

Restitutionary Remedies, Statutory Consumer Protections, and Regulatory Governance in Residential Real Estate: RERA Regime in Keralam, India

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Abstract

Housing and residential real estate (RRE) transactions in India were historically governed by the doctrine of caveat emptor, leaving home-buyers with weak and fragmented remedies under common law contracts or general civil litigation. The enactment of the flagship Real Estate (Regulation and Development) Act, 2016 (RERA) marked a structural paradigm shift toward statutory restitution, unjust enrichment prevention, and administrative accountability. This paper formulates the Restitutionary Real Estate Mismatch (RREM) Framework to examine how project delays, structural defects, and asymmetric buyer-promoter contracts trigger statutory restitution under Section 18 of RERA, disgorgement of unearned developer profits, and monetary refunds with compounding interest. Utilizing national (India) and sub-national (Keralam) level data from the Reserve Bank of India (RBI), National Housing Bank (NHB), Kerala Real Estate Regulatory Authority (K-RERA), State Level Bankers' Committee (SLBC-Kerala), and landmark judgments of the Supreme Court of India, this study explores the statutory intersection of property rights, unjust enrichment law, Information and Communication Technology (ICT) integration, and sustainable ESG disclosures. Strategic legal and policy interventions are proposed to resolve conflicts between RERA and the Insolvency and Bankruptcy Code (IBC), streamline revenue recovery execution, and enhance consumer protection in the digital era.

Keywords: Restitutionary Remedies, RERA, K-RERA, Unjust Enrichment, ESG Disclosures, ICT Integration, Consumer Protection, Residential Real Estate Law.

1. Introduction

The residential real estate (RRE) sector denotes a foundational pillar of private property rights, contract enforcement, and institutional investment in emerging market economies. In India, housing development was historically afflicted by severe information asymmetry, systemic delivery delays, non-negotiable standard-form contracts, and the illegal diversion of buyer advances to unapproved land acquisitions.

Prior to 2016, aggrieved allottees sought fragmented relief under the Consumer Protection Act, civil suits under the Code of Civil Procedure (CPC, 1908), or specific performance under the Specific Relief Act, 1963.

But these traditional civil remedies proved ill-equipped to counter developer defaults, resulting in widespread failure of contractual performance, market distortions, and the unjust enrichment of defaulting builders. To rectify these systemic failures, the Parliament of India enacted the Real Estate (Regulation and Development) Act, 2016 (RERA).

The central legal innovation of RERA lies in its statutory codification of unconditional restitutionary rights under Section 18. This provision confers upon home-allottees an unqualified right to claim a full refund of all amounts paid, alongside statutory interest and monetary compensation, whenever a promoter fails to complete or give possession of an apartment in accordance with the terms of the agreement for sale.

This paper evaluates the jurisprudential, statutory, and administrative mechanisms of real estate restitution in India, focusing on the sub-national context of Keralam (Kerala), given the special socio-legal and economic environment prevalent in the State of Keralam.

2. Significance of the Study

Keralam represents a unique socio-legal environment defined by high land fragmentation, dense residential development, elevated consumer literacy, and vulnerability to ecological hazards. By analyzing sub-national enforcement trends under the Kerala Real Estate Regulatory Authority (K-RERA) and binding rulings of the Supreme Court of India, this study examines how statutory restitutionary remedies operate against developer default, unfair trade practices, and real estate inventory overhang in an increasingly digitalized economy.

In fact, the development of housing and RRE creates extensive forward and backward linkages with over 350 allied sectors – including steel, cement, logistics, paint, electrical fixtures, and financial intermediation. Investment in residential construction yields substantial income and employment multiplier effects, driving broad-based macro-economic expansion. In emerging economies like India, the mortgage-to-GDP ratio (MGR) remains under-penetrated relative to global benchmarks, signalling vast structural space for sustained long-term expansion.

Figure I: Cross-Country Comparison of MGRs of various nations.

