

# THE STUDY ON IMPACT OF ADMINISTRATIVE FUNCTIONS TOWARDS PROTECTION OF REAL ESTATE BUYERS: A CASE ANALYSIS ON ILLEGAL ENCROACHMENTS AND CONSTRUCTIONS

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**Abstract** *Real estate sector in India is been growing steadily. . In the current decade with the rise in the demand and buyers of real estate's there is also the rise in the issues concerning real estate's affecting the buyers. One such notable issue is the selling of illegal encroached lands and construction. Various studies have put forth that there has been an increase in illegal encroachment and construction of lands, in spite of passing the Real Estate Act as a step taken by the Legislature to protect the interest of buyers of real estates, there still is prevalence of this problem. As a result an ambiguity arises with respect to the impact of the administrative functions made by the Regulatory authority in India. Therefore this research is carried out with an aim to identify the impact of administrative of Real Estate Regulatory Authority towards protection of buyers from selling of illegal encroachment and construction. Through non probability convenience sampling of sample size 1542 and using statistical test of chi square it could be found out that The administrative functions carried out by the Real Estate Regulatory Authority has a negative impact which may be cured by adapting new administrative functions by the RERA.*

**Keywords** *real estate, administrative function, Real Estate Regulatory Authority, impact*

## INTRODUCTION

The real estate sector is one of the most all around perceived sectors. Real estate sector includes four sub sectors - housing, retail, hospitality, and commercial. The development of this sector is very much supplemented by the development of the professional workplace and the demand for office space just as urban and semi-urban lodging. The development business positions third among the 14 significant sectors regarding immediate, aberrant and actuated impacts in all sectors of the economy.

Real estate sector in India is relied upon to arrive at a market size of US\$ 1 trillion by 2030 from US\$ 120 billion of every 2017 and contribute 13 percent of the nation's GDP by 2025. Retail, hospitality and commercial real estate are likewise developing altogether, giving the genuinely necessary framework to India's developing needs. The Indian real estate sector has seen high development lately with the ascent in demand for office just as private spaces. Private Equity and Venture Capital interests in the sector have come to US\$ 1.47 billion between Jan-Mar 2019. Institutional interests in India's real estate are required to reach US\$ 5.5 billion for 2018, the most elevated in 10 years. In the current decade with the rise in the demand and buyers of real estate's there is also the rise in the issues concerning real estate's affecting the buyers. One such notable issue is the selling of illegal encroached lands.

Encroachment is a circumstance in real estate where a property owner abuses the property privileges of his neighbor by expanding on or stretching out a structure to the neighbor's territory or property. Encroachment can be an issue along contested property lines where an individual purposefully disregards his neighbor's limits, or when a property owner doesn't know about his property limits.

Encroachment achieves an infringement of the property privileges of the influenced property owner. At the point when a property owner trespasses on to their neighbor's property, s/he is said to infringe on the neighbor's property. Trespassing happens when the property owner enters the grounds of the neighbor or fabricates a structure that reaches out past the lawful limits that different the two properties. These encroached lands are sold to genuine buyers causing deception and violating their rights.

The government has taken various steps in controlling the issue of selling illegal encroachments under Real Estate Act, 2016, by forming the administrative body and ensuring that process of real estates are carried out in a genuine way. But on the contrary one is able to witness a steady increase in the issue of selling encroached plots in India. Therefore a natural ambiguity arises with respect to the impact of the administrative functions under Real Estate Act, 2016. This research **aims** in identifying the impact of administrative of Real Estate Regulatory Authority towards protection of buyers from selling of illegal encroachment and construction .

### OBJECTIVES

1. To identify the prevalence of illegal encroachment and constructions in India
2. To study the functions of Real estate Regulatory Authority
3. To analyze the impact of administrative functions carried out by Real estate Regulatory Authority in protection of buyers rights.

