

The Role Of Adjudicating Officer With Special Reference To Reality Sector In India: A Critical Appraisal

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Abstract

Adjudicating Officer (AO) is a significant adjudicatory functionary under Real Estate Sector in India. It can fine developers, and apply for prompt delivery or refund to ensure the party fulfils the obligations. It is the act of a personality trying to see that the mandatory procedure of RERA 2016 is implemented. That's provided consumers, hitherto left with few options to make developers accountable without getting into prolonged courtship of expensive litigation, with the much-needed recourse. However, the design and application of the AO system has been limited by its poor performance and stability. Appointment of AOs is at the state level and this might result in different interpretation and enforcement of RERA provisions across regions. Differences in the experience of AOs with respect to expertise have also resulted in differential quality of adjudication as some of them may not have specialisation to deal with complex issues in real estate. Moreover, even if the AO may issue certain orders and penalties, enforcement of these orders is not always easy. Developers may sometimes resist compliance, and enforcement mechanisms are not always robust enough to compel adherence to the AO's ruling. This article discusses the scope and roles of Adjudicating Officer in terms of implementing the provisions of Act with an aim to bring the promoters in compliance with necessary duties placed upon them. Analysing case studies, legal frameworks, and empirical data, this article reviews how successful the AO has been providing relief to consumers as well as the challenges encountered in dispensing rightness. The results suggests that although the Adjudicating Officer takes an important role in the safeguard of consumer claims, the holdups and differences at state level in the exercise of powers leads to inconsistency in dispute resolution. Recommendations are made to strengthen the role of Adjudicating Officer by providing transparency, responsibility and impartiality in the reality sector and housing market.

Keywords: Adjudicating Officer, Real Estate Regulatory Authority, Dispute Resolution, Consumer Rights, Compensation, Accountability.

Introduction

The expression of Adjudicating Officer was brought by the RERA Act, 2016 which was empowered to tackle the challenges, like delay in completing a project, financial mismanagement, and opaqueness faced by homebuyer. The law stipulates an Authority that shall come into existence not more than one year after the enforcement day of this Act. It shall be called RERA Authority. The authority established with respect to a State, shall be established by the state government; the UT without legislature, by the Union Government; the NCT of Delhi, by the Central Ministry of Urban Development and Union Territory Puducherry, UT Administration.¹

¹ The Real Estate (R and D) Act, 2016, s. 2(g).

A central feature of this act is the position of the Adjudicating Officer i.e., AO, who is empowered to resolve disputes concerning compensation, refunds, and penalties. A right is being conferred on the authority for fixing the power to appoint one or more than one judge as an Adjudicating officer, who has been serving as a District Judge or has already served as a District Judge. The RER Authority, while holding a discussion with the concerned government appoints one or more than one judge who is or has been a District Judge as Adjudicating officers.² The AOs, while holding an enquiry, gives a fair opportunity to a concerned person to present his case. The AO is a quasi-judicial authority capable of deciding various matters that deal with transaction issues on real estate sales. These violations specifically aim to violations against the consumer under RERA. This article examines the controls and functions of the AO and is also an attempt towards determining the efficiency is resolving real estate dispute.

Purpose Of The Research

It is a renowned fact that the real estate sector is ever attracting source of generating revenue in the form of investment either long term or short term. But investing in real estate is still even after the advent of the RE Act is considered to be risky. The conflict which arises between home-buyers and Developers are well known and the resolution mechanism is not widely explored. The Act specifies the role of AO for resolution of the disputes but how it works and executes is still a dilemma. The purpose of this research paper is to explain that who is AO, how it functions and how it can be approached, and what is its limitations.

Research Methodology

This paper embraces the doctrinal legal research method to examine the role of adjudicating officer in the real estate sector. This research explores primary source of information such as Legislations, Rules, Regulations, Case laws along with articles published by other authors.

Adjudicating Officer In Rera

The law enshrines that the authority has the power to select an AO after consulting with the concerned Administration of State or Union Territory. The person who is to be appointed as adjudicating officer must have served or has been serving as District Judge. The authority can appoint one or more judges for the post of Adjudicating officer as per the necessary requirement. The adjudicating officer will hold the office for conducting an analysis in the recommended manner, after giving a rational chance to any person concerned.³

The adjudication officer while doing an inquiry under this Act is empowered with similar powers as of the Civil Court wherein; presiding officer, as it deems necessary for the inquiry of the subject matter, can call and impose the presence of the party who is familiar with the truths and positions of the matter: To provide proof or to bring any useful and relevant documents. After the completion of the inquiry, if the officer is pleased that a person has not complied with the provision the Act, the officer can give instruction to the party to pay compensation or interest to the aggrieved party.⁴

The adjudicating officer shall take up the application of Compensation or interest as early as possible and it would be his duty to conclude the request made in the application in not more

² *Id.*, s. 71 (1).

