

**COMPARISON STUDY BETWEEN RERA AND WEST BENGAL HOUSING
INDUSTRY REGULATION ACT**

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Abstract: - The essential goal of RERA is making a straightforward framework between the homebuyers and manufacturers, in a path that there's advantage for both the gatherings. The interests of the purchasers are taken as best need and the demonstration guarantees finish consumer loyalty, the west Bengal made a new RERA named housing industry regulation act and disobeyed the central law, this paper deals with the comparison of the both acts.

Objective of study:-

1. Comparison of the two acts
2. Introduction to both the acts
3. Constitutional validity of west Bengal housing industry regulation act?

Key Words:-

Repugnancy, housing industry regulation act, rent control regulation act.

Research Methodology:-

The Researchers utilized an exploratory research system based on past literature from individual diaries, annual reports, daily papers and magazines covering wide gathering of scholastic writing.

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INTRODUCTION TO REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate (Regulation and Development) Act, 2016 (The Real Estate Act) provides for establishing regulatory authorities at the state level to register residential real estate projects and seeks to regulate contracts between buyers and sellers in the real estate sector to ensure sale of plot, apartment or building, etc. in an efficient and transparent manner. It also proposes to ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast track dispute resolution mechanism.² Things that are going to be taken in RERA are:-

- The area of land which is going to be developed is below 500 sq. mtrs.
- The number of flat/apartments are 8 or lesser than 8
- Any scheme which obtained completion certificate before the said act came into force.
- Any project which is carrying renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building.

²<https://maheshspeak.com/2016/03/18/introduction-to-the-real-estate-regulation-and-development-act-2016/>

INTRODUCTION TO WEST BENGAL HOUSING INDUSTRY REGULATION ACT, 2018.

For many years, people in India faced issues with builders and developers when buying a house. The Government of India decided to put an end to the pressing problems in the real estate sector and introduced the Real Estate Act, 2016 to help and support people buying homes in the country. The bill could also boost real estate investments. RERA establishments were formed in each state with an objective to regulate the real estate sector and these agencies acted as an adjudicating body who dealt with any redressals.³

Many states in India accepted RERA quickly as soon as it was approved. Initially, West Bengal missed the deadline to implement RERA in the state. The West Bengal Government did not agree with certain terms that were defined by RERA. So, they have redefined the terms and added rules in a draft proposal which will be submitted for approval to the RERA committee.

The main purpose of the legislation is to keep the interest of the buyers at a higher ground. The new rules will also create an atmosphere to encourage private investment in the sector, with an emphasis on 'housing for all'.

All promoters have to register their projects with the West Bengal Housing Industry Regulation Bill, 2017, furnishing all necessary details, including the stipulated time within which they plan to hand over the flats to the consumers. There are allegations that some promoters do not hand over flats to consumers within the promised period of time.

Through this new law, if any promoter fails to provide a flat to a customer within the stipulated time, there will be a provision to slap a fine on him, as well as a provision for the promoter to be prosecuted.

No promoter would be allowed to advertise, market, book, sell or offer for sale or invite persons to purchase any plot, apartment or building in any real estate project or part of it without registering the projects with the regulatory authority.⁴

³<https://www.bankbazaar.com/home-loan/rera-west-bengal.html?ck=Y%2BziX71XnZjIM9ZwEflsyDYIRL7gaN4W0xhuJSr9lq7aMYwRm2IPACTQB2XBBtGG&rc=1>

⁴<https://news.webindia123.com/news/articles/india/20170818/3170813.html>

COMPARITIVE ANAYLSIS BETWEEN RERA AND WBHERA

<u>Sl.No.</u>	<u>Point of Difference</u>	<u>RERA</u>	<u>WBHERA</u>
1.	Grant of Registration.	The grant of the Registration time is 30 days	There is no time limit set for grant of Registration
2.	Extension of Registration time.	The time period shall not extend more than one year.	The time period of extension shall not be more than 3 months.
3.	Sections	There are 92 Sections in RERA	There are only 39 Sections in WBHERA
4.	Force majeure clause	Under RERA, developers can invoke the clause only in case of war, drought, flood, earthquake, fire or any other calamity caused by nature, affecting the regular development of real estate projects.	According to the Bengal Act, over and above the conditions listed by RERA, force majeure can be declared for “any other circumstances as may be prescribed.”
5.	Defining garage	‘Garage’ has been defined to mean ‘a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas’.	HIRA defines ‘garage’ as “garage and parking space, as sanctioned by the competent authority,”

6.	Unforeseen circumstances that prevent a builder from fulfilling his contract	RERA says the circumstances could be war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature.	HIRA makes an addition to the clause “...or any other circumstances as may be prescribed.”
7.	Compounding of Offences.	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed: Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.	There is no such provision as of compounding of offences.
8.	Salary of chairperson and members.	The power to decide salary is given to State government.	The salary is decided as 1, 50,000.
9.	Definition of ‘car parking area’	There is no definition of car parking,	‘Car parking area’ has been defined to mean ‘such area as may be prescribed’.
10.	Construction materials	Authority may make recommendations to appropriate government for use of appropriate construction materials.	Authority may make recommendations to the state government for use of state construction materials.

