



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Finance
Member of Consultative Committee on Finance
Member of Central Advisory Committee for the National Cadet Corps
Co-Chairman, District Development Coordination & Monitoring Committee, Bengaluru Urban District
September 06, 2018

Dear Kumaraswamy avaré,

Sub: Enforcement of the Real Estate (Regulation and Development) Act, 2016
("RERA") in Karnataka

- Ref:** 1. My Letter dated July 1, 2016 - "Regarding the Appointment of an Officer as Regulatory Authority by the State Government of Karnataka for the Interim Period".
2. My Letter dated July 4, 2017 - "Enforcement of RERA in Karnataka".
3. My letter dated August 8, 2017 - Karnataka Real Estate (Regulation and Development) Rules, 2017

I am writing this to you to bring to your notice the anguish of Home buyers of Bengaluru and other cities of Karnataka who are deprived of benefits of RERA Act as envisaged by the Parliament.

Despite series of letters to your predecessor Shri Siddaramaiah, (Copies attached), the enforcement of Real Estate (Regulation and Development) Act 2016 in Karnataka, is continuing to deny its full benefits to lakhs of homebuyers due to dilution in its implementation.

I therefore urge you to act in accordance with your constitutional obligations and initiate immediate action for

1. Amendment to the Diluted Karnataka Real Estate Rules to be in line with that of Ministry of Housing notified Rules for UTs. In this context, your attention is invited to the Mumbai High court ruling to the challenges to Real Estate Act vide Writ Petition No. 2708 of 2017, where it upheld the RERA Act as under:

Para 288 : "We hold that challenge to constitutional validity of first proviso to Section 3(1), Section 3(2)(a), explanation to Section 3, Section 4(2)(I)(C), Section 4(2)(I)(D), Section 5(3) and the first proviso to Section 6, Sections 7, 8, 18, 22, 38, 40, 59, 60, 61, 63, 64 of the Real Estate (Regulation and Development) Act, 2016 fails. These provisions are held to be constitutional, valid and legal"



2. Notify Draft Rules for Agreement for Sale without depriving the Benefits to Karnataka Homebuyers. The Executive ought to have completed this by October 2016. The RERA Act under Section 84 contemplates that within 6 months of the RERA Act being enforced, State Governments shall make rules for carrying out the provisions of the Act. The RERA was notified on 1st May 2016 and all the States were expected to notify the RERA rules by 31st October 2016.
3. A Permanent Chairman for Real Estate Authority for Karnataka as per Section 20 of the Act, and An Appellate Tribunal as per section 43 of the Act, should have been in its place by 31st May 2017 and unfortunately no action is initiated by Government of Karnataka till date.

I urge you to ensure that implementation of RERA Act in Karnataka complies with the statutory mandates of RERA and Rules are amended and notified to effectively enforce the law in its original letter and spirit, failing which the citizens may be constrained to approach the court.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Shri H D Kumaraswamy
Hon'ble Chief Minister
Government of Karnataka
Vidhana Soudha, Bengaluru

Copy to:

1. **Shri U T Khader**, Hon'ble Minister for Urban Development & Housing, Government of Karnataka, Vidhana Soudha, Bengaluru
2. **Shri Krishna Byre Gowda**, Hon'ble Minister for Law & Parliamentary Affairs, Government of Karnataka, Vidhana Soudha, Bengaluru



RAJEEV CHANDRASEKHAR
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Member of Central Advisory Committee for the National Cadet Corps
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District
Vice Chairman, National Military Memorial Management Trust, Bangalore

1st July, 2016

Dear Shri Siddaramaiah avare,

Sub: Regarding appointment of an Officer as a Regulatory Authority by the State Government of Karnataka for the interim period under the Real Estate (Regulation and Development) Act, 2016.

Ref: Real Estate (Regulation and Development) Act, 2016.

As you are aware the Real Estate (Regulation and Development) Act, 2016 has been enacted by the Parliament and the same has received the assent of the Hon'ble President of India on 25th March 2016. Further, the Central Government has vide Notification dated 26th April, 2016 has appointed the 1st day of May 2016 as the date on which most of the provisions of the Real Estate (Regulation and Development) Act, 2016 have brought into force, including Section 20 of the Real Estate (Regulation and Development) Act, 2016 (in short referred to as "**Act**").

The Act has been enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to protect the interest of the consumers in the real estate sector amongst other objectives.