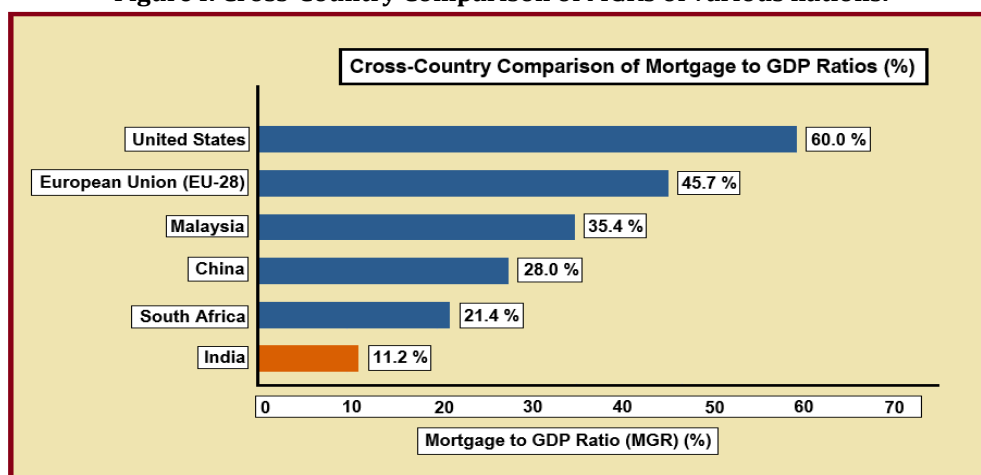


Figure 1: Cross-Country Comparison of Mortgage-to-GDP Ratios (MGRs).

Source: Compiled from NHB (India) and such other global regulatory bodies.

The rapid advancement of Information and Communication Technology (ICT) and financial technology (FinTech) could add a crucial operational dimension to RRE governance. Union and State policy frameworks – including *Digital India*, the *Kerala Knowledge Economy Mission*, and localized digital banking networks—have accelerated ICT adoption in title search, property registration, and credit appraisal. However, expanding financial intermediation without strong regulatory oversight risks exacerbating credit mismatches, default rates, and market friction.

Global experiences, like the one in Philippines noted by Pickens (2009) relating to the vast potential of ICT adoption (Mobile phones) for inclusive economic growth and many such experiences in India too, indicate that adoption of ICT (Fintech, E-CRM) is an imperative. A field-based study in Keralam in India by Joju et. al. (2017a) observed the significant improvement in customer attitudes to ICT-based bank products in Keralam due to e-CRM.

Another study by Joju et. al. (2017b) noted marked rise in the service quality of the banks in Keralam due to their financial technology (fintech) adoption by the banks. Besides ICT, the need for alternative financing models like housing microfinance was noted by Manoj (2015). Similar observations were made regarding the use banking technology for better service quality by Joju and Manoj (2019) and the role of ICT for effective social banking by Manoj (2019).

In India, the statutory intervention of RERA in 2016 introduced mandatory legal guardrails to ensure that market deepening is supported by robust restitutionary protections, equitable contract terms, and operational transparency.

Besides the enactment of RERA in India in 2016, the policy shift towards promoting innovative products like REITs (Real Estate Investment Trusts) in the Indian market by way of conducive regulatory measures in its capital market has created a conducive environment for the growth RRE and housing. The developments in India follow those in emerging markets elsewhere in the world, like those on REITs in Nigeria as noted by Dabara & Ogunba (2019).

Sustainable urban planning increasingly needs to integrate environmental parameters into housing finance. Studies by Cupchik et al. (2003), Bond (2011), and Newton et al. (2015) analyzed consumer perceptions, cost barriers, and drivers regarding energy-efficient building technologies. Tan (2016a) assessed the satisfaction of neighborhood using the responses of the residents in Malaysian green townships.

Tan (2016b) has studied the satisfaction of residents in Malaysia living in gated communities. Olanrewaju and Tan (2017) have studied the factors affecting the choice of affordable homes. Chan et. al. (2017) have designed strategies to promote the adoption of green building technologies (GBTs) for green building with respect to the construction industry from a global perspective, based on the views of various experts across the globe.