**CONSTITUTIONAL VALIDITY OF WEST BENGAL HOUSING INDUSTRY
REGULATION ACT, 2018**

It is Article 254 of the Constitution of India that immovably settles in the Doctrine of Repugnancy in India. As indicated by Black's Law Dictionary, Repugnancy could be characterized as "an irregularity or logical inconsistency between at least two sections of a legitimate instrument, (for example, a statute or an agreement)". Before understanding the Doctrine of Repugnancy, let us initially comprehend somewhat about the administrative plan conceived in our Constitution.

Article 245 states that Parliament may make laws for entire or any piece of India and the Legislature of a State may make laws for entire or any piece of the State. It additionally expresses that no law made by Parliament will be regarded to be invalid on the ground that it would have additional regional activity.

Article 246 additionally discusses Legislative intensity of the Parliament and the Legislature of a State. It expresses that:

1. The Parliament has selective capacity to make laws regarding any of the issues counted in List I or the Union List in the Seventh Schedule.
2. The Legislature of any State has selective capacity to make laws for such state as for any of the issues counted in List II or the State List in the Seventh Schedule.
3. The Parliament and the Legislature of any State have capacity to make laws regarding any of the issues identified in the List III or Concurrent List in the Seventh Schedule.

4. Parliament has capacity to make laws regarding any issue for any piece of the domain of India excluded in a State despite that such issue is an issue specified in the State List.

The Legislative Scheme in our Constitution is both mind boggling and long. In the present post, I will keep myself just to Repugnancy and its comforts. I won't bargain not with some other arrangements identifying with the Legislative Scheme of our Constitution. The main articles that I will contact in this regard are article 245, article 246 and article 254.

The Supreme Court in *M. Karunanidhi v. Association of India* The court said that:

"1. Where the arrangements of a Central Act and a State Act in the Concurrent List are completely conflicting and are totally hopeless, the Central Act will win and the State Act will end up void in perspective of the repugnancy.

2. Where anyway a law go by the State comes into impact with a law go by Parliament on an Entry in the Concurrent List, the State Act will win to the degree of the repugnancy and the arrangements of the Central Act would wind up void gave the State Act has been passed as per condition (2) of Article 254.

3. Where a law go by the State Legislature while being considerably inside the extent of the passages in the State List digs endless supply of the Entries in the Central List, the legality of the law might be maintained by summoning the precept of essence and substance if on an examination of the arrangements of the Act it gives the idea that all around the law falls inside the four corners of the State List and entrenchment, assuming any, is absolutely accidental or immaterial.

4. Where, in any case, a law made by the State Legislature regarding a matter secured by the Concurrent List is conflicting with and offensive to a past law made by Parliament, at that point such a law can be ensured by getting the consent of the President under Article 254(2) of the Constitution. The aftereffect of acquiring the consent of the President would be that so far as the State Act is concerned, it will win in the State and overrule the arrangements of the Central Act in their appropriateness to the State as it were.

Such a situation will exist just until the point when Parliament may whenever make a law adding to, or changing, fluctuating or canceling the law made by the State Legislature under the stipulation to Article 254.

Presently, the conditions which must be fulfilled before any repugnancy could emerge are as per the following:

1. That there is a reasonable and direct irregularity between the Central Act and the State Act.
2. That such an irregularity is totally beyond reconciliation.
3. That the irregularity between the arrangements of the two Acts is of such nature as to bring the two Acts into coordinate crash with each other and a circumstance is achieved where it is difficult to comply with the one without defying the other."

CONCLUSION

The Conclusion here which can be drawn is that there is no constitutional validity of the West Bengal housing industry regulation act, 2018 and the main reason for it is because of the doctrine of repugnancy which tells that in case of conflict between the state and the central law the central law shall always prevail and to make the state law valid the state law must be ratified by the president.

Both RERA and HIRA aim to achieve a salutary object, of protecting the interest of the consumers. However, the decision by the State legislature to enact a new (but almost identical) legislation covering the same field of operation, as opposed to making the relevant rules to make RERA implementable in the State, not only has delayed the implementation of a legislation regulating the real estate sector, but also has the potential of unsettling the regulatory landscape, should anyone decide to challenge the vires of HIRA. One would be prompted to think that, a better course of options would have been⁵.

HIRA has been enacted under the garb of being under the State List, whilst RERA has been enacted under the Concurrent List, HIRA may still not stand the test of constitutionality laid down by the Supreme Court.

⁵https://www.slideshare.net/shrutiprakash3/west-bengal-housing-industry-regulation-act-2017-comparison-with-rera-and-questioning-its-vires?from_action=save