It is pertinent to note that, in terms of Section 20 of the Act, the State Government of Karnataka is required to establish an Authority to be known as the "Real Estate Regulatory Authority" within a period of one year from 1st May, 2016, to exercise the powers conferred on it and to perform the functions assigned to it under the Act. The third Proviso to the said Section 20 provides as follows:

"until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act".



The Act *inter-alia* aims to bring about much needed reform in the real estate sector i.e., to protect the interest of consumers in the real estate sector and to promote sale of plot, apartment or building in an efficient and transparent manner. In order to implement the same, it is necessary to designate any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes of the Act. Without such appointment, the provisions of the Act cannot be effectively implemented and enforced in the State of Karnataka. For the betterment of our citizens and in the interest of the consumers of the real estate sector, it is essential to designate an officer as the Regulatory Authority for the purposes of the Act.

In light of the above and Section 20 of the Act, I urge you to pass an appropriate order to appoint the Principal Secretary to the Department of Housing, Government of Karnataka, as the 'Regulatory Authority' for the purposes of the Act, as soon as possible, to ensure effective implementation of the provisions of the Act in the State of Karnataka. Any delay in such appointment would not only defeat the very essence of the Act but also render the Act toothless, and continue to have consumers suffer at the hands of law breaking real estate companies.

This letter is on behalf of lakhs of real estate consumers under this Act who will get justice in its early implementation.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri Siddaramaiah

Hon'ble Chief Minister
Government of Karnataka
Vidhana Soudha, Bangalore

CC: **Shri K J George**, Hon'ble Minister for Bengaluru Development & Town Planning, Vidhana Soudha, Bengaluru



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Defence
Member of Consultative Committee on Finance
Member of Central Advisory Committee for the National Cadet Corps
Co-Chairman, District Development Coordination & Monitoring Committee, Bengaluru Urban District

July 04, 2017

Dear

Siddaramaiah - aware,

Sub: Enforcement of the Real Estate (Regulation and Development) Act, 2016 ("RERA") in Karnataka.

Ref: My letter dated July 1, 2016, titled "*Regarding the appointment of an Officer as a Regulatory Authority by the State Government of Karnataka for the interim period under the Real Estate (Regulation and Development) Act, 2016*".

I write to you to regarding the inordinate delay by your government in notifying the Karnataka State Real Estate (Regulation and Development) Rules and the failure to constitute: (i) the Real Estate Regulatory Authority; and (ii) the Real Estate Appellate Tribunal. The Executive ought to have completed these activities by May 1, 2017.

You will no doubt be aware that RERA was enacted by the Parliament and received the assent of the His Excellency, the President of India on March 25, 2016. Most of the provisions of RERA, including Section 20, were brought into force on May 01, 2016. Among others, Section 20 of RERA required the State Government to designate any officer (preferably the Secretary, Department of Housing) as an interim regulatory authority until the constitution of permanent regulatory and appellate authorities. In this regard, I had as early as July 2016, addressed the letter above referenced, requesting you to appoint the Principal Secretary to the Department of Housing, Government of Karnataka, as the interim regulatory authority. Unfortunately, no action was initiated by your government, either regarding the interim authorities or as regards the permanent authorities.

As per Sections 20 and 43 of RERA, the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal are to be established and incorporated by the State Government within a period of one year from the date on which RERA came into force i.e., within a period of one year from May 1, 2016. To this effect, the State Government is also



required to formulate rules. It is unfortunate that your government has failed to notify the Rules, thereby, depriving the benefits of RERA to the residents of Karnataka; and also thereby indefinitely delaying the commencement of the process of appointment of the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal.

I urge you to comply with the statutory mandates of RERA and ensure that the Rules are notified after taking into consideration the suggestions and objections proffered by the civil society. Further, in the interregnum, until the permanent Real Estate Regulatory Authority and the Real Estate Appellate Tribunal are constituted, I urge you to forthwith appoint an interim regulatory authority to implement the statutory mandates of RERA. I also urge you to notify, as an interim measure, an existing tribunal in the State of Karnataka, as the interim Appellate Tribunal under RERA.

There is no gainsaying the fact that RERA was enacted to curb malpractices in the real estate sector and to protect the interests of consumers. The real estate sector is in immediate need of regulation to ensure the welfare of the consumers at large. In such circumstances, the inaction on the part of your government is inexplicable as well as inexcusable. It is a failure of the government's promise of upholding the rule of law. In this regard, I draw your attention to Article 256 of the Constitution of India, which casts an obligation on the Executive of every State to ensure compliance with laws made by the Parliament.

