



A Comparative Study of Regulatory Framework and Consumer Rights in Real Estate Transactions in India and the UK

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Abstract

Real estate transactions typically involve the largest financial investments made by individuals. Considering the size of transactions, consumers in this field require a solid legal framework to protect themselves from fraud, delays, and other malpractices. The legal environments of the Indian and UK real estate industries represent two extremely different legal scenarios. This study analyses consumer rights and remedies in real estate transactions in the United Kingdom and India, taking into account enforcement efforts, judicial trends, and legislative frameworks. The study's goal is to analyse the consumer protection regulations and propose measures for increasing consumer trust in real estate markets. It examines regulatory frameworks, legal clarity, dispute resolution processes, and reforms in real estate transactions. The consumer rights, buyer-builder contract, rights of homebuyers during the insolvency of the real estate builder are also compared, considering the real estate industry's rising corporate crisis in India. At the end, suggestions are made for cross-border harmonisation of best practices for improving consumer protection in the real estate market in India.

Keywords: *Real Estate Sector, Real Estate transactions, Consumer Rights, Consumer Protection, Insolvency, Homebuyer.*

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Introduction

The real estate sector is foundational to economic development, social stability, and personal

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wealth. The real estate business is India's second-largest employer, trailing only agriculture. The growth of India's urban population, which was 37.7 crore in 2011 and is predicted to reach 60 crores by 2030, has increased demand for residential and commercial real estate. However, malpractices such as delays in giving possession, false ads, black money transactions, and a lack of grievance redressal made homebuyers vulnerable. India's real estate is a developing market in transition, and in contrast, the UK has a historically established and codified real estate regime. A country's economic growth is heavily influenced by its real estate market. Real estate demand has skyrocketed in India as a result of urbanisation. However, this expansion has led to several unethical tactics that regularly put clients at risk. Legal frameworks must change as markets do in order to safeguard consumers, maintain transparency, and offer redress in cases of fraud, delay, or default. Both countries have established legal safeguards for consumers, but the nature and scope of these measures vary. This study compares the legal rights and remedies available to consumers in real estate purchases in these two jurisdictions to gain insight from the UK's developed real estate regime. The study's goal is to offer insight into how each country handles the issues involved with real estate transactions, as well as the resolution of any resulting disputes. Furthermore, it examines the effectiveness of enforcement techniques, reviews major court decisions, to identify best practices and areas of reform for improving consumer protection in the real estate market in India.

Methodology

The paper explores and compares the regulatory frameworks related to real estate transactions and consumer legislation in England and India, as well as the safeguards in place to protect consumers.

Key Regulatory Frameworks governing the Real Estate Sector

United Kingdom: The key regulations related to the real estate sector in the UK include the Town and “Country Planning Act, 1990”, “Housing and Planning Act, 2016” and the “Land Registration Act, 2002”. In the UK, the planning system ensures the legality of the real estate developments and the HM Land Registry ensures its title certainty.³ The Housing Act of 2004

³ Land Registration Act 2002, c. 9 (UK); Housing Act 2004, c. 34 (UK); Town and Country Planning Act 1990, c. 8 (UK).

establishes social housing requirements and manages landlord-tenant relationships. It replaces the previous housing standard under the Act of 1985 with the new “Housing Health and Safety Rating System”.⁴ One of the primary goals of this Act is to ensure that buildings used for housing meet acceptable criteria. These standards are evaluated using the Housing Health and Safety Rating System.⁵ It also provides tenancy deposit systems to preserve deposits made in connection with assured short hold.⁶ The Housing and Planning Act, 2016, on the other hand, set out the legislative framework for Starter Homes.⁷ Whereas, the planning rules, namely the “Town and Country Planning Act of 1990”, govern development limits and approvals. It is a key piece of legislation in the United Kingdom that oversees land use and development. Its major goal is to establish a comprehensive framework for regulating land use and other areas of urban and rural development. The Act's goals include promoting sustainable development, facilitating efficient land use, and protecting the environment. It establishes the legal foundation for planning authorities to govern land use, oversee building operations, and ensure that developments serve the public interest.⁸

India: The key statute related to the real estate sector is the “Real Estate Regulation and Development Act, 2016 (RERA)”. RERA was passed to increase the efficiency, accountability, and transparency of real estate transactions. The Real Estate Sector in India suffers from systematic irregularities such as project delays, fund diversion, malpractices, and the lack of a specialised dispute resolution procedure. RERA came as a response to deal with issues of the legacy stalled real estate projects and the malpractices underlying the real estate sector, establishing a regulatory framework to restore consumer confidence and accountability among developers and agents. RERA requires that real estate projects and agents register with RERA. RERA requires that all real estate projects larger than 500 square meters or involving more than

