration: Prior to promoting or selling units, promoters are required to register their real estate projects with the appropriate RERA Authority. This is promoter's professional liability.

Honest Advertising: Advertisers are responsible for the veracity of the data they present in their prospectuses and ads. The promoter is required to reimburse a buyer who loses money as a result of receiving misleading information.

- **Vicarious Liability**

A legal theory of liability called vicarious liability, sometimes referred to as joint responsibility liability, gives the court the authority to hold an individual accountable for the actions of an others. According to this theory, people can be held vicariously liable for the criminal acts of others even if they only contributed to the crime in some way, such as by aiding and abetting criminal activity. This frequently happens in civil law contexts, such as employment cases. Vicarious liability establishes guilt in a criminal context¹ or criminal liability, to anyone for wrongful action committed by someone else. This doctrine is regarded as to be fundamentally flawed under criminal statute because it is based on "respondent superior" principles that deal with allocating losses brought on by cruel behaviour.

Vicarious liability means that under it, a person is attributed to the work done by any other partner, colleague, agent or any other person. Vicarious liability, as defined by the Real Estate (Regulation and Development) Act, usually applies to "Promoters" of real estate projects, which includes investors and landowners who provide money or land and anybody else participating in the project that may be held accountable for its debts.

RERA act sec. 69 clarifies that when any illegal duty is done under this method or this method is violated and such an act is done by a company; then in such a situation it will be right for the effective or responsible person of the company to be right for it. According to the Bombay Chartered Accountant Journal², some people, such as a manager or director, will also be held accountable and guilty if the offense was committed with their knowledge or approval or as a result of their negligence. Number

¹ [Vicarious Liability in Criminal Law - Academike](#)

² <https://bcajonline.org/journal/imprisonment-and-penalty-under-rera-realty-firms-directors-partners-and-officers-beware/>

Analytics¹ claims that RERA acknowledges that real estate firms can be held liable for violations of the Act committed by their agents and that they have an obligation to make sure their agents behave morally and responsibly.

- **Strict Liability**

A person or organization is legally liable for the results of an action or product under the legal doctrine of strict liability, regardless of whether they were negligent or meant to no cause harm. To put it simply, culpability can be established without blame or intent. Strict responsibility offenses in particular, promoters are required by RERA Section 14(3)² of the Act to fix any structural flaws that show up within five years of the date of possession, at their own expense. This implies that even if the builder wasn't directly at fault for the flaws, they are nonetheless liable for these repairs. The allottee (buyer) doesn't have to prove the builder was at fault for the defect to trigger this obligation. The mere existence of the defect within the five-year period is sufficient for the builder to be liable. Promoters will have to fix the structural defects found within 5 years of occupation free of cost within 30 days. The buyer has the right to compensate if the developer does not fix the flaws in a timely manner in RERA provision. The principle of strict liability also applied especially under the tort law.

- **Contractual Liability**

Legally speaking, contractual liability is the obligation that parties take on when they sign a contract. It is the duty to carry out the obligations and promises stated in the contract. The legal repercussions of breaching a contract are basically what it is. This burden may consist of monetary commitments. A party may be subject to financial penalties, specific performance (fulfilling what was promised), or other legal remedies if they are unable to fulfil their contractual duties. For which he is jointly and individually liable in the law. Joint liability in contracts means that all parties who jointly signed the contract are responsible for fulfilling its terms.

Developers' contractual obligations to homebuyers are the main focus of the Real Estate (Regulation and Development) Act, 2016 (RERA), Parties who violate specific contractual provisions such as failing to pay agreed-upon instalments or making mistakes in the building plan and design are subject to disputes. Especially when it comes to late possession or terms that are broken. If a developer does not deliver the property as agreed, RERA gives homebuyers the ability to demand compensation or even to withdraw from a project and receive a refund. In the event that the developer fails to fulfil contractual obligations, homebuyers may pursue remedies, such as reimbursement for their losses³.