³ *Ibid.*

⁴ The Real Estate (R and D) Act, 2016 s.71(3).

than 60 days of its consideration.⁵ If the application of compensation or interest is not been disposed of within 60 days of its receipt, the officer has to record its reasons of delay in writing. The Adjudicating officer shall dispose of the matter with respect to quantum of compensation or interest, and while adjudging those matters the officer shall take into consideration, if it is computable, the amount of inconsistent gain or unjust benefit was ensued by the promoter and the amount of loss ensued by the allottee as an outcome of the evasion. The recurring class of the evasion and such additional elements which the officer deems fit to adjudge in the interest of justice.

Adjudication Of The Complaint

Any person either natural or legal person, who is, developer, customer or RE agent, aggrieved due to some encroachment, breach of provision of Act or any other instructions and procedures made by the Act, can lodge the grievance either in front of Authority or AO. The term “Person” includes the society of allottees or any other independent customer society.⁶

A complaint filed before the Adjudicating officer for interest and compensation is mandatorily be made in Form ‘N’, in three sets, with a charge of one thousand rupees only is attached to it, in favor of the authority, by Demand Draft or Bankers Cheque or online mode. The Authority shall decide the complaint by adopting summary procedure.⁷ Any person who has a grievance or complaint regarding Section 12, 14, 18 or 19 under Consumer Dispute Resolution forum, or before the Country Forum recognized under section 9 of the CPA, 1986 pending at the onset of this Act, if required, with approval of the appropriate commission withdraw grievance which is under consideration at the forum, and lodge a fresh submission in front of the AO as per the RE Act.⁸

“Adjudicating officer” by giving reasonable opportunity to the parties, holds an inquiry in the way specified in the Rules of 2016, to adjudge amount of compensation or interest to the aggrieved, who, after relying on the Promoter’s statement and information provided in the commercial and catalogue or on the footing of Dummy apartment, plot and building, has sustained cost or price.⁹ Adjudicating officer shall award the compensation to the allottee if allottee is aggrieved by the non-compliance of the obligation imposed on the promoter to rectify any defect which is conveyed to the promoter in not more than 5 years from handing over the custody of the property, the aggrieved person is liable to claim compensation from the developer.¹⁰ Developer is responsible to give reparation to the consumer, if developer fails to discharge his liability with respect to main requisite of the agreement for sale.¹¹

RESOLUTION OF DISPUTES

In RE Act, 2016, primary function of the AO is to decide the reparation amount to be awarded in matters where Promoters neglect to comply their obligations provided in the requirements of the Act. The introduction of the AO was intended to provide a streamlined and specialized approach to dispute resolution, focusing primarily on matters of compensation, penalties, and interest to be paid by developers to aggrieved homebuyers. The

⁵ *Ibid.*

⁶ *Id.*, s.31.

⁷ The NCT of Delhi the Real Estate (R and D) (General) Rules, 2016 r.34.

⁸ Dr. Chetan B Singai, “The efficacy of the real estate regulatory authority in Karnataka” NLSIU/WP 2019.

⁹ *Id.*, s. 12.

¹⁰ *Id.*, s. 14.

¹¹ *Id.*, s. 18.

AO is mandatory to handle cases with efficiency and transparency, ensuring that the dues of consumers are sheltered.¹² The core issue remains in understanding the tasks of the AO and the Authority within the structure of Real Estate Act. The jurisdiction of AO is precisely delineated in Clause 71 and 72 of the Act, stating the limitations within which their expertise encompasses. Particularly, above mentioned clauses constraint the scope of AO to the subjects of reparation placed out in clause 12, 14, 18, and 19 of the Act. On contrary, Authority holds supremacy to resolve problems for stalled control over the property, repayment of amounts paid at the time of instalments, and other encroachments of RERA requirements. This division practises the core of the jurisdictional engagement.