⁴ Housing Act 2004, Explanatory Notes, legislation.gov.uk, <https://www.legislation.gov.uk/ukpga/2004/34/notes>

⁵ Housing Renewal Guidance, Hastings Borough Council, https://www.hastings.gov.uk/housing/improvement/housing_renewal_guidance/

⁶ Housing Act 2004, Explanatory Notes, legislation.gov.uk, <https://www.legislation.gov.uk/ukpga/2004/34/notes>

⁷ Housing and Planning Act 2016, c. 22, <https://www.legislation.gov.uk/ukpga/2016/22/contents> (UK)

⁸ Town and Country Planning Act 1990, Aviso Consultancy, <https://www.avisoconsultancy.co.uk/legal-register/town-country-planning-act-1990>

eight flats be registered with the corresponding State Real Estate Regulatory Authority, disclose the authorised plans, including layout plans, a completion timeline, land title status, and approvals.⁹ It also requires 70% of the cash collected by the homebuyers to be deposited in escrow accounts, a separate bank account to be utilised only for the purpose of that specific project.¹⁰ This basically prohibits fund diversion, which was a major concern prior to RERA. It also provides for on-time delivery with a default penalty. Promoters are required to compensate buyers in the event of project delays, structural defects within five years, or false promises. RERA also obligates developers to update project progress quarterly and prohibits any advertisement or sale before project registration. Furthermore, real estate agents must also register with the Authority and adhere to prescribed ethical standards. RERA also assures that developers maintain the highest levels of construction quality. If any structural faults or poor-quality work are discovered within a specified period (typically five years after possession), developers must resolve the faults at no additional expense to the consumer and provide assurances for construction quality and materials used.¹¹ Additionally, it establishes Appellate Tribunals and Real Estate Regulatory Authorities at the state level to resolve complaints.¹² It creates a three-tier grievance redressal mechanism consisting of the “Real Estate Regulatory Authority”, the Adjudicating Officer, and the Appellate Tribunal, in order to ensure the resolution of disputes within sixty days, improving access to timely justice.¹³

The Ministry of Housing and Urban Affairs supervises urban planning and development in India. Unlike the UK's TCPA, India lacks a Central Act, every state has its town planning law because planning and development are subject to state control under the Indian Constitution (Entry 20 and 18 of the State List - List II).¹⁴ These undertake items similar to those of the UK's

⁹ The Real Estate (Regulation and Development) Act, No. 16 of 2016, Section 3, 4, 11, 18, INDIA CODE (2016), <https://www.indiacode.nic.in/handle/123456789/2159>

¹⁰ Raghavi Kasa, RERA Escrow Account: Meaning, Benefits & More, Razorpay Learn, <https://razorpay.com/learn/business-banking/rera-escrow-account>

¹¹ Ashwinder R. Singh, RERA India – Real Estate Regulatory Development, Ashwinderr Singh Blog, <https://ashwinderrsingh.com/blog/rera-india-real-estate-regulatory-development>

¹² Real Estate (Regulation and Development) Act, No. 16 of 2016.

¹³ Overview of Real Estate Regulation and Development Act 2016, Singhania & Partners, <https://singhania.in/blog/the-real-estate-regulation-development-act-2016-an-overview>

¹⁴ Entry 20 and 18 of the State List - List II of the Constitution of India.

TCPA, such as urban planning, development permits, and zoning. Similarly, India lacks a unified national housing act like the UK; state-specific Housing boards and Acts, including government initiatives such as Pradhan Mantri Awas Yojana (PMAY) are mostly responsible for housing and urban development, along with RERA being the primary legislation to regulate private real estate development. The same is supplemented by various other laws such as: The Model Tenancy Act, 2021 which regulates tenancy and housing and aims to protect the interests of landlords and tenants, as well as offer a fast and efficient dispute resolution process in connected matters;¹⁵ The Slum Areas (Improvement and Clearance) Act, 1956 which aims to ameliorate and eliminate slum areas in specific Union territories, and to safeguard renters from eviction and intends to address the issues of urban slums by establishing a legal framework for improvement, clearance, and rebuilding;¹⁶ and various other state Housing Acts.