- **Joint Liability**

Joint liability means according to the law, two or more people are deemed jointly liable for the same debt, duty, or transgression. This implies that any or all of the parties may be pursued by a creditor or claimant for the entire amount owed. When several people act together with the intent to commit a crime, joint culpability frequently arises in criminal law. One important clause pertaining to shared liability in India is found in Section 34 of the Indian Penal Code. When numerous parties cause harm, joint and several responsibilities may exist in tort law, RERA act and other civil laws, allowing the harmed party to sue any or all of them for full damages. Joint liability implies that all parties are responsible together.

In this view RERA Act Regardless of any internal agreements, promoters of a real estate project are jointly accountable for the project's duties under the Real Estate (Regulation and Development) Act (RERA). This implies that even when several promoters participate in a joint venture, they are all accountable for keeping the promises given to homebuyers, including delivering the project on schedule.

In a recent landmark decision, the Hon'ble Bombay High Court ("BHC") held, among other things, that a promoter of a joint development project who has not received any consideration from the allottee of an apartment coming to the share of another promoter is jointly obligated to refund that consideration with interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016

¹ <https://www.numberanalytics.com/blog/real-estate-ethics-vicarious-liability-guide>

² "In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act"

³ <https://thelegalschool.in/blog/real-estate-contract-law>

("RERA Act"), as part of the "Wadhwa Group Housing Private Limited ("Appellant") vs. Vijay Choksi and Ors." The appellant filed a special leave petition contesting the aforementioned BHC ruling, but the Hon'ble Supreme Court denied it in its April 8, 2024, order and following judgment was stated.

- The term "promoter" as defined in Section 2(zk) of the RERA Act encompasses a broad range of individuals involved in the construction of a building. This includes builders, colonisers, contractors, developers, estate developers, or any other designation, as well as those who assert they are acting as the holder of a power of attorney from the landowner. Furthermore, individuals who are simply investors in the project alongside the promoter and are entitled to benefits from the real estate venture are also included in the definition of "promoter." Additionally, a person who does not directly construct or oversee the construction of a building but participates in a joint venture and sells flats qualifies as a promoter.
- The appellant is not exempt from the obligations and liabilities under the RERA Act, Rules, and Regulations pertaining to the flat just because it falls within SEPL's right under the JDA. The responsibilities of various promoters in various project sectors are not defined or limited under the RERA Act. According to the RERA Act, Rules, and Regulations, the liability is joint for all purposes.
- Regarding the joint liability of multiple promoters, the project's status as an ongoing project would not change anything. The ongoing projects were a major factor in the Circular's issuance. Therefore, the landowners/investors must decide whether they want to continue in the joint venture before registering the project. They must take on the obligations of a project promoter if they choose to carry on with the joint venture once the RERA Act goes into effect.
- Section 18 of the RERA Act cannot be narrowly interpreted to only include the promoter who actually received the money; doing so would allow developers to accept payments in one promoter's account on purpose and then avoid having to reimburse or pay interest to the allottee on the fictitious grounds that the other promoters are not responsible for those payments.
- Whether or not there is privity of contract with each promoter, all promoters are held jointly accountable with the flat buyer when the latter makes a claim about a real estate project.

Accordingly, Bombay High Court decided that under Section 18 of the RERA Act, a promoter who has not received any consideration from an allottee is nevertheless jointly responsible to provide a refund with interest, along with the promoter who has received the money¹.

Conclusion

The ruling in Wadhwa Group Housing Private Limited ("Appellant") vs. Vijay Choksi and Ors., represents a major shift in the real estate industry. The Commission guarantees that customers are sufficiently shielded against service delivery delays and failures by upholding the shared liability of developers and landowners. Beneficiaries are empowered to effectively seek remedy due to the expanded interpretation of consumer rights, regardless of contract privacy. This ruling not only preserves the values of justice and accountability but also sets a precedent that obligates all parties involved in real estate projects to maintain transparency, stick to timeframes, and complete their contractual obligations diligently.

The paper concludes that the RERA Act has significantly strengthened consumer protection by ensuring transparency, timely project delivery, and accountability of all parties involved. The doctrine of joint liability under RERA serves as an effective mechanism to prevent avoidance of responsibility and promotes fairness, justice, and confidence in the real estate sector.



¹ <https://corporate.cyrilamarchandblogs.com/2024/05/promoters-liability-for-joint-development-projects-consideration-received-by-one-cannot-absolve-the-other-from-joint-liability-to-refund/>