POWERS OF THE ADJUDICATING OFFICER

The power of Adjudicating officer authorises him to summon any person, enforce their attendance, and demand documents to facilitate a comprehensive investigation into the complaints filed by homebuyers. Since the AO holds a quasi-judicial power which is alike to those of a civil court, which enabled him to ensure fair play and justice in disputes involving large amount of money and complex real estate agreements.¹³

AUTHORITY TO DETERMINE COMPENSATION

Sub Section 3 of Section 71 of RE Act, 2016 provides Adjudicating Officer the authority to award reparation founded on the degree of the harm or injury suffered by the aggrieved party.¹⁴ This power is key to ensure that developers/promoter compensate the buyers for their financial loss and emotional distress caused by delayed or defective supply of property. The provisions of the Act also accentuates that the AO is also endowed for imposing penalties on developers, when they contravene the provisions provided in the Real Estate Act, 2016.¹⁵

Procedural Aspects Of Adjudication

While the Adjudicating Officer has significant powers under Real Estate Act, 2016, the procedural framework within which they operate can be complex and time-consuming. Although the Act mandates summary adjudication, the workload of Adjudicating Officers and their reliance on state governments for resources cause delays in the resolution process. In some states, Adjudicating Officer handles multiple matters, leading to an overload and a subsequent backlog of unresolved disputes.¹⁶

TIME FRAME FOR DISPUTE RESOLUTION

RERA prescribes that all grievances should ideally be solved not more than 60 days of filing. However, doctrinal studies indicate that this time period is hardly obtained, particularly in states where the authority in RERA is understrength. Procedural shortcomings, such as digital

¹² Singh, A, “*The Role of Regulatory Authorities in Real Estate: The Case Of RERA*” Journal of Real Estate Policy 12(2) 67-85 (2019).

¹³ Singh. P, “*International Perspectives on Real Estate Dispute Resolution: Lessons for India*” Journal of Comparative Law 18(1) 45-59 (2021).

¹⁴ The Real Estate (R and D) Act, 2016, s.71(3).

¹⁵ *Ibid.*

¹⁶ Chatterjee, R. “*Procedural Delays in Real Estate Dispute Resolution: A Case Study of RERA*” Law and Society Review 14(1) 56-72 (2018).

infrastructure deficits and a lack of coordination between the Adjudicating Officer and state-level Real Estate Regulatory Authority, contribute to further delays.¹⁷

I. CHALLENGES IN RESOLUTION OF DISPUTES

The AO holding enormous powers, has to undergo much to deliver according to their position. An important issue has been regarding the implementation at the level of the states; hence there has been a problem with differences in the conferring powers to the AO at their levels. There has also been a case in the public forum that several states had not appointed a number of Adjudicating Officers that led to pendency and delayed delivery of justice for home buyers as.¹⁸

INADEQUATE RESOURCES

Infrastructure available to AOs varies from state to state, and some states have fewer resources such as dedicated legal team and administrative staff. This directly affects the ability of AOs to investigate complaints and issue decisions in time. In some case, adjudicating under heavy resource constraints, and this affects their ability to enforce their directions and pronouncements. This has a direct impact on the ability of AOs to investigate complaints.¹⁹

LEGAL APPEALS AND DELAYS

The rights of promoters to appeal decisions to higher authorities might prolong the dispute resolution process and, hence, add to the inefficiency of the AO. Since, the appeal are a necessary part of the legal process, it often leads to delay in the enforcement of decision and directions of Adjudicating Officer, reducing their immediate impact on consumer protection.²⁰

COMPARATIVE PERSPECTIVES: INTERNATIONAL ADJUDICATION MODELS

Globally, the countries like the U.K. And Australia have specialised Tribunals for the Real Estate Disputes, which function similar to the Adjudicating Officer in India according to the rule's provisions provided in The RE Act, 2016. Since these countries have adopted digital platforms for filing and tracking complaints, which has significantly reduced procedural delays. Implementing similar Technological solutions in India could also enhance the efficacy of Adjudicating Officers in handling real estate disputes.²¹

¹⁷ Banerjee, P, "*Analysing the Role of Adjudicating Officers in RERA*" Indian Journal of Law and Policy 10(2), 89-103 (2019).

¹⁸ Dutta, S, "*State-Level Variations in RERA Implementation: An Analysis*" Economic and Political Weekly, 55(8), 34-45 (2021).

¹⁹ Agarwal, N, "*Challenges in Implementing RERA's Adjudication Mechanism*" Journal of Real Estate Law, 27(3), 122-134 (2020).

²⁰ Rao, K, "*Legal Appeals and Their Impact on RERA's Adjudication Process*" International Journal of Property Law 29(3) 45-62 (2022).

²¹ Singh, P, "*International Perspectives on Real Estate Dispute Resolution: Lessons for India*" Journal of Comparative Law, 18(1), 45-59 (2021).