Registration, Legal Certainty, and Title Assurance in Real Estate Transactions

United Kingdom: The Law of Property Act, 1925, lays down the provisions relating to conveyancing and the law of real property.¹⁷ The Land Registration Act, 2002 is the primary legislation controlling land registration in the UK.¹⁸ It establishes procedures for preserving a register of title to land and requirements for its management by HM Land Registry under a Chief Land Registrar.¹⁹ It established the HM Land Registry, which provides a publicly accessible digital registry and title guarantee. Section 4 of the Act provides that the title must be registered, mandating the compulsory registration upon certain transfers. Whereas Section 58 provides for the entry of a person in the register as the proprietor of a legal estate, the legal estate will be assumed to be vested in him as a result of the registration.²⁰ “Schedule 8” of the Land Registration Act, 2002 also provides for state-backed indemnity, which provides that a

¹⁵ Model Tenancy Act, 2021, Ministry of Housing & Urban Affairs, Govt. of India, <https://mohua.gov.in/upload/whatsnew/60b7acb90a086Model-Tenancy-Act-English-02.06.2021.pdf>

¹⁶ The Slum Areas (Improvement and Clearance) Act, 1956, Karma Legal, <https://karma.law/insights/the-slum-areas-improvement-and-clearance-act-1956/>

¹⁷ Law of Property Act 1925, legislation.gov.uk (UK), <https://www.legislation.gov.uk/ukpga/Geo5/15-16/20>

¹⁸ Land Registration Act 2002, legislation.gov.uk (UK), <https://www.legislation.gov.uk/ukpga/2002/9/contents>

¹⁹ Law Commission Review of the Land Registration Act 2002: Government Full Response, GOV.UK, <https://www.gov.uk/government/publications/land-registration-act-2002-government-response-to-the-law-commission-review/law-commission-review-of-the-land-registration-act-2002-government-full-response>

²⁰ Land Registration Act 2002, Section 58, legislation.gov.uk (UK), <https://www.legislation.gov.uk/ukpga/2002/9/contents>

person is entitled to be compensated by the registrar if he suffers loss due to the change of title under section 62.²¹

The registration in the UK provides a title guarantee through the title by registration system. The approach eliminates the necessity to demonstrate a chain of title and the need to trace the title back in time through a succession of papers. HM Land Registry guarantees the title and provides insurance in the event of fraud or error.²² This method promotes customer trust while lowering litigation.

India: The Transfer of Property Act, 1882, governs the transfer related to immovable property. The act required the execution of a valid deed to give effect to the transfer.²³ The Registration Act, 1908, governs the registration of documents related to the conveyance of immovable property.²⁴ Section 17 of the Act provides for the mandatory registration of certain transactions related to immovable property. Whereas Section 49 provides that any unregistered document of which registration was compulsory cannot affect property or be admitted as evidence in a court of law. Unlike the United Kingdom, which employs a title registration system, India uses a deed registration system. In India, property ownership is currently proven through presumptive land titling, a chain of documents that offer evidence of the transfer of title from one person to another person through the years, all the way to the current owner.²⁵ Even though the Registration Act of 1908 governs the registration of property documents, it does not ensure title. It provides for registration of a deed with a presumptive title system. Although Legislative changes are in the draughting stages, current initiatives such as “Digital India Land Records Modernisation Programme (DILRMP)” aim to progress towards conclusive land titling similar

²¹ Land Registration Act 2002, Section 62 & Sch. 8 (UK), <https://www.legislation.gov.uk/ukpga/2002/9/contents>

²² Land Registration Act 2002, Section 58-61

²³ The Transfer of Property Act, No. 4 of 1882, Section 54, 58, 105, INDIA CODE (1882), <https://www.indiacode.nic.in/handle/123456789/2180>

²⁴ The Registration Act, No. 16 of 1908, INDIA CODE (1908), <https://www.indiacode.nic.in/handle/123456789/2337>

²⁵ Land Registration Using Blockchain Technology, Blockchain Strategy for India, <https://blockchain.gov.in/Home/CaseStudy?CaseStudy=LandRegistration>

to the UK's Land Registration Act of 2002.²⁶ Land is a state subject in India, hence, land reform is complicated by several state-level rules and procedures.

