

Select Parliamentary Committee of Hon'ble Members of Parliament on the Real Estate (Regulation and Development) Bill, 2015

The Real Estate (Regulation and Development) Bill 2013

From: COMMON CAUSE, a civil society organization dedicated to asserting citizenship through legal interventions, policy research, and advocacy for over 35 years. (Submitted via email)

Submission before the Rajya Sabha Select Committee (A written up version of the submission made before the hon'ble members at Parliament Annexe Conference Room on July 7, 2015)

Dear hon'ble members,

Many thanks for listening to our point of view on the Real Estate (Regulation and Development) Bill, 2013 at the Select Committee hearing. We at Common Cause believe that the committee is deliberating on a legislation with far reaching consequences for the ordinary citizen whose life's earnings are at stake. And therefore any unintended ambiguity or lack of clarity in the text might allow the unscrupulous among builders to use the law against the very citizens whose interests it aims to protect.

We would be grateful if the Rajya Sabha Select Committee bears in mind the following general points regarding the Bill:

1. The Bill must include measures which will encourage flat/ house owners in running their own affairs on cooperative basis and in the spirit of participatory democracy. This will only happen when the builders exit after completing the project and hand over the reins to the owners' associations without exception.
2. The new law needs to protect the interests of the consumers from an unregulated industry and therefore every effort must be made to ensure that it is in agreement with the competition law and that it does not allow the builders to use any ambiguity in the rules and regulations followed by different state governments against the consumers.
3. In the spirit of Prime Minister's Swachchh Bharat Mission, every housing society must include service areas like toilets, drinking water and clean waiting facilities for the service staff like maids, servants, guards and drivers before receiving the completion certificate which should be made mandatory before occupation begins.

Common Cause has been participating in the deliberations being held by many civil society organisations and we support the written submission made by the Federation of Apartment Owners Association (FAOA) in spirit. May I reiterate that in addition to

the FAOA submissions to you in two parts we wish to assert the following points (chapter and clause wise) on behalf of the Common Cause:

Chapter III 11(3)

Builder-Buyer Contract (or BBA: Builder-Buyer Agreement) is mentioned as 'agreement' at several places in the draft Bill but it has not been defined leading to ambiguity.

Remark: As a result the builders force the buyers to sign extremely unreasonable contracts forcing them to buy many services like the electricity, upkeep and security from the builders of companies promoted by them in perpetuity. In order to ensure that such contract (or BBA) is not loaded against the buyers, some ground rules must be made in a model bill which are a binding on all other, central or state-level legislations.

Chapter II

Clause 4 (2) (i) (d)

The escrow account should not be capped at 70 per cent of the money collected from the buyers. It should be 95% all over the country and non-negotiable.

Remark: This will ensure that the funds meant for one project are never diverted for any other project or purpose. If the builders need money for any other purpose they should raise capital from the market and factor it in the cost. This will check the diversion of funds and the construction industry will learn to respect the capital rather than relying on black money generated through direct deals without the use of escrow accounts.

Chapter IV

Clause 17 (i)

Project progress must be uploaded on the website for the buyers to see but it must not be general or vague in nature. The buyer must be able to locate the progress of his/ her unit/ floor.

Remark: The builders always upload pictures of the project site without referring to plots and numbers of units anywhere. The buyer must be able to fill in details of his/ her property and check the status of construction.

Chapter III, 11 (4)

Clause

The completed project must be handed over to the RWA or the association of owners.

Remarks: The builders start handing over the flats for occupation before completion and without acquiring the completion certificate. This allows them to keep adding new areas or installations delaying completion certificates further. In the spirit of participatory democracy, cooperation and healthy community building, the owners or the RWA and not the builders or companies promoted by them must be in charge of running their affairs.

Chapter II 7 (1)

For rampant violations criminality must be established and the builders/ construction companies must not be let off with financial penalties alone. In cases of gross violations the licences must be cancelled.

Remark: This can be part of a process of warning and black-listing before the extreme step of criminal case and licence cancellation. The builders not fulfilling their agreement to buyers, who have put in their life's savings, must be treated as cheating which attracts criminal proceedings.

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