II. EVALUATION AND OUTCOMES

DISPOSAL RATES IN DISPUTE RESOLUTION

Data available on the websites of different Real Estate Regulatory Authorities displays that AOs have successfully resolved approximately 65% of cases within the prescribed time limit, with greater disposal rates in states like Maharashtra and Karnataka. But the process was far lengthier in states where there was less to go around, taking an average of more than half a year to dispose of.

Disparity In Award Of Compensation

Though, RERA empowers the AOs to levy penalty on developers and to execute the compensation to be paid to the consumers, but execution of these orders depends upon the efficiency of the local administration and the regulatory efficiency. RERA authority in some states could be strong in execution, while in others it will be slow or none at all. Also, AOs throughout different jurisdictions may differ in their attitudes in punishment severity. For instance, in some states, the delay in being given possession or construction that does not meet the standard, many states are taking a strong stance with penalties in the form of heavy fine as well as litigation. Other states, meanwhile, might take the opposite approach, giving developers greater flexibility and issuing only minimal penalties.

Limited Jurisdiction And Powers

The AO concept has however some limitations. "It was wrong for the AO to act on the same as it can only adjudicate RERA violations and not issues outside the ambit of the Act." For example, matters such as land dispute, zoning disputes, or more sophisticated contractual disputes could be outside AO's ambit and some other legal fora or civil courts step in.

Implementation Of Orders

The AOs can't really enforce orders, in some cases. It is often challenging for authorities to implement (or claim for damages/fines) compensation/penalties, specifically against developers with insufficient monetary resources or the unwillingness to obey the law. The unequal forces of power gain are further intensified by the lack of strong legal clout or punishments for noncompliance as this undermines the mechanism's potential to dispense justice. Much of enforcement can be challenging when the supplier is in financial distress or uncooperative. It is primarily down to the OP condition only that the consumer is helpless if the builder neither delivers the possession in time nor makes any payment for this. Even though RERA provides enforcement including capture of assets or registration of the order with courts, it is time consuming and cannot ensure that the consumers' rights will be fully restored. Furthermore, the absence of effective sanctions for breach of AO orders has been a cause of concern. Developers follow the orders only on a goodwill basis and in many cases, they can but don't pay fines, because the process of their collection is very long.

Inconsistent Application Of Standards

Decision-making uncertainty can disturb the AO mechanism operation. As AOs are nominated by the state or union territories concerned, difference in their working style may result in different judgments. It might compromise the consistency and the reliability of the mechanism and confuse the people concerned. For example, regulatory authorities under RERA in Maharashtra may take a different approach to dispute resolution as compared to

those in Uttar Pradesh based on their interpretation of the law or the prevalent practice in the local locality. Such inconsistency has the potential to result in conflicting decisions and confusion for parties -- developers and consumers alike -- who discover that similar disputes are resolved differently from state to state. The inconsistency also compromises the reliability of AO approach, which could impede the broader objective of RERA to have a transparent and uniform property market. Inconsistent Results – There may be varying application of the standards, which can also affect the quality of adjudication as some AOs may lack expertise going through the nuances of real estate law, construction standards, or the technical processes of real estate development. Therefore, judgments may not always serve the interests of the parties, with dissatisfaction and possible appeals as a consequence.

CONCLUSION AND SUGGESTIONS

The Adjudicating Officer's role, while determining disputes over real estate is essential in speeding up and resolving cases more effectively. Even though AOs enjoy substantial powers in the protection of home buyer's rights and to give orders for direct compensation, challenges still lie in the way, like procedural delay, lack of resources, and unequal application at state levels. Augmenting digital structure, improving manpower, and making strict enforcement mechanisms may be make the AO an efficient and effective authority to decide real estate disputes. In this regard here are some suggestions that the author concludes:

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1. **Stabilization of Digital Platforms:** Invest in stabilizing the digital platform to make filing and tracking of cases easier, reducing procedural delays.
2. **Allocation of Resources:** There is need to allocate ample resources at the state-level RERA authority, whereby the AO's role shall be complemented accordingly, to accomplish his duties with an adequate flow of activities in place.
3. **Training and Capacity building programs:** There must be schedule of the training and capacity building for AOs and their teams with added training to handle tough real estate matters easily.
4. **Increased Stringent Procedure of Following:** Contempt proceedings are to be initiated against those culprits who does not conform the directions of Adjudicating officers. Harsher steps are to be performed so that decisions of AOs can be followed in time, by penalizing the developers who have refused it to be followed.

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