India's lack of a definitive title system leads to multiple claims, forged deeds, and protracted legal actions. Instead of depending on assured record keeping, the system is based on registration of deeds and previous transactions.²⁷ Although fragmented record-keeping and overlapping authorities remain issues, India's digitalisation efforts (such as the Digital India Land Records Modernisation Programme) are imminent.²⁸ Significant progress has been made under the DILRMP programme, in terms of basic components, computerisation of land records, i.e. 95.08 percent Record of Rights (RoR) have been completed (6,25,062 villages out of total 6,57,396 villages in the country), and 68.02 percent Cadastral maps have been digitized (2,49,57,221 maps out of total 3,66,92,728 maps), 94.95% Computerisation of registration completed (5060 Sub-Registrar Offices out of total 5,329 SROs) and 87.48% of the integration of Sub Registrar Offices (SROs) with Land Records has been completed (4,662 SROs out of 5329 SROs).²⁹ The DILRMP now also includes “consent-based integration of Aadhaar numbers” with the land record database, as well as computerisation of Revenue Courts and their integration with land records. There are currently trial blockchain projects in place, including in Maharashtra and Telangana. As per the proposed system, the certifications produced by the Revenue Department will be recorded in the blockchain and can be utilised by other institutions, such as banks, for any verification process during a land transaction.³⁰

Consumer Protection and Dispute Resolution in Real Estate Transactions

United Kingdom: Mechanisms for resolving consumer disputes are critical for ensuring justice and fairness in real estate transactions. The UK relies on the common law for consumer protection. In the UK, real estate consumer protection is supervised by local authorities'

²⁶ Ministry of Rural Development, Digital India Land Records Modernization Programme (DILRMP), GOV'T OF INDIA, <https://dolr.gov.in/programmes-schemes/dilrmp-2/#:~:text=DILRMP%20is%20a%20Government%20of,the%20land%20records%20maintenance%20system.>

²⁷ Bibek Debroy et al., A CONCLUSIVE TITLING SYSTEM FOR INDIA, NITI Aayog (2021)

²⁸ Ministry of Rural Development, DILRMP Annual Report (2022–23), Government of India

²⁹ Year End Review 2023: Achievement of the Department of Land Resources (Ministry of Rural Development), Press Info. Bureau, Govt. of India, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1989671>

³⁰ Land Registration Using Blockchain Technology, Blockchain Strategy for India, NIC, Govt. of India, <https://blockchain.gov.in/Home/CaseStudy?CaseStudy=LandRegistration>

regulations, the Consumer Rights Act, 2015, the Housing Act 2004, the Property Ombudsman Scheme, the Consumer Protection from Unfair Trading Regulations, 2008, and the Alternative Dispute Resolution for Consumer Dispute Regulations, 2015 etc. The various remedies available to consumers in real estate transactions include registering a complaint with the Trading Standards or Property Ombudsman, initiating civil action for contract violations or deceit, and getting reimbursements and compensation under the Consumer Rights Act etc.³¹ The 2008 Unfair Trading Regulations prohibit traders from engaging in dishonest activity. Additionally, the National House Building Council (NHBC) provides warranties for new homes that cover structural problems for up to ten years.³²

Although contracts make up the majority of real estate transactions, strict regulation guarantees equity. The Consumer Rights Act of 2015 governs the contract between the real estate traders and the consumers. The Consumer Rights Act of 2015 ensures contract fairness, whereas the Misrepresentation Act of 1967 covers pre-contractual misstatements and provides legal remedies for nuisances, lease violations, and damaged property. The Consumer Rights Act, 2015 provides real estate consumers protection from unfair terms and ensures fair treatment. Section 2 of the Act provides for the definition of the consumer and trader; Section 62 of the Act lays down the requirement of the contract terms and notices to be fair, and Schedule 2 indicates the list of unfair terms.³³ It ensures fairness and provides for complete disclosure of facts and property conditions, protection against unfair contract terms, remedies through courts and the property ombudsman, claims for misrepresentation, and the option to withdraw during the cooling-off period. Additionally, the Housing Act 2004 establishes a housing standard and a mechanism to resolve disputes through local authorities and residential property tribunals.³⁴ Redress organizations like the Property Ombudsman, which are free, neutral, and independent Ombudsman services for settling conflicts between consumers and property agents, provide a voluntary ADR mechanism that provides for a quick and cost-effective dispute resolution and

³¹ Consumer Rights Act 2015, (UK); The Property Ombudsman Code of Practice.

