

REAL ESTATE SECTOR

1. What is the real estate sector?

Real estate is the umbrella word for any land-based property that includes a building or structures. It entails the acquisition, resale, and development of land as well as residential and nonresidential structures. After agriculture, real estate is the industry that generates the second-highest number of jobs in India. Customers know virtually little about this industry. This is the reason why they are taken advantage of and defrauded in this industry.

2. What are the available grounds for complaints?

- False assurances about the provision of various amenities
- Delays in handing over possession even after making full and final payments.
- Clandestine sale of disputed properties which do not have a clear title.
- Wrong measurements and usage of sub-standard materials.
- Charging more money than agreed.
- Construction not completed within the promised duration.
- Not providing the promised booked plot or flat.

3. What are the modes or methods of complaint available?

The consumer can register his complaint through various available mechanisms. These are provided below in a step-by-step manner. The complaint in consumer commissions can also be filed simultaneously with other remedies.

(i) Giving a Notice to the Builder:

The consumer shall issue a formal notice to the builder regarding the adverse practices being followed. If the builder does not respond within a reasonable period of time, the consumer can move further with the issue. At this point, the consumer can proceed under the RERA Act of 2016, and under the consumer protection act, 2019.

(ii) Under RERA, 2016:

RERA is applicable to projects that did not have the completion certificate as of the date of the enactment. Therefore, the consumer can file complaints against projects that are registered with RERA. In doing so, the consumer shall go to the state website of consumer redressal in RERA cases and register their complaints. A step-by-step guide to the same could be found in the link given below:

<https://rera.karnataka.gov.in/resources/staticpage/complaint%20usermanual.pdf>

Upon filling of the form, the consumer has to pay a small fee.

(iii) Approaching Confederation of Real Estate Developers' Association of India ("CREDAI"):

Established in 1999, CREDAI is the apex body of private real estate developers in India, which has adopted a voluntary standard code of conduct aspiring towards ethical business practices. A complaint on their portal could be registered using the following link:

<https://credai.org/register-your-complaint>

(iv) Approaching any other appropriate judicial or quasi-judicial body:

The complainant is free to take the service provider to a court or any other suitable venue (judicial or quasi-judicial). The proceedings in consumer commissions are not mired by the niceties of procedure, allowing the complainant to file a complaint for himself. As a consumer, the aggrieved party can take the service provider to the appropriate consumer commission, based on the pecuniary and territorial jurisdiction. The jurisdictions of the various consumer commissions are as follows-

a) *District Commission:* The aggrieved consumer can reach out to the District Commission under section 34 of the CPA, 2019, which provides that the district commission shall entertain matters where the value of the goods or services paid as consideration does not exceed more than one crore rupees.

b) *State Commission:* In cases where the value of the goods or services paid as consideration is more than one crore, but less than 10 crores, the consumer can approach the State Commission. Moreover, in cases of unfair contracts, the State Commission has original jurisdiction and the

consumer can be directly approached. An appeal against the order of the District Commission can also be made under section 47 of the CPA, 2019.

c) National Commission: The National Commission can entertain matters where the value of goods or services paid as consideration exceeds 10 crores. Section 58 also provides that complaints against unfair contracts can be entertained by NCDRC when the amount of value paid exceeds 10 crores. The NCDRC also has appellate jurisdiction against the orders of any State Commission and Central Authority.

Moreover, it must also be kept in mind, that section 100 of the CPA, 2019 provides that the remedy under CPA is in addition and not in derogation of other available remedies.

Another remedy available to consumers is mediation. Chapter 5 of the Consumer Protection Act provides for establishing mediation cells and resolving consumer complaints using mediation. The following link could be used to file complaints online:

<https://consumerhelpline.gov.in/>

(v) Central Consumer Protection Authority

If the commission finds violations of rights of consumers or in notice of trade practices which is unfair it can inquire or cause an inquiry, either on receipt of complaint or suo moto or as directed by Central Government. If the commission finds, after preliminary inquiry, of an existence of a prima facie case of consumer rights violation or it is in notice of any unfair trade practice or any wrong or inaccurate advertisement which is prejudicial to public interest or to the interests of the consumers, it can order an investigation by the District Collector or by Director General.

The consumer can complain to the District Collector of the respective district for investigation and subsequent proceedings by the CCPA. He/she/they can also submit a complaint via email, at com-ccpa@nic.in.

4. What are the regulatory bodies in this sector?

Real Estate Regulatory Authority is known by the acronym RERA Authority. It was created by the government to regulate how the real estate sector is run. The purpose behind the government's introduction of the body was to provide accessibility and transparency for both parties engaged in purchasing and selling real estate. The body has the power to mandate the

developers and real estate marketers to provide all pertinent project information. Additionally, each real estate agent is required to register both themselves and their projects with the right authorities. The main goal of the RERA Authority is to provide purchasers with relief by swiftly settling disputes. Enforcement of industry openness and accountability is another responsibility of the Authority.

5. What are the rules, Acts, and Guidelines that govern this sector?

1. The Real Estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) Act, 2016 is an Act of the Parliament of India which seeks to protect home-buyers as well as help boost investments in the real estate industry. This Act brings fair practices in the real estate sector that would protect the interests of the buyers. It also imposes penalties on errant builders.

https://legislative.gov.in/sites/default/files/A2016-16_0.pdf

Further, it establishes the Real Estate Regulatory Authority (RERA) in each State for regulation of the real estate sector and also to act as an adjudicating body for a speedy Redressal of disputes. It is applicable for all commercial and residential real estate projects where the land is over 500 square metres.

6. What are the landmark judgements in the sector?

1. *Sanjay Gupta v. Three C Shelters*

In the above case, it was held that the delay in handing the possession of the property is a valid ground for claiming of refund by the complainant.

