



## Key Features and State-wise Implementation of the Real Estate (Regulation and Development) Act (2016)

### Background

Prior to the enactment of the Real Estate (Regulation and Development) Act, 2016, there was no single regulator governing the real estate sector in India. There was limited compliance with the existing regulatory framework in the States, and violations of legal requirements by real estate promoters became commonplace. This led to a deepening trust deficit between real estate builders and buyers.<sup>1</sup>

In addition, parties transacting in real estate had to fulfil compliance requirements from multiple government agencies which varied by State. These were not always known to the applicant beforehand, making it impossible for them to ascertain the timelines for obtaining the necessary approvals.<sup>2</sup> According to a 2014 report published by the Federation of Indian Chambers of Commerce and Industry (FICCI), it took anywhere between 2.5 and 4 years to obtain all the permissions ranging from Change of Land-Use to occupancy certificate.<sup>3</sup> The same report also estimated as follows, the approximate time taken in different states to complete the approval processes-

Type of approval	Maharashtra	Gujarat	Odisha	Tamil Nadu	Haryana
Land conversion (from Agricultural to Non-Agricultural)	3 months or more	2 months	3 to 6 months	9 months	6 months
Ownership certificate	15 days	60 days	6 to 12 months	12 months	3 days

<sup>1</sup> Indian Institute for Human Settlements (2018)- Ironing out Difficulties in Implementing the RERA Act, 2016

<sup>2</sup> Report of the Committee of Streamlining Approval Procedures for Real Estate Projects in India (2013)

<sup>3</sup> FICCI (2014)- Approval Process for Real Estate Projects and Suggestions to Streamline the System

Building layout approval	1 month	6 months	6 to 12 months	45 days	6 months
Commencement certificate	15 to 30 days	2 to 3 months	6 months	1 to 4 months	6 to 9 months
Archaeological Survey of India, if applicable	6 months	Over 1 year	3 to 24 months		2 months
Airport Authority of India, if applicable	3 to 4 months	6 months	6 to 12 months	1 to 2 months	3 months
Environmental clearance	3 months or more	1 year	30 days to 12 months	4 to 8 months	2 years
Building completion certificate	30 days				6 months
Occupancy certificate	60 days	3 to 4 months	6 to 12 months	3 to 6 months	6 months

Recognising the drawbacks of a multifarious and time-consuming compliance system, a Real Estate (Regulation and Development) Bill was introduced in the Rajya Sabha in 2013. Following multiple recommendations by the Standing Committee of the Parliament, the Real Estate (Regulation and Development) Act (henceforth referred to as the '*Central Act*') was finally passed by the Parliament in 2016. **The Central Act was passed with a view to protecting the interests of real estate purchasers and promoting an environment of transparency in the real estate sector.**<sup>4</sup>

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<sup>4</sup> Press Information Bureau (2017)- Regulation of real estate sector becomes a reality ending nine year wait

## Key provisions and features from the Central Act

Sr. No.	Topic	Explanation	Section Number
1	Jurisdiction of State governments	<ul style="list-style-type: none"> <li>It is mandatory for each State and Union Territory<sup>5</sup> to establish their Real Estate Regulation Authorities (RERAs) following the notification of RERA regulations within one year of its enactment.<sup>6</sup></li> </ul>	20
2	Compulsory registration	<ul style="list-style-type: none"> <li>It is compulsory for promoters to register projects measuring more than 500 square meters or having more than 8 apartments with the relevant State RERA.</li> <li>It is also binding upon all real estate promoters and agents transacting in RERA-registered projects to register with RERA.</li> </ul>	3
3	Online application and public disclosure	Those promoters who are applying to register their projects, must do so online by uploading the requisite documents.	11
4	Time-bound approval by RERA	The RERA is bound to approve or reject an application within 30 days of receiving it.	5
5	Status of ongoing projects	It is binding to register those projects which are in progress and for which a completion certificate has not been yet issued.	3
6	Cap on deposit that a promoter can accept after entering into a sale agreement	Promoters are not allowed to accept any deposit in advance of the project being completed without entering into an agreement for sale. Furthermore, they are not allowed to accept more than 10 percent of the consideration value of the property being sold.	13
7	Title insurance	It is mandatory for real estate promoters to purchase title insurance and extend its cover to the customers.	16
8	Dedicated fund	It is binding upon promoters to deposit 70 percent of the funds received from buyers for the project in an escrow	4

<sup>5</sup> The Central Act allows for the establishment of two or more regulatory authorities for a single State or the establishment of a single authority for two or more States or Union Territories as well. For instance, the State of Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli have a common RERA.