³² NHBC Buildmark Warranty Coverage and Protection, Brickkickers, <https://brickkickers.co.uk/snagging-advice/nhbc-buildmark-warranty-coverage-and-protection#:~:text=Exchange%20to%20Completion,should%20the%20builder%20become%20insolvent>

³³ Consumer Rights Act 2015, Section 2, 62 & sch. 2 (UK), <https://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

³⁴ Housing Act 2004, Part 7 (UK), <https://www.legislation.gov.uk/ukpga/2004/34>

can provide non-judicial remedies as well.³⁵ Since 1990, the Property Ombudsman (TPO) initiative has provided an alternative dispute resolution mechanism to both consumers and property agents. Whereas “Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015” implements the EU ADR directive, which requires consumers to be given information regarding ADR institutions.³⁶

India: In India, the CPA, 2019, and the RERA, 2016 offer dual protection. These two are supplemented by the Indian Contract Act of 1872, the Transfer of Property Act of 1882, and state-specific policies. India's real estate business has risen dramatically over the past two decades, becoming the third-largest contributor to the GDP. As housing demand grows, builder-buyer disputes and delays in approvals, planning, and project delivery have increased. Historically, homebuyers depended on developers' discretion for property possession, which led to delays and contractual breaches. Judicial involvement, consumer redressal forums, and legislative initiatives like the Consumer Protection Act and RERA have endeavoured to improve consumer rights.³⁷

RERA, 2016, aims to increase accountability and transparency. RERA permits buyers to file complaints with the Regulatory Authority regarding fraud or delays. Any promoter, allottee, or real estate agent can file a complaint with the "Real Estate Regulatory Authority" if they violate the Act or its rules and regulations.³⁸ The Authority will address all complaints promptly and resolve them within 60 days of receiving the application.³⁹ The appellate tribunal can hear challenges against the authority's decision within 60 days after obtaining a copy of the directive or order.⁴⁰ Appeals from the Appellate Tribunal must be filed with the High Court within 60

³⁵ The Property Ombudsman, <https://www.tpos.co.uk/>

³⁶ Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, SI 2015/542 (UK), <https://www.legislation.gov.uk/uksi/2015/542/contents/made>

³⁷ Dr. Parineeta Goswami & Gurmanpreet Kaur, Real Estate Dispute Resolution: A Study of Remedies Available Under Real Estate Regulation Act and Consumer Protection Act, <https://ssrn.com/abstract=5085787> or <http://dx.doi.org/10.2139/ssrn.5085787>

³⁸ Section 31, Real Estate (Regulation and Development) Act, 2016

³⁹ Section 29, Real Estate (Regulation and Development) Act, 2016

⁴⁰ Section 44, Real Estate (Regulation and Development) Act, 2016

days after their decision. RERA provides for the timely delivery of possession and property ownership, disclosure of information to consumers, and provisions for complaints to consumer forums or the RERA authority. It also provides for reimbursement for unmet commitments and refunds, along with interest for cancellations or delays of handing over the possessions to homebuyers.⁴¹

The 2019 Consumer Protection Act classifies real estate services as "services" and allows consumers' commissions to hear complaints.⁴² Consumers have two years from the date of the cause of action to file a complaint with the consumer forum for defective or deficient products or services.⁴³ The consumer forums have pecuniary jurisdiction and resolve complaints within three months of receiving notification.⁴⁴ The Act allows the forums to award punitive damages and reimbursement for losses in appropriate cases. Indian consumers are entitled to the following remedies under the CPA: Refunds, interest, and compensation, which also include filing a complaint under the Consumer Protection Act (CPR) for criminal misconduct (such as cheating), bringing a civil suit for damages or specific performance, or filing a complaint under the RERA for delay or fraud.

In India, disputes may be brought before RERA Authorities, Consumer Commissions, NCLT under the IBC, and even Civil Courts. Homebuyers are acknowledged as consumers under the Consumer Protection Act of 2019 and the RERA, 2016, which gives them various remedies such as the right to timely delivery, reimbursement, and compensation in case of delay. Individual claims, however, may be suspended after the IBC is invoked and a moratorium under Section 14 is established. On November 02, 2020, the Hon'ble Supreme Court in a landmark judgment held that the Consumer Protection Act's remedies are not barred by the RERA Act, and the Consumer Protection Act and RERA remedies are complimentary and concurrent.⁴⁵ The establishment of the Real Estate Tribunal did not take away the jurisdiction of the

⁴¹ Section 18, 31, Real Estate (Regulation and Development) Act, No. 16 of 2016.

⁴² Consumer Protection Act, No. 35 of 2019, Section 2(42), India Code.