### HYPOTHESIS

**H<sub>0</sub>:** The administrative functions carried out by the Real Estate Regulatory Authority do not have a negative impact

**H<sub>1</sub>:** The administrative functions carried out by the Real Estate Regulatory Authority has a negative impact

### REVIEW OF LITERATURE

#### *Forms of encroachment*

Trespass of individual is a demonstration wherein an individual with no position or the assent of the wronged individual, upsets or intercedes the individual from doing what he was doing before he was interrupted. Trespass of individual has been clarified in the law of torts (Remec, 1960; Ambrose, Diop and Yoshida, 2017).

Trespass of chattel is a demonstration wherein an individual with no power or the assent of the abused individual, upsets or intercedes with the exclusive portable property of the individual (Dunbar-Brunton, 1979b).

Trespass of property or land is a demonstration wherein an individual with no position or the assent of the oppressed individual, upsets or mediates with the property or land of an individual. Trespass of land has been clarified in the law of torts just as in the Indian Penal Code. It is a culpable offense (Dunbar-Brunton, 1979a).

### PENAL PROVISION RELATING TO ENCROACHMENT IN INDIAN LAW

Section 441 of Indian Penal Code (IPC), 1860 encroachment is the point at which somebody goes into or upon property possessing another with a purpose to submit an offense or to compromise, affront or pester any individual possessing such property, and misguidedly stays there.' Penalty for the equivalent is given under Section 447, which incorporates imprisonment for as long as a quarter of a year or fine up to Rs. 500 or both (Yeo and Wright, 2016).

Under the Real Estate Regulation Authority Act which is made for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or

sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate (Kozina *et al.*, 2019).

### REAL ESTATE REGULATION AUTHORITY

Real estate sector had been to a great extent unregulated, no standardization of business practices and transactions. There is Predominance of issues like postponements, value, and nature of development (Muyingo, 2014; Kozina *et al.*, 2019). Deferrals in ventures had been a significant issue plaguing real estate sector-enormous cost overwhelm because of defers. There are Various instances where designers tricked property purchasers and No complaint redressal instrument, so the authority was formed (Hou, 2019). The main objective of RERA is

1. Enhance transparency and accountability in real estate and housing transactions
2. Lift local and remote investment in the real estate sector
3. Give uniform administrative condition to guarantee expedient settling of debates
4. Advance methodical development through effective venture execution and standardization

### FUNCTIONS

1. Register and maintain a database of real estate projects; publish it on its website for public viewing,
2. Protection of interest of promoters, buyers and real estate agents
3. development of sustainable and affordable housing,
4. Render advice to the government and ensuring compliance with its Regulations and the Act (Kalantry, no date)

### ROLE OF JUDICIARY

Supreme Court of India in the matter of M. C. Mehta Vs Union of India & Others, directed issuance of show cause notice to the accused promoter wherever there is any unauthorized construction or illegal encroachment. The court said that not more than 48 hours time be given to the defaulter to respond. Supreme Court also recommended that that it would be appropriate for the Ministry of Housing and Urban Affairs, Government of India to issue an advisory to other States, particularly, to the States of Maharashtra and Karnataka to take steps similar to the steps taken in Delhi (Schusser, 2019).

In the case of GyanPrakash Sharma v. Delhi Development Authority and Anr., the Court has stated that before granting the permission or sanction the Authority has to seek clearance from from every concerned department as the case may be (Kalantry, no date; Schusser, 2019).

Navin Bhatia and Ors. v. Lt. Governor of Delhi and Ors. a petition was filed to restrict illegal construction that was completed without a sanctioned plan. The Court held that according to the Act, the layout plan of a project must be approved before starting any promotion work (Iyer, 2007).

A division bench of Justice M Venugopal and Justice S Vaidyan, passed order in the Krian Bai Case, restraining illegal constructions and also directed the authorities to take necessary steps and recommended guidelines towards prevention of cases of illegal construction.

### STATEMENT OF PROBLEM

Various studies have put forth that there has been an increase in illegal encroachment and construction of lands, in spite of passing the Real Estate Regulatory Authority Act as a step taken by the Legislature to protect the interest of buyers of real estates, there still is prevalence of this problem (Patil and Waghmare, 2018). As a result an ambiguity arises with respect to the impact

of the administrative functions made by the Regulatory authority in India. Therefore this research is done with such aim to identify the same.