<sup>6</sup> In the same section, the Central Act also enumerates the provisions on the constitution and membership of the RERAs as well as other administrative details relating to their functioning.

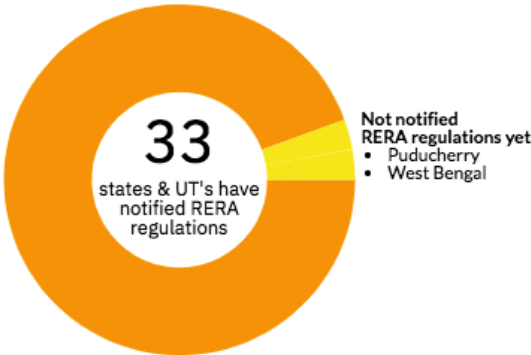
		account which can only be used for implementing the project.	
9	Filing a case	An aggrieved person may file a complaint with RERA against a buyer, promoter or agent.	31
10	Real Estate Appellate Tribunal	It is possible to file an appeal with the Appellate Tribunal against the decision of the RERA.	43 to 58

## An overview of RERA implementation and potential issues

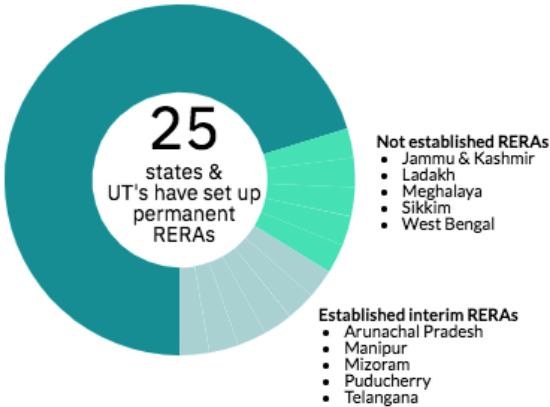
### Delayed progress of RERA establishment

Even though the Central Act made it mandatory for the State governments to establish their respective Real Estate Regulatory Authorities (RERAs) following the passage of their legislations within one year of its enactment, several State governments failed to do so within the stipulated period. In fact, as of March, 2021, West Bengal<sup>7</sup> and Puducherry have not notified their RERA legislations. Moreover, some States have established interim RERAs while a few have not established RERAs at all.<sup>8 9</sup>