⁴³ Section 69(1), Consumer Protection Act, 2019

⁴⁴ Section 38(7), Consumer Protection Act, 2019

⁴⁵ M/s Imperia Structures Ltd. vs. Anil Patni, CIVIL APPEAL NO.3591 OF 2020, <https://indiankanoon.org/doc/122264633/>

consumer courts, whereas, consumers could withdraw their complaint from the Consumer Forum if granted authorisation, and then apply to the adjudicating officer for consideration under RERA.⁴⁶ The Real Estate Regulatory Act (Sections 14, 15, 18, and 19) and other provisions require builders to follow home-buyer rights and duties. However, aggrieved home-buyers have the right to approach both RERA authorities and the Consumer Forum. Section 71 of the RERA allows anyone to use the provisions of the Consumer Protection Act, either directly or indirectly. Additionally, home buyers can withdraw their complaint from the Consumer Forum and file it with the RERA individually. Availability of multiple judicial forums to enforce a duty or right is an example of the state's efforts to guarantee persons have access to justice. Whereas, at times, delays and overlapping jurisdictions might reduce efficacy. When reading legislation with several remedies, courts must constructively harmonise the provisions. This is necessary for the courts. RERA enhances the CPA by promoting transparency and accountability between developers and buyers. It covers delays in possession, changes in project plans, and contractual breaches, empowering customers to seek recourse. Social media and increased access to information have driven consumer activism, empowering homebuyers to effectively express their rights.⁴⁷

Consumer Protection and Builder-Buyer Contracts in the Real Estate Sector

United Kingdom: In the United Kingdom, builder-buyer contracts are governed by the combination of common law principles and statutory provisions under the Consumer Rights Act 2015, Misrepresentation Act, etc. Construction projects frequently use standard form contracts. These agreements outline both parties' responsibilities, including deadlines, payment terms, and dispute resolution procedures. English case law presupposes that each party can manage their own interests during contract discussions and that each party is aware of the rights, obligations, and remedies in the contract they ultimately engage in, as well as any relevant legal background.⁴⁸ In Foxton's case, even though not related to a buyer-builder

⁴⁶ Section 71, Real Estate (Regulation and Development) Act, 2016

⁴⁷ Dr. Parineeta Goswami & Gurmanpreet Kaur, Real Estate Dispute Resolution: A Study of Remedies Available Under Real Estate Regulation Act and Consumer Protection Act, <https://ssrn.com/abstract=5085787> or <http://dx.doi.org/10.2139/ssrn.5085787>

⁴⁸ McAdam, Brodie; Britton, Philip; Bailey, Julian (2011). New homes and consumer rights: England and Australia compared, *International Journal of Law in the Built Environment*, 3(3), 269–295. doi:10.1108/17561451111178461 10.1002/abio.370040210, <https://sci-hub.lu/10.1108/17561451111>

agreement, this case served as a great reminder of the necessity of ensuring consumer contracts are fair and clear. In this case, the Office of Fair Trading sued the defendant, claiming that elements of the letting contract, the usual terms and conditions, were unfair and violated the “Unfair Terms in Consumer Contracts Regulations 1999”. The court ultimately held that all the terms challenged by the OFT including the automatic renewal, renewal commission, sales commission clause etc are unfair under the Regulations.⁴⁹ The principles from this case can be used to judge the fairness of clauses in builder-buyer contracts.

India: RERA, which oversees builder-buyer agreements in India, establishes standards to ensure equity and transparency. RERA requires that the agreements adhere to a certain framework, maintaining consistency across projects. It should include particulars of the project, payment methods, possession dates, and measures for penalties and delays.⁵⁰ Supreme Court had also asked the Union To Examine State RERA Rules For Essential Norms and formulate Model Builder-Buyer Agreement while hearing on a Public Interest Litigation (PIL) filed advocate Ashwini Upadhyay.⁵¹ The Centre has submitted the Model Builder Buyer Agreement, designed in cooperation with state governments and the Confederation of Real Estate Developers' Associations of India (CREDAI), to the Supreme Court for approval, following the court's instruction.⁵² The universal RERA builder buyer agreement is awaited while the proceedings in this case are ongoing.⁵³ The Ministry of Consumer Affairs has also proposed

⁴⁹ Office of Fair Trading v Foxtons Ltd [2009] EWHC 1681 (Ch) (10 July 2009)