**RESEARCH METHODOLOGY AND MATERIALS**

The purpose of carrying out this study is to identify Impact of Administrative Function towards Protection of Buyers Under Real Estate Regulatory Authority Act. This is an indicative study because the study focuses on Case on Illegal Encroachments and Construction and as the researcher intends to understand and identify Impact of Administrative Function towards Protection of Buyers Under Real Estate Regulatory Authority Act the study is divided into 2 categories – 1. Effectiveness

2. Need for new system

The above two categories are intended to fulfill the research gap mentioned above. Studies have put forth that the impact can be classified by two type’s namely positive and negative impact. The space between the two can be identified effectiveness and requirements, which can be identified through public opinion.

The study includes both qualitative as well as quantitative method, which includes analytic method. Present study is based on Primary as well as Secondary sources of data, where the Primary Sources are collected by collecting questionnaire from general public and Secondary Sources collected through literature of N.G.O. reports, Government Reports, Websites, Research Articles, Newspapers. *The Variable used can be classified into two types namely*, Independent variable as gender and Age on the other hand Dependent variable namely.

The study is carried out with the help of non-probability convenience sampling method, where 703 respondents are male, 853 respondents are females and 90 respondents belong to other community. In this study to determine the validity and the determine the study results chi-square analysis method is used. when the pearson value of ‘Asymp. Sig’ value is less than 0.05, the alternate hypothesis is considered and when the pearson value ‘Asymp. Sig’ value is greater than 0.05, the null hypothesis is accepted. For the determining the hypothesis the variables are cross tabulated.

**FREQUENCY AND SAMPLE SIZE**

	Frequency	Percent	Valid Percent	Cumulative Percent
Business	702	45.5	45.5	45.5
Govt. Job	82	5.3	5.3	50.8
Self Employeed	302	19.6	19.6	70.4
Unemployed	456	29.6	29.6	100.0
<b>Total</b>	<b>1542</b>	<b>100.0</b>	<b>100.0</b>	-

**CONCEPT ANALYSIS AND RESULTS**

**1. Effectiveness of Real Estate Regulatory Authority Functions**

**H<sub>0</sub>:** There is no relationship between the public opinion on Effectiveness of Real Estate Regulatory Authority Functions and education qualification, Occupation.

**H<sub>1</sub>:** There is relationship between the public opinion on Effectiveness of Real Estate Regulatory Authority Functions and education qualification, Occupation.

**Table1. Opinion on Effectiveness of Real Estate Regulatory Authority Functions**

Occupation	Opinion on effectiveness of real estate Regulatory Authority Functions			Total
	Maybe	No	Yes	
Business	144	430	128	702
Govt. Job	11	59	12	82
Self Employed	66	142	94	302
Unemployed	49	236	171	456
<b>Total</b>	<b>270</b>	<b>867</b>	<b>405</b>	<b>1542</b>

**Chi-Square Tests**

-	Value	df	Asymptotic Significance(2-sided)
Pearson Chi-square	78.604	6	0.075
Likelihood Ration	80.254	6	0.075
<b>N of Valid Cases</b>	1542	-	-

**Table2. Opinion on Effectiveness of Real Estate Regulatory Authority Functions with respect to educational qualification**

Educational Qualification	Opinion on Effectiveness of Real Estate Regulatory Authority Functions			Total
	Maybe	No	Yes	
10 <sup>th</sup>	37	21	60	118
12 <sup>th</sup>	114	166	57	337
Illiterate	8	25	11	44
PG	116	168	87	371
UG	242	319	111	672
<b>Total</b>	<b>517</b>	<b>699</b>	<b>326</b>	<b>1542</b>

**Chi-Square Tests**

-	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	880.52	8	0.060
Likelihood Ration	81.172	8	0.077
N of Valid Cases	1542		-

The asymptotic significance value of pearson chi square is greater than 0.05, which proves that there is no relationship between the independent and dependent variable. As a result, proving to the fact that, the administrative functions, carried out by RERA is not effective. Since there is no such relationship between the 2 variables, the null hypothesis is accepted

**2. Need for new Administrative Functions**

**H<sub>0</sub>:** There is no relationship between the public opinion on Need for new Administrative Functions and educational qualification, Occupation.