State-wise Notification of RERA Regulations



State-wise Establishment of RERAs till March, 2021

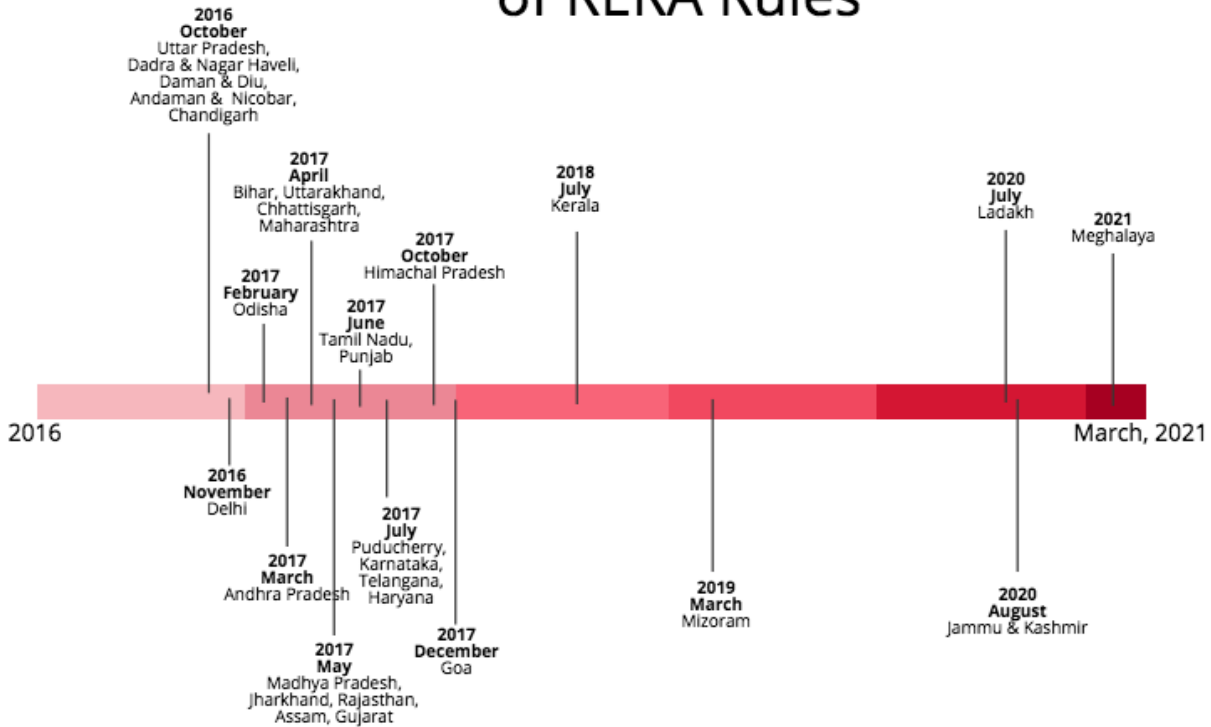


<sup>7</sup> West Bengal enacted their own Housing Industry Regulation Act in 2017 to regulate the real estate sector in the state.

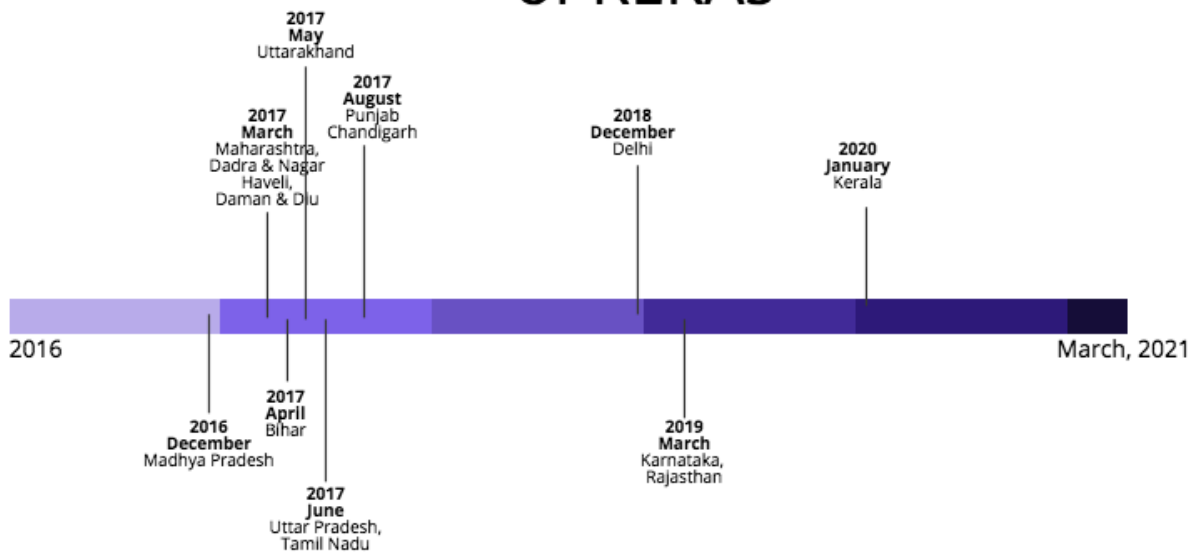
<sup>8</sup> Ministry of Housing and Urban Affairs (MoHUA)- RERA (2016) Implementation Progress Report

<sup>9</sup> Maharashtra was one of the first States to establish its RERA. It leads in the agent and project registration approvals. Till date, it has approved 27762 projects and 26620 agents.