⁵⁰ Ashwinder R. Singh, RERA India – Real Estate Regulatory Development, Ashwinderr Singh Blog, <https://ashwinderrsingh.com/blog/rera-india-real-estate-regulatory-development>

⁵¹ Model Builder Buyer Agreement: Supreme Court Asks Union To Scrutinize State RERA Rules For Essential Norms, LiveLaw.in (Jan. 13, 2022), <https://www.livelaw.in/top-stories/model-builder-buyer-agreement-supreme-court-asks-union-to-scrutinize-state-rera-rules-for-essential-norms-191940>

⁵² Model Builder-Buyer Agreement Submitted to Supreme Court for Approval, CNBCTV18, <https://www.cnbctv18.com/real-estate/model-builder-buyer-agreement-submitted-to-supreme-court-for-approval-19439879.htm>

⁵³ What Is a Builder-Buyer Agreement?, Sobha Blog, <https://www.sobha.com/blog/builder-buyer-agreement/>

introducing an "exit clause" that would allow consumers to cancel the contract in certain circumstances, such as project delays.⁵⁴

Additionally, the Supreme Court has reinforced the consumer-centric approach in various cases in circumstances of delayed possession by affirming the buyer's entitlement to a refund.⁵⁵ In the DLF case of 2011, the CCI imposed a penalty on DLF Limited for misusing its dominant position in the real estate market.⁵⁶ DLF Ltd, a leading real estate developer, was penalised for abusing its dominant position in the high-end residential market by charging arbitrary and unfair terms to flat buyers, presenting changes in project layouts without involving the buyers, delaying possession, and charging excessive penalties for late payments by flat buyers for which CCI fined DLF ₹630 crore and ordered it to stop its anti-competitive conduct, the same turned out to be one of the most important issues in ensuring fair practices in the real estate industry and preventing large companies from using their power.⁵⁷ In another DLF case, there was a delay in handing over the possession of the residential flats ranging between 2-4 years, but the builders contended that the purchasers were not entitled to compensation in excess of what was stipulated in the "Apartment Buyers Agreement (ABA)". The supreme court, while setting aside the National Consumer Dispute Redressal commission's order held that when there is a gross delay in delivery of possession the jurisdiction of the consumer forum to grant reasonable compensation cannot be set aside by any clause stipulated in the ABA as the nature of delay is such that the compensation provided under the agreement would not be sufficient.⁵⁸

Consumer Protection during Insolvency in the Real Estate Sector

UK: Although there is no single, comprehensive insolvency legislation in the UK, the Insolvency Act of 1986 is the primary act that governs insolvency procedures. It is the key law

⁵⁴ Include Exit Clause in Builder-Buyer Pact, Suggests Centre, Times of India (Apr. 18, 2023), <https://timesofindia.indiatimes.com/india/include-exit-clause-in-builder-buyer-pact-suggests-centre/articleshow/99596584.cms>

⁵⁵ Kolkata West International City Pvt. Ltd. v. Devasis Rudra, (2019) 8 SCC 613

⁵⁶ DLF Ltd. v. Competition Comm'n of India, 2011 Comp. L.R. 119 (CCI)

⁵⁷ The Role of Competition Law in Regulating Monopolies and Mergers in India, Legal Onus, <https://legalonus.com/the-role-of-competition-law-in-regulating-monopolies-and-mergers-in-india/>

⁵⁸ Wing Commander Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd., 2020 SC 693 & DLF Southern Homes Pvt. Ltd. and Annabel Builders and Developers Pvt. Ltd.

governing liquidation, administration, and restructuring. Real estate developers can also move into Administration or Company Voluntary Arrangements (CVAs) under the Insolvency Act 1986. The law prioritises secured creditors, sometimes leaving buyers with limited options unless safeguarded under contracts.⁵⁹

National House Building Council (NHBC) Buildmark and Similar “private warranty Schemes” provides protection to buyers if the builder falls insolvent. It provides for the Recovery of the contract deposit paid to the builder, up to 10% of the original purchase price (maximum of £100,000) and Coverage of reasonable additional expenditures required to finish the home to the original specifications, if the builder goes insolvent.⁶⁰ This safeguard ensures that buyers do not lose their deposits or face unanticipated additional fees if their builder experiences financial difficulties before completion. Buildmark coverage is only available for homes built by “NHBC registered builders” that adhere to particular technical standards and regulations. Builders must maintain NHBC registration and build homes in accordance with NHBC criteria for the warranty to be valid.