I draw your attention to the fact that many state governments have demonstrated alacrity in complying with RERA's statutory mandates. Eighteen States have notified rules; nine States have appointed interim regulatory authorities; and three States have notified and constituted regulatory authorities. Many have also established online portals as required under RERA. I see no reason why the people of Karnataka should continue to bear the brunt of practices prohibited under RERA and be rendered remediless due to the inaction of your government.

I therefore urge you to act in accordance with your constitutional obligations and initiate action for: (i) the notification of the Rules; (ii) immediate appointment of the Principal Secretary, Housing Department as the interim regulatory authority; and (iii) immediate notification of an existing Tribunal in the State of Karnataka as the interim Appellate



Tribunal under RERA. I further urge you to immediately commence the process of establishing a permanent Real Estate

Regulatory Authority and a permanent Real Estate Appellate Tribunal in the State of Karnataka, thereby effectively enforce RERA in the State of Karnataka.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri Siddaramaiah
Hon'ble Chief Minister
Government of Karnataka
Vidhana Soudha, Bengaluru

Copy to:

Shri M Krishnappa, Hon'ble Housing Minister, Room Number 257 A, 2nd Floor, Vidhana Soudha, Bengaluru



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August 08, 2017

Dear *Shri Siddaramaiah avaré*,

Sub: Karnataka Real Estate (Regulation and Development) Rules, 2017.

Ref: (1) My letter dated July 1, 2016, titled "*Regarding the appointment of an Officer as a Regulatory Authority by the State Government of Karnataka for the interim period under the Real Estate (Regulation and Development) Act, 2016*";

(2) My letter dated July 04, 2017, titled "*Enforcement of the Real Estate (Regulation and Development) Act, 2016 in Karnataka*".

I congratulate your Government for notifying the Karnataka Real Estate (Regulation and Development) Rules, 2017 ("Rules"), albeit with considerable delay. Whilst I hoped that the Rules would assist in achieving the objectives of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), I cannot help but write to you expressing my concerns regarding the Rules and the anomalies therein.

You will admit that RERA is a beneficial Central legislation, intended to protect the interests of real estate consumers and the citizenry. RERA establishes a new regulatory regime to rein in errant real estate developers. It provides for a legal paradigm that ushers in transparency in the real estate industry. RERA contemplates that such a regulatory regime would be implemented by an independent regulator i.e., the Real Estate Regulatory Authority; and the policy implementation would be checked by an independent judicial tribunal i.e., the Real Estate Appellate Tribunal. Unfortunately, by framing the Rules in the manner that it has been, an attempt seems to have been made by your Executive, to dilute the regulatory regime and deprive the benefits of RERA to the consumers and the citizenry.



A bare reading of the Rules demonstrates *ex-facie*, that the Rules go beyond the ambit of the parent Act and in effect attenuates the provisions of RERA. Whilst a closer scrutiny of the Rules may be required by the Law Department and Law Officers of the State, I am highlighting below, a few glaring illegalities and inadequacies in the Rules.

Attempt to exclude Ongoing Projects from the rigors of RERA:

The Rules have provided a safe harbor to ongoing real estate projects in the State. In effect, the Rules dilute the rigors of RERA. Section 3(1) of RERA categorically stipulates that all projects that are ongoing; and for which the completion certificate has not been issued, must necessarily be registered with the Real Estate Regulatory Authority, thereby bringing it within the rigors of RERA.

However, the Explanation to Rule 4(1) of the Rules, exempts various ongoing projects which fulfill certain artificial criteria stipulated therein, from the requirement of registration. By stipulating such exemptions in the Rules, an attempt has been made to ring fence a number of ongoing projects for which completion certificates have not been issued; and which otherwise would have been subject to the rigors of RERA. By way of illustration, the following have been excluded from the requirement of registration, by virtue of the Rules:

- (i) Layout projects where the streets, civic amenities sites and other services have been handed over to the local authority and the planning authority for maintenance;
- (ii) Apartment projects where common areas and facilities have been handed over to the registered Association consisting of majority of the allottees;
- (iii) Projects which have been completed and certified by the 'competent agency' and where sale/lease deeds for 60% of the apartments/houses/plots have been executed and registered; and
- (iv) Projects which have been completed and certified by the 'competent agency' and where application has been filed with the authority concerned for issue of the completion certificate.