# Timeline of State-wise Notification of RERA Rules



# Timeline of State-wise Establishment of RERAs



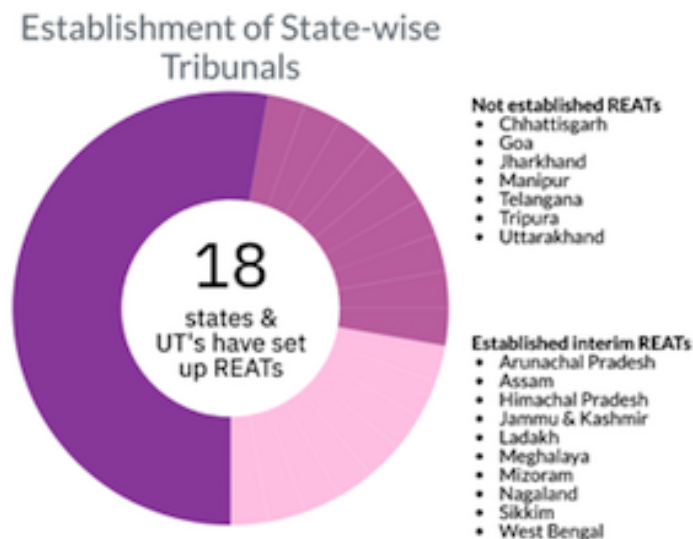
*Note: The RERA establishment dates of a few states such as Haryana, Odisha, Jharkhand and Chhattisgarh are not mentioned on their official RERA websites.*

## Multiplicity of bodies hearing complaints

The Central Act empowers the Adjudicating Officer<sup>10</sup> to hear complaints and decide the compensation to be paid to the aggrieved party within 60 days of the registration of the complaint by the aggrieved party. The appointment of an Adjudicating Officer gives the aggrieved party the option of approaching either him or the State RERA for the redressal of his complaint. However, there is also a possibility of multiple bodies, such as, the RERA, the Consumer Disputes Redressal Forum giving varying orders for the disposal of similar complaints.<sup>11</sup>

## Delays in establishing Real Estate Appellate Tribunals

The Central Act also made the establishment of Real Estate Appellate Tribunals mandatory within one year of its enactment. The tribunal is empowered to hear appeals against any order or decision of the State's RERA.<sup>12</sup> Seventeen states have not established permanent Appellate Tribunals till date. There is presently no data available on the disposal of appeals by the Appellate Tribunals.



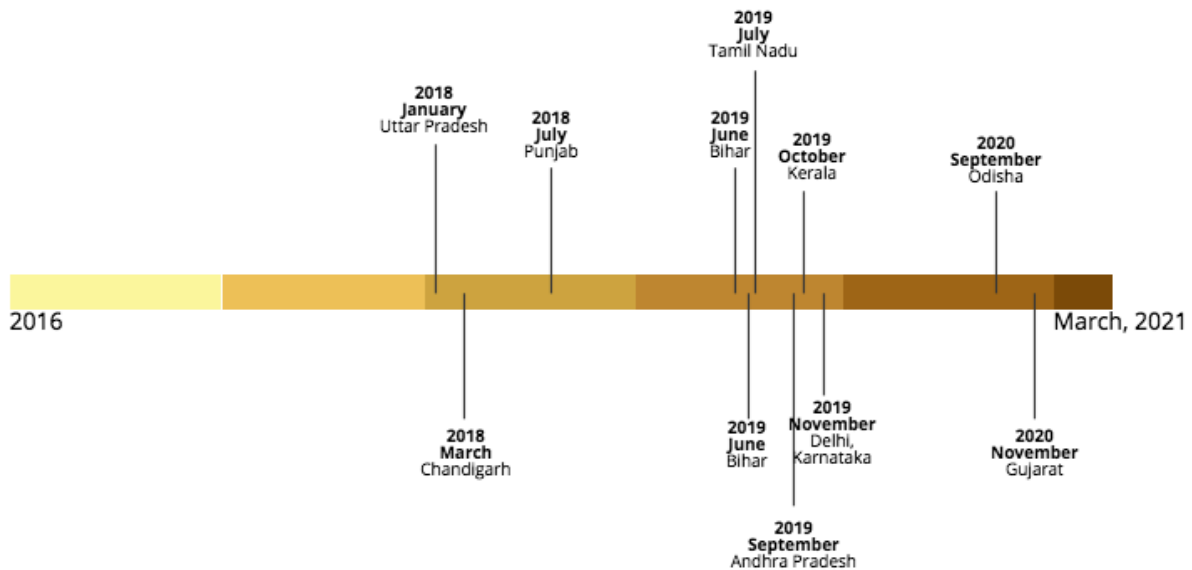
Source: Ministry of Housing and Urban Affairs (MoHUA) website

<sup>10</sup> The State government may appoint one or more Adjudicating Officers who are or have been District Judges.