**H<sub>1</sub>:** There is a relationship between the public opinion on Need for new Administrative Functions and educational qualification, Occupation.

**Table3. Opinion on Need for new Administrative Functions**

Occupation	Opinion on need for new administrative functions			Total
	Maybe	No	Yes	
Business	252	281	169	702
Govt. Job	0	65	17	82
Self Employed	70	117	115	302
Unemployed	93	301	62	456
<b>Total</b>	<b>415</b>	<b>764</b>	<b>363</b>	<b>1542</b>

**Chi-Square Tests**

-	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	158.033	6	0.066
Likelihood Ration	174.836	6	0.061
N of Valid Cases	1542		-

**Table4. Opinion on Need for new Administrative Functions with respect to educational**

Educational Qualification	Opinion on Need for new Administrative Functions			Total
	Maybe	No	Yes	
10 <sup>th</sup>	65	19	34	118
12 <sup>th</sup>	145	153	39	337



Illiterate	15	21	8	44
PG	109	204	8	371
UG	205	287	180	672
<b>Total</b>	<b>539</b>	<b>684</b>	<b>319</b>	<b>1542</b>

**Chi-Square Tests**

-	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	92.464	8	0.054
Likelihood Ration	98.168	8	0.050
N of Valid Cases	1542		-

The asymptotic significance value of Pearson chi square is greater than 0.05, which proves that there is no relationship between the independent and dependent variable. As a result, proving to the fact that, there is need for new administrative functions, carried out by RERA. Since there is no such relationship between the 2 variables, the null hypothesis is accepted.

**DISCUSSION**

From the current study it could be inferred that There is no relationship between the public opinion on Need for new Administrative Functions and Gender, Occupation. There is no relationship between the public opinion on Effectiveness of Real Estate Regulatory Authority Functions and Gender, Occupation. These results convey the fact that there is need for new administrative functions, carried out by RERA and the administrative functions are not effective. The parameters that are considered for the purpose of this study are Public opinion on the Need for new Administrative Functions and effectiveness of administrative functions.

The current study is primarily influenced by the individual’s ability to perceive an issue and extent of being a victim for the problem. In the ambit of this study it is proven that individuals who haven’t faced higher intensity of the problem tend to show a negative response. At the same time individuals who haven’t perceived this problem or have not experienced this problem at its fullest have shown a negative response.

When the current study is compared with the situation in other states it could be found out that the state enactments act vibrantly in preventing the problem. Therefore the administrative functions under RERA are effective and have positive impact.

The study recommends that state legislature must also make such effective laws in motions to curb these practices of illegal encroachment and constructions.

**FINDINGS**

1. There is no relationship between the public opinion on Need for new Administrative Functions and Gender, Occupation.
2. There is no relationship between the public opinion on Effectiveness of Real Estate Regulatory Authority Functions and Gender, Occupation.
3. There is need for new administrative functions, carried out by RERA and the administrative functions are not effective.

**RECOMMENDATIONS**

1. state legislature must also make such effective laws in motions to curb these practices of illegal encroachment and constructions
2. New administrative functions need to be adopted by RERA.

**CONCLUSION**

From the current study it could be inferred that There is no relationship between the public opinion on Need for new Administrative Functions and Gender, Occupation. There is no

relationship between the public opinion on Effectiveness of Real Estate Regulatory Authority Functions and Gender, Occupation. These results convey the fact that there is need for new administrative functions, carried out by RERA and the administrative functions are not effective. These inferences permit to the conclusion that The administrative functions carried out by the Real Estate Regulatory Authority has a negative impact which may be cured by adapting new administrative functions by the RERA.

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