

Should heads of government development bodies become RERA regulators?

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After a long wait, the implementation of the Real Estate (Regulation and Development) Act, 2016 (the Act), for bringing transparency and fair practices in real estate sector and for regulating the real estate sector, is seeing the light of the day. The Act came into force on May 1, 2017. One of the main features of the Act is establishment of a Real Estate Regulatory Authority in each State, with the object to regulate and promote real estate sector, promote transparency and efficiency in sale, protect interest of buyers and provide speedy dispute redressal.

Many States have not been able to keep the timelines for forming the Regulatory Authority and, therefore, to meet the specified deadlines have designated / appointed an interim regulator in a hurried manner. Most of these states as provided in the Act for

an interim period, have designated senior officers / head of the state level developmental bodies as interim regulator. In Delhi, it is the vice-chairman of Delhi Development Authority (DDA), and in Chandigarh, it is the Secretary of Chandigarh Housing Board, to name a few.

Since, often the development bodies / departments are also engaged in development and sale of properties, these bodies will themselves be the promoter/developers under the scheme of the Act, and appointing officers of these authorities as regulator raises few fundamental concerns.

The primary concern is that the same officer will be wearing two hats for the purposes of the Act, one that of an officer of state development body, and the other of a real estate regulator. It needs to be ascertained that whether the key objective of the Act, of bringing efficiency and transparency in sale, protecting interest of the buyer / allottee and speedy dispute redressal, can be achieved wherever the grievance is against such development bodies.

It is one of the fundamental principles of justice that no person should judge a matter in which he/she is involved. By designating/appointing a regulator who is also acting as an officer of a developer, might result in potential conflict of interest and would cast doubt in the system as well as concept of fairness in the administrative proceeding, as justice should not only be done but should manifest and undoubtedly be seen to be done.

Keeping in view the intent and object basis which the provisions of the Act have been enacted, more thought and deliberation needs to be applied for identifying that who can be appointed as a real estate regulator for the interim period i.e., till a permanent Regulator is appointed.

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