Further, sub-clauses (iii) and (iv) of the Explanation refer to the certification of the projects by the 'competent agency'. The said term 'competent agency' has not been defined in the Rules. However, by means of a Press Release (http://housing.kar.nic.in/Press_Release_RERA.pdf), an attempt has been made to denote certain local and municipal authorities as 'competent agency'. By doing so, the Executive has attempted to exclude a vast majority of the ongoing real estate projects in the State, from the mandates of RERA and bring them back into the jurisdiction of the municipal and other local authorities.

In effect, therefore, the attempt is to continue the jurisdiction of local and municipal authorities on all ongoing projects and thereby prevent the applicability of a beneficial legislation such as RERA to such ongoing projects. In my view, this amounts to a fraud on power, as Executive power cannot be exercised in a manner so as to prevent the applicability of a special beneficial legislation such as RERA. Such exclusion is not only illegal but also demonstrates the mischief of the Executive, to dilute the rigors of RERA and deprive its benefits to consumers and the citizenry.

Attempt to dilute financial discipline:

Section 4(2)(l)(D) of RERA provides that 70% of the amounts realized in each real estate project, from the allottees, must be deposited in a separate account maintained in a scheduled bank to cover the cost of construction and the land cost, for such projects. These amounts are to be used strictly in accordance with the mandates of RERA and withdrawals ought to be in proportion to the percentage of completion of the project.

However, Rule 5 of the Rules expands the definition of cost of construction and cost of land. The Rules include within such costs, all approval costs, taxes, off-site expenses, interest etc. This will enable the mischievous promoters/developers to withdraw large sums of monies and divert them for purposes not germane to the project in question. In effect, the financial discipline induced by RERA is being diluted by the Rules. Clearly, the Rules not only go beyond RERA but also attempt to dilute the parent Act, which is impermissible.



Attempt to dilute the control of allottees and purchasers:

Section 14 of RERA establishes an architecture whereby allottees and purchasers of real estate developments exercise a degree of control over belated modifications to real estate developments by unscrupulous developers. In effect, Section 14 prevents real estate developers from belatedly modifying or altering sanction plans and specifications of buildings, unless they obtain written consent of at least two thirds of allottees/purchasers.

The Executive has, through the Rules, attempted to dilute this safety net and protection afforded to the purchasers/allottees by RERA. Rule 4 creates various exceptions whereby the prior written consent of at least two third of the allottees would not be required in case of additions and alterations in the sanctioned plans, layout plans, etc. This Rule is in the teeth of RERA and attempts to dilute the protection afforded to real estate consumers by Section 14.

Non-stipulation of a format of Agreement for Sale:

Section 13(2) of RERA stipulates that the agreement for sale to be executed by and between the promoter/developer and the allottee, must be in such form as prescribed by the Rules. The intent was for the Rules to prescribe a format which takes care of factors prevalent in the State and which protects the interests of the consumers. The Rules promulgated by your Government, however, does not prescribe any format, thereby grossly diluting the beneficial impact of Section 13(2). I cannot fathom why a format of the agreement for sale was not prescribed by the Rules, despite the draft rules containing a format, which received extensive comments and feedback from the civil society.

Extraneous mechanism for Interpretation of the Rules:

You will agree that formulating laws is the job of Legislature and in the present case, Parliament has enacted RERA. What is delegated to the State Executive is the subordinate exercise of making rules. The Executive cannot confer itself over-arching powers to become the final authority in the interpretation of such rules. Your Executive, by promulgating Rule 46, has attempted to do exactly that. Rule 46 confers upon the Housing Department the authority to be the final interpreter of the Rules and further denotes that such an interpretation would be binding. By doing so, your Executive has attempted to impinge into the judicial domain, which by virtue of separate of powers



in our Constitution, is the exclusive prerogative of the judiciary. This manifests the overbearing nature of your Executive and of the Rules generally.

The Executive, when acting as the delegate of the Legislature, should have ensured that the Rules are a result of intelligent care and deliberation. The Executive is expected to undertake a deeper study, prior to formulating rules. At any event, the Rules cannot travel beyond the scope of the parent Act or in any manner create rights and liabilities beyond the mandates of the parent Act. It is inconceivable in our Constitutional scheme for an Executive to attempt to dilute the rigors of the parent enactment.

I urge you, therefore, to initiate necessary action to amend the Rules and align it with the provisions of RERA.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri Siddaramaiah
Hon'ble Chief Minister
Government of Karnataka
Vidhana Soudha, Bengaluru

Copy to:

Shri M Krishnappa, Hon'ble Housing Minister, Room Number 257 A, 2nd Floor,
Vidhana Soudha, Bengaluru