Darko et al. (2017) and Albert et al. (2018) identified high upfront capital costs and financing constraints as primary hurdles to adopting Green Building Technologies (GBTs) in developing countries. Of late, there is a growing policy shift towards sustainability in housing and RRE sector, and initiatives that promote green and environment-friendly housing, adoption of ESG etc. are increasingly being encouraged by the Governments across the world, including India.

For instance, Niti Aayog (2018) under the Govt. of India (GOI) in its index baseline report on SDGs in India could effectively serve as a reference book that provides guidance on initiatives aiming at attaining SDGs. Sahoo (2020) has studied the impact of housing bubbles on inflation in India and India's economic growth, and has noted housing price index (HPI) positively influences inflation but not economic growth and has also suggested the need for discouraging HPI for controlling unbridled growth in inflation in the country.

Zam et. al. (2022) sought to embed various technology features that are, both eco-friendly as well as smart, into the arena of affordable housing in Malaysia to ensure satisfaction for the respective community. Sarojkumari, et al. (2023) "Health Monitoring Based Cognitive IOT Using Fast Machine Learning Technique" have noted the key relevance of ICT-based tools for scientific health management in this digital era.

Recent empirical work by Al Mamun et al. (2023), Ho et al. (2024), Jitender et al. (2025), and Razib et al.

(2025) indicates that environmental literacy, subjective norms, and perceived performance positively influence consumer willingness to pay for eco-friendly housing. Manoj (2023) argued that adopting ESG frameworks provides a viable route for sustainable real estate transition in India.

Al Mamun et. al. (2023) studied as to how the willingness to pay (WTP) higher prices (premium prices) for the purchase of green homes in the Malaysian context; based on the replies from 1198 working class people. Factors like environmental literacy, environmental belief, awareness of consequences and their effect on the WTP for green homes. Ho, S.P. et. al. (2024) studied the demand for green residential units, suggested a behavioral model for green house consumers, including growth strategies.

Jitender et. al. (2025) noted various pathways for sustainable growth of the market for India's green housing market.

The awareness of environment and the knowledge of environment of customers could greatly affect their attitudes towards green buildings and allied aspects. Sreedevi et. al. (2025), noted that there exist specific and distinct socio-linguistic strategies and confirmed that language use in a multi-lingual setting is very symbolic and a socially developed one.

Razib et. al. (2025) designed a model for scientific purchase of eco-friendly homes; and factors like the attitude toward such homes, performance expectancy, subjective norms, environmental knowledge and sensitivity to environment are noted to have a positive effect on the intention to purchase such houses. The need for conducive legal and regulatory measures that ensure sustainability in the housing and RRE sector is noticed in all these recent studies.

The accumulation of unsold residential inventory in major Indian metro areas presents systemic financial stability risks. Reports of the Bank for International Settlements (BIS, 2023), IMF, and industry studies (CII-Knight Frank, 2024; Business Standard, 2024) point out huge unsold inventory overhang despite slowing project launches. Mahalik and Mallick (2016), Samirana (2020), and Sahoo (2020) highlighted the risks of speculative housing price inflation and bubble formation, confirming that unbridled price escalation in high-end real estate fails to generate corresponding real economic growth.

Rao et al. (2025) emphasized community resilience and urban planning strategies to mitigate infrastructure vulnerabilities. The vital significance of a closer and critical study of India's housing and RRE sector is evident from the above studies, particularly in view of the very low MGR of India vis-à-vis other nations of the world.

So, such a study in the aftermath of the enactment of RERA 2016 is attempted here with a focus on the State of Kerala (Kerala). The case of Kerala is more relevant given the falling trend in its relative performance vis-à-vis in the housing and RRE front. Further details in this regard are dealt in detail in the next part of this paper.