India: The Indian Bankruptcy Code governs corporate insolvency resolution. Real estate developers fall under the definition of “corporate debtors”. Under IBC, 2016 Corporate Insolvency Resolution process can be initiated by a Financial Creditor or, Operational Creditor of the Corporate Debtor itself.⁶¹ The Insolvency and Bankruptcy Code of 2016 (IBC) (post-2018 amendment) treats “homebuyers” as “financial creditors”.⁶² As a result, they are eligible to vote in the Committee of Creditors. Allottees (homebuyers) are represented on the Committee of Creditors (CoC) by an authorized representative for the class of creditor.⁶³ Regulation 16A deals with the appointment of an authorized representative for any such class of creditors.⁶⁴

⁵⁹ Insolvency Act 1986, (UK).

⁶⁰ NHBC Buildmark Warranty Coverage and Protection, Brickkickers, <https://brickkickers.co.uk/snagging-advice/nhbc-buildmark-warranty-coverage-and-protection#:~:text=Exchange%20to%20Completion,should%20the%20builder%20become%20insolvent>

⁶¹ Section 7-10, The Insolvency and Bankruptcy Code, 2016

⁶² Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

⁶³ Section 21(6A) (b), Insolvency and Bankruptcy Code, 2016

⁶⁴ Regulation 16A, IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In *Pioneer Urban v. Union of India*, the Supreme Court upheld the consumer rights of homebuyers during insolvency and affirmed their status as financial creditors.⁶⁵ Whereas, the Amendment Act, 2020 requires that a minimum of one hundred allottees from the same real estate project, or ten percent of the total number of such allottees under the same real estate project, whichever is less, file a petition to initiate the insolvency resolution process.⁶⁶

Conclusion

Consumer rights are critical for preserving confidence and integrity in the real estate industry. In India, Consumer rights have been strengthened by recent regulations. RERA in India has been a significant step forward, despite the need for strong execution. RERA and the Consumer Protection Act provide robust legal frameworks that provide consumers with a choice of redress options depending on the nature of the grievance. India and the United Kingdom take diverse but complementary approaches to real estate law. India's consumer-oriented regulations, such as RERA, are broad in scope, but the United Kingdom provides mature governance and legal certainty. India has implemented online complaint filing and simplified RERA procedures. Compared to traditional courts, RERA provides for faster access to justice by requiring complaints to be resolved within 60 days. Customers have greater freedom and legal leverage because they can seek relief under RERA, CPA, and even IBC. Unlike India, the UK lacks consumer-friendly tribunals dedicated for housing disputes, making remedies slower and more costly. Legal proceedings in the United Kingdom are complex and might be difficult for the typical consumer. Consumers may be deterred from pursuing claims because accessing justice frequently necessitates navigating intricate and expensive court procedures. India's legal system is strong in theory but still faces implementation challenges in practice, whereas UK systems combine stringent regulation with public participation. Like Planning permissions are open to the public. Agents are governed by codes of conduct and Trading Standards. In India, RERA also mandates disclosures for builders and false information may result in penalties. RERA's disclosure regulations, escrow accounts, and mandatory project registration increase transparency while reducing the risk of fraud. However, project delays and non-compliance

⁶⁵ *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

⁶⁶ The Insolvency and Bankruptcy (Amendment) Act, 2020, <https://ibclaw.in/wp-content/uploads/2020/03/The-Insolvency-and-Bankruptcy-Code-Amendment-Act-2020.pdf>

still remain widespread. In India, builders are required to obtain a licence and register with RERA. Currently, buyers are not required by law to obtain warranty insurance. Third-party warranties (e.g., NHBC) are widespread in the UK, but their scope is limited and only granted if the builder is NHBC-registered. The United Kingdom has a more centralised digital infrastructure, the entire HM Land Registry has gone digital. India's initiatives are continuing and distributed over multiple states. Although the purpose of DILRMP is to digitize records, it is still in process.

It can be concluded that despite the legal protections, the implementation of these regulations varies across states in India. India's framework is consumer-focused and ambitious, yet it suffers from implementation challenges and enforcement deficiencies. Indian law could be improved by setting stricter regulations for real estate builders, regulating buyer-builder agreements, mandating the use of written contracts with specific terms, and requiring builders to be insured in addition to being registered and licensed. Other important proposals for India include streamlining dispute settlement by simplifying RERA and consumer court jurisdictions, strengthening RERA order enforcement, improving alternative dispute settlement methods and transitioning to digitalised land records and a conclusive titling system.

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