<sup>11</sup> [Observer Research Foundation \(ORF\) \(2020\)- The third anniversary of RERA: Streamlining to energize the sluggish real estate sector](#)

<sup>12</sup> It is possible to appeal against the decision of the REAT by approaching the High Court within 60 days of the day of receipt of the decision.

# Timeline of State-wise Establishment of Tribunals



Complicated and time-consuming process of registration with RERA

Prior to the implementation of RERA regulations in States, the entire compliance requirements were not known to the applicant beforehand. Now, with the enactment of the State RERA guidelines which specify the requirements to be fulfilled and the enumeration of those requirements on the respective RERA websites, the approval process has become more transparent. However, it is cumbersome; registration with RERA requires the applicant to obtain multiple compliances from several government agencies. RERA is unable to compel governmental authorities at different levels to abide by a specific timeline to provide clearances.<sup>13</sup> For instance, in Karnataka, the online registration process requires the submission of 25 different No Objection Certificates (NOCs)<sup>14</sup> from various authorities, making the entire process time-consuming. It takes 60 days alone to obtain a Change of Land-Use certificate which is a type of NOC.

Dilution of some key provisions of the Central Act in State RERA legislations

Some variance in the State-wise implementation of RERA is to be expected. For instance, the RERA rules in Delhi, Haryana, Karnataka and Tamil Nadu mandate that the price of the

<sup>13</sup> IDFC (2018)- India Infrastructure Report: Making Housing Affordable

<sup>14</sup> Out of the 25 NOCs, it is mandatory to submit 3 NOCs. The remaining NOCs are to be submitted if the governing legislations require the promoter to obtain a clearance for the project in question.

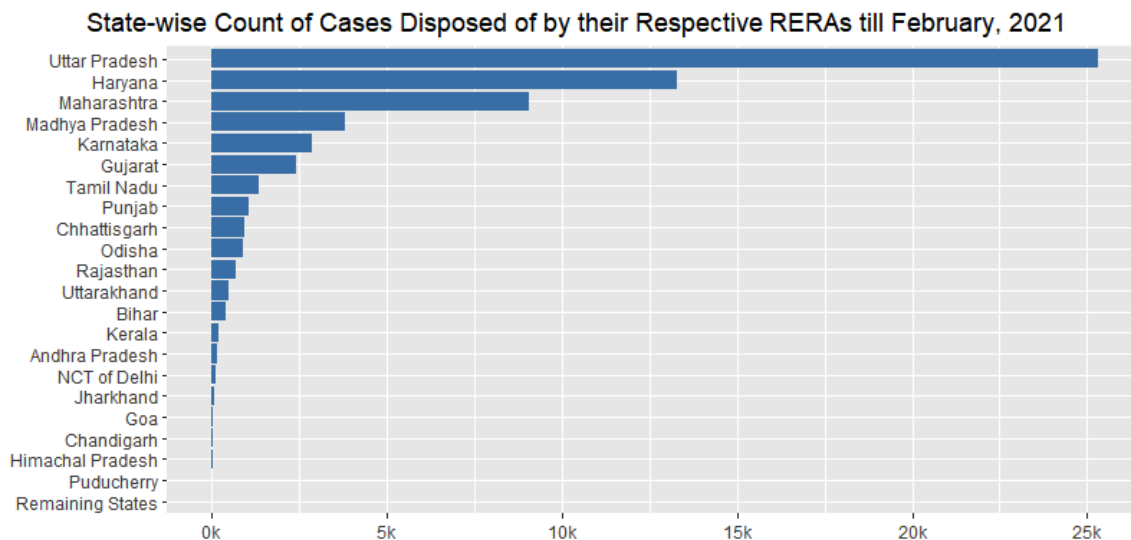
apartment recorded in the Agreement for Sale include the cost of maintenance of essential services till maintenance is taken over by the association of allottees. On the other hand, the Maharashtra RERA rules require the Sale Agreement to record the breakup of the costs of the apartment and common areas, and not the maintenance charges.<sup>15</sup> Some states have provided for exemptions for a few provisions which may dilute the objectives of the Central Act.