3. Falling Trend in the Housing and RRE Sector in Kerala: Need for a Reversal

The vital role of the development of housing and RRE sector for the faster national economic development has already been noted. So also, the vast growth of this sector in India is beyond doubt in view of the very low MGR of India (Figure I).

Now, if we look into the specific case of the State of Kerala (Kerala) within India, it is noted that there has been a very discouraging trend in respect of housing (home) loans (HL) in Kerala in its percentage share in India as a whole. Accordingly, Kerala's share has fallen from 3.55 percent in financial year (FY) 2017 has been declining year after to as low as 1.19 percent in FY 2025. (Table I). (Figure II).

Table I: Comparative Credit Metrics: India vs. Kerala (Rs. Lakh Crores)

Particulars	FY2017	FY2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Bank Credit-India	78.41	86.25	97.72	103.71	109.5	118.91	136.75	164.32	175.09
Bank Credit-Kerala	2.56075	2.86783	3.29900	3.59274	3.92669	4.24626	4.93157	5.77092	6.28248
Kerala % India- BC	3.27	3.33	3.38	3.46	3.59	3.57	3.61	3.51	3.59
Home Loans India	8.6	9.75	11.77	13.62	14.92	17.38	19.91	27.19	29.09
Home Loans-Kerala	0.30530	0.32181	0.27386	0.28964	0.30783	0.33046	0.34762	0.34521	0.34603
Kerala % India- HL	3.55	3.30	2.33	2.13	2.06	1.90	1.75	1.27	1.19

Source: Compiled and computed from RBI and SLBC-Kerala data for FY2017–FY2025.

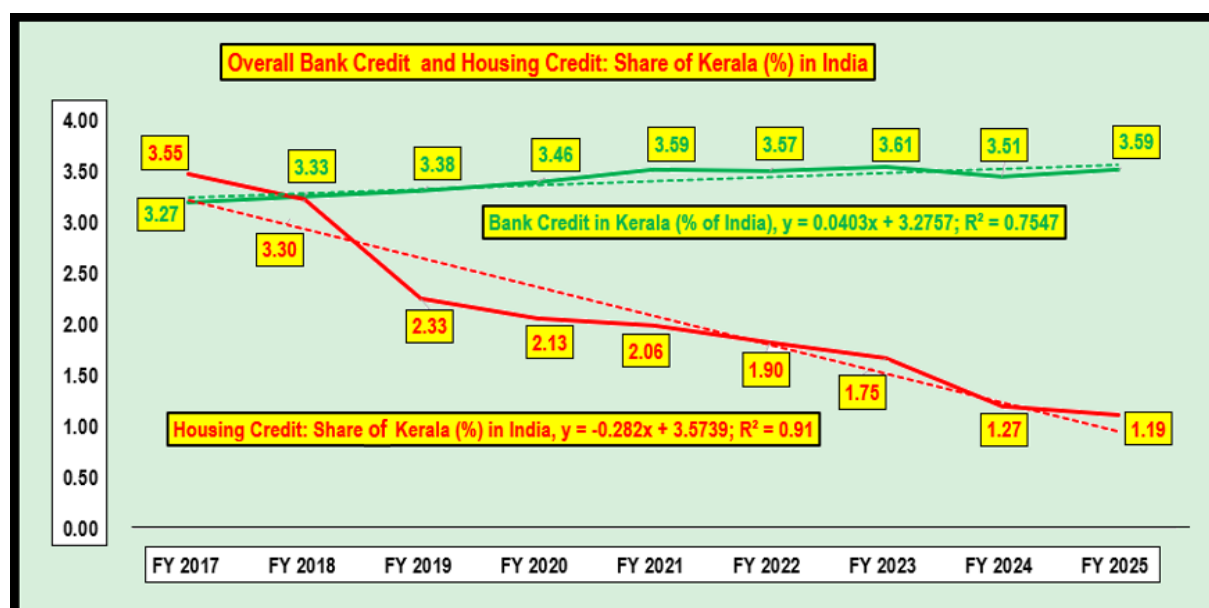


Figure II: Total Credit and Housing Credit segment – Share of Kerala in India as a whole.