2. *Wg. Cdr. Arifur Rahman Khan and Aleva Sultana & others v. DLF Southern Homes Pvt. Ltd*

Similar to the above case, the Supreme Court held that failure of the developer to comply with the contractual obligation to provide the flat to a purchaser within a contractually stipulated period amounts to a deficiency of service.

3. *Imperia Structures Ltd. v. Anil Patni*

Here, the court held that the remedy under RERA is without prejudice to any other remedy available and, therefore, remedy under the CPA is available in addition to other legislations and not in derogation thereof.

7. What is the format of the complaint to be made?

<https://cdrc.gujarat.gov.in/images/pdf/1-CC-Eng.pdf> - DCDRC format.

<https://cdrc.gujarat.gov.in/images/pdf/1-CC-Eng.pdf> - SCDRC format.

<https://ncdrc.nic.in/cc.html> - NCDRC filing.

8. What are the important links and resources?

1. About CREDAI <https://credai.org/abouts>

2. Real Estate FAQs <https://consumerhelpline.gov.in/faq-details.php?fid=Real%20Estate>

Real Estate FAQs

1. What are the documents that I need to check before buying a property?

Check for proper conveyance of Title in favour of the builder.

Check the license/development right/approvals of the builder.

Check clear and marketable title of the project.

Ensure execution of proper Allotment Letter/Sale Agreements on your payments.

Ensure whether reputed financial companies approve the project. This will help you in getting financial loans.

Check the tentative layout/building plan and verify the plinth area of the apartment. It is advisable to check the carpet area of the apartment and find out if the difference between plinth area and carpet area is reasonable.

Ask for Occupation/Completion Certificate.

Ensure the Conveyance Deed is registered after the entire payment has been made.

For buying a property you need to check Deed of Conveyance, Mutation Certificate (for complete property), Land Registration Status, Sanction Plan, Search Report and Payment Schedule (for under construction). It is a must that you go through all the documents relating to the origin of the property, chain of Title, Occupancy Certificate, sanctions from various authorities dealing with building plans, fire safety and Completion Certificate.

For re-sale property, check demand notice relating to renovation, tax dues and latest receipts of payments made towards various out-goings such as water, electricity and ground rent.

2. What is the difference between Built-up Area, Super Built-up Area and Carpet Area?

Carpet Area is the area of the apartment that does not include the area of the walls i.e. the area of the apartment that a carpet can cover. Built-Up Area is the area of the apartment that includes the area covered by the walls. Super Built-Up Area includes the built-up areas such as the lobby, lifts, stairs etc. This term is therefore only applicable for multi-dwelling units, such as flat complexes.

3. What is the difference between the Lease, Leave, and the License agreement?

A Lease, defined under Section 105 of The Transfer of Property Act, 1882, is a transfer of the right to enjoy the concerned property for a pre-defined time period or in perpetuity. The lesser (owner of the property) gives the lessee (the one leasing the property) such consideration periodically, usually at the beginning or end of a lease agreement. License is defined in Section 52 of the Indian Easements Act, 1882. License does not allow any interest in the premises on the licensee's part. It merely gives the licensee the right to use and occupy the premises for a limited duration. A lease deed needs to be stamped and registered. The amount payable towards the lease deed's stamp duty is more than that payable towards the Leave and License's. For a period exceeding three years, the stamp duty is same for both agreements.

4. What are the implications of entering into a lease agreement?

There are various implications of entering into a lease agreement such as you have to pay the stamp duty, the lease agreement has to be registered etc. Who does a group of tenants of a old

building approach to be able to form a society without the concerned landlord's permission? You can approach the Registrar of Co-Operative Societies and file the various relevant documents.

5. What exactly do we mean by free hold?

A freehold property flat is one where there is a whole and sole owner/s, ownership is full and unconditional and there is no lessor. A freehold property flat is one where there is a whole and sole owner/s, ownership is full and unconditional and there is no lessor / lessee involved.

6. Who is liable to pay Stamp Duty-the buyer or the seller?

The buyer is liable to pay the stamp duty.

7. What is meant by the market value of the property and is Stamp Duty payable on the market value of the property or on consideration as stated in the agreement?

Market value of property is the price at which there is a willing buyer and a seller agreeing to the transfer the property at an arms length transaction. Stamp duty is levied on the ready reckoner rate or the agreement price, whichever is higher.

8. Who is the appropriate authority for knowing the market value of the property?

It is ideal to get the valuation done by a certified valuer for the house as per the ongoing rates. The property valuation reports can be obtained from the architects or a certified valuation expert.

9. What action can I take against a builder who is delaying possession?

The first course of action should always be to issue a letter in writing to the builder stating your grievance. Ensure that all assurances by the builder of giving you possession on such and such date are given to you in writing on the letterhead and under the seal of the builder. If it appears that the builder will not be giving you possession in an acceptable time period then you may approach CREDAI for mediation.

10. What is CREDAI?

The Confederation of Real Estate Developers' Association of India (CREDAI) is an association formed by developers and builders in India for self-regulating the business of real estate

development. CREDAI has more than 8500 member developers and builders through 112 member associations with representation in all the major cities and states of the country. CREDAI has its office at #703, Ansal Bhawan, Street 16, Kasturba Gandhi Marg, New Delhi, Delhi 110001.

11. What is your recourse in case of a delayed project?

First and foremost, buyers should scrutinize the project and the background of the developer. If possible, they must hire a real estate consultancy firm who has market expertise and is known for unbiased consulting. In addition, an investor has the right to ask for the copies of approvals of the project, if not buying during a soft launch stage. You must ask for detailed construction schedules and negotiate for penalty clause in case of delay of project. Refunds can be claimed if a project is delayed beyond the period stipulated in the Builder Buyer Agreement by filing a case in the consumer court.