### Definition of ongoing projects

The Central Act requires the registration of new and ongoing projects with the relevant state RERA within 3 months of its enactment. The Central Act defines an ongoing project as a project for which its developer has not obtained a completion certificate. The Haryana government, however, exempts those projects for which a part-completion certificate has been issued or for which their developers have made applications for completion certificates before the government notified its draft RERA rules, that is before 30th of April, 2017. In Uttar Pradesh, projects in which 60 percent of the units have been sold or applied for a completion certificate are exempt from registration with RERA. In Delhi-NCR, 90% of the projects fall in this category.<sup>16</sup>

### Varying efficiency of case disposal by State RERAs

The Central Act and the relevant State regulations allow aggrieved parties to file complaints against a real estate buyer, promoter or agent. The chart below shows the count of case disposal in those States where RERAs have been established.



Source: Terra Economics and Analytics Lab

Source: Ministry of Housing and Urban Affairs (MoHUA) website

<sup>15</sup> Knight and Frank (2018)- RERA Through a Magnifying Glass

<sup>16</sup> Observer Research Foundation (ORF) (2020)- The third anniversary of RERA: Streamlining to energize the sluggish real estate sector



Increased transparency owing to public disclosure of project and promoter details  
It is mandatory for the promoter to upload his registration details<sup>17</sup> related to his project. Such a provision is bound to help consumers make an informed decision about the promoter and the relevant project.<sup>18</sup> However, not all states which have established either an interim or permanent RERA, have set up their web portals. They include Assam, Manipur, Ladakh and Arunachal Pradesh. The details to be disclosed by the promoter also vary by state.

### Restriction on usage of funds has potential to curb malpractices

Since it is mandatory for the promoter to deposit 70 percent of the funds he receives from his customers in an escrow account and use them solely for project implementation,<sup>19</sup> it can curb the common practice of diverting funds from one project to another by promoters.<sup>20</sup> However, the same restriction can also hamper the working capital of promoters causing them to face a liquidity crunch.<sup>21</sup>

### Stringent penalty in cases of violation of RERA rules

The Central Act stipulates that the violation of the RERA provisions by the promoter could lead to his imprisonment of up to 3 years or a fine which could extend up to 10 percent of the estimated cost of the project. Several states have already diluted these provisions by adding a clause which allows the promoter to pay a compounding penalty and avoid imprisonment. Experts argue that instead of imposing stringent penalties which could lead up to the cancellation of projects, efforts should be made to amend the clauses to ensure that they do not adversely affect progress of the projects. This is because a majority of the home buyers are interested in owning their homes and hence developers are interested in completing their projects.<sup>22</sup>

### Title insurance not implemented by the State governments

The Central Act makes mandatory the transfer of the title insurance cover from promoters to the allottees once they enter into an agreement for sale. Promoters who violate this provision are liable to be penalised 5% of the estimated cost of their project. However, it is effectively up

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<sup>17</sup> Registration details include details and specifications such as, the registration number of the project and quarterly updates of the number and types of apartments and booked in the project.

<sup>18</sup> [Ibid](#)

<sup>19</sup> Project implementation costs include land and construction costs which differ from State-to-State. For instance, in Maharashtra, they include land and Transfer of Development Rights' acquisition costs. In Karnataka, stamp duty and registration fees are considered part of project implementation costs.

<sup>20</sup> [Knight and Frank \(2018\)- RERA Through a Magnifying Glass](#)

<sup>21</sup> [Bloomberg Quint- Builders Brace For Liquidity Crunch As Real Estate Act Comes Into Force](#)

<sup>22</sup> [Observer Research Foundation \(ORF\) \(2020\)- The third anniversary of RERA: Streamlining to energize the sluggish real estate sector](#)

to the State governments to require title insurance for RERA projects through their respective legislations. It has been almost five years since RERA was enacted and not a single State government has yet notified any rules to govern title insurance.<sup>23 24</sup>

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<sup>23</sup> [Terra Economics and Analytics Lab \(2020\)- Title Insurance in India](#)

<sup>24</sup> Although no State government has made it mandatory for promoters to purchase title insurance, there are 7 title insurance products filed with the Insurance Regulatory and Development Authority of India (IRDAI), which are being currently offered by insurers.