It may be noted that Kerala's share in housing (including RRE) loans has been steadily falling even when Kerala's share in its total bank credit (BC) has been gradually growing, from 3.27 percent in FY 2017 to 3.69 percent in FY 2025. This diverging trend, characterized by the fast-declining trend in HL in Kerala as against the growing trend in total BC is clearly shown in Figure II.

Now, if we make a closer look into the case of BC in Kerala and the share of HL within it, it may be noted that the percentage share of HL in the total BC has been steadily falling. (Table II). It may be noted that the share of HL within total BC in Kerala has come down from 11.92 percent in FY 2017 to as low as 5.51 percent in FY 2025, i.e. it has more than halved during the 8 years' period.

On the other hand, the share of HL within the total BC at the national level (all-India) level has increased from 10.97 percent in FY 2017 to 16.61 percent in FY 2025, i.e. over 50 percent rise during the 8 years' period. This trend is shown in Figure III.

Table II: Total Bank Credit (BC) in Kerala and Housing Credit in Kerala (Rs. Crores)

Particulars	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Bank Credit (BC)	256075	286783	329900	359274	392669	424626	493157	577092	628248
Housing Loans (HL)	30530	32181	27386	28964	30783	33046	34762	34521	34603
HL as a % of BC	11.92	11.22	8.30	8.06	7.84	7.78	7.05	5.98	5.51

Source: Compiled from SLBC-Kerala (2025), Banking Statistics for FY2017–FY2025.

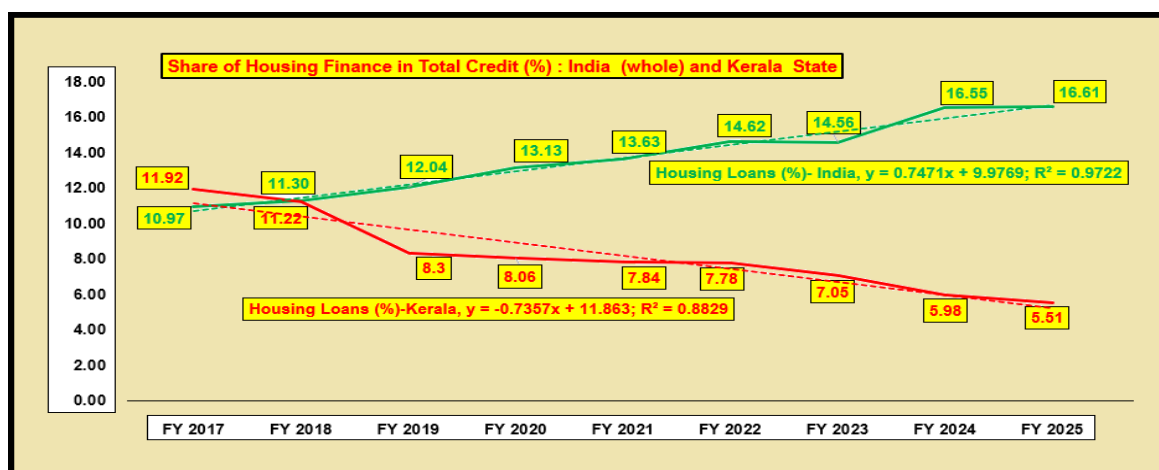


Figure III: Share (Percentage) of HL in Total BC in the State of Keralam (Kerala).

The diverging trend observed between national (India) and sub-national (Keralam or Kerala) is a matter of concern for the State of Keralam. Specific policies for the reversal of this declining trend in respect of Keralam needs to be designed and developed through a closer, and systematic study of this State's housing (including RRE) sector, its financing pattern from the formal sources, etc. Housing loans (HL) are mainly provided by Commercial Banks (CBs), and Housing Finance Companies (HFCs); while Regional Rural Banks (RRBs) and Co-operative sector also grant HL to a small extent. Restitutionary remedies are relevant in this context.

4. Theoretical Framework: The Restitutionary Real Estate Mismatch (RREM)

To conceptualize how RERA alters private law obligations, this study introduces the Restitutionary Real Estate Mismatch (RREM) Framework. This framework posits that contractual failure in RRE development is fundamentally an issue of unjust enrichment, where a developer retains buyer advance payments without fulfilling reciprocal performance within a stipulated statutory time frame. Figure IV depicts the theoretical framework for this study.

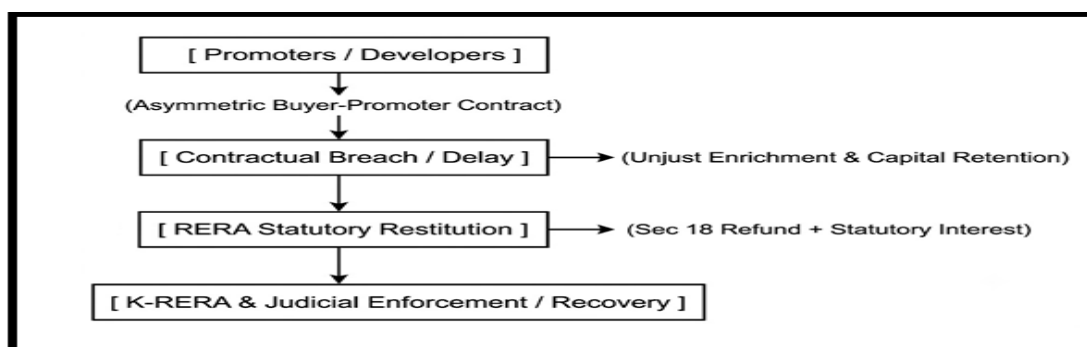


Figure IV: Restitutionary Real Estate Mismatch (RREM) Framework

(Source: Developed by the author).

The RREM framework that is posited for this study has got three core pillars and these are (i) Contractual asymmetry and failure of consideration, (ii) Unjust enrichment via capital diversion, and (iii) Statutory restitution in integrum. These pillars are briefly discussed below.

Three Core Pillars of the RREM Framework

(i) *Contractual Asymmetry and Failure of Consideration*: Firstly, it may be noted that prior to RERA, promoter-drafted agreements imposed severe interest penalties (e.g., 18 percent per annum) on delayed buyer instalments while capping promoter delay damages at nominal fees. RERA statutory provisions nullify these unconscionable clauses, establishing equal interest liabilities.

- (ii) *Unjust Enrichment via Capital Diversion*: Secondly, it may be observed that promoters historically used buyer advances from active projects to purchase land for future developments. By mandating that 70 percent of all project funds be deposited into a dedicated escrow account (Section 4(2)(I)(D)), RERA establishes a statutory trust that prevents capital siphoning and unjust enrichment.
- (iii) *Statutory Restitution in Integrum*: Thirdly, Section 18 replaces discretionary civil court remedies with an absolute statutory entitlement to restitution in integrum (restoration to original position), requiring full money refunds plus compounding interest upon breach of agreed timelines.

5. Legal Architecture of RERA and Statutory Restitutionary Mechanisms

The statutory framework of RERA transforms the traditional legal status of a purchaser of an RRE product or a house (like, villa, flat, apartment etc.) from a passive contract counterparty to a statutorily protected claimant. The details regarding the provisions in RERA and the facts about the legal nature and restitutionary mechanism corresponding to such RERA provisions as well as the respective jurisprudential objective are given in Table III.

Accordingly, Sections 3 and 4 of the RERA relate to mandatory registration and 70 percent Escrow account deposit; and these in turn have got the jurisprudential objective of creating a statutory trust over buyer funds thus preventing capital diversion as well as unjust enrichment.

Besides, Section 13 of RERA corresponds to a ceiling (cap) on advance payment of upto 10 percent without registered agreement for sale; and this in turn has the jurisprudential objective of limiting pre-contractual exploitation and unequal bargaining leverage. Also, RERA's Section 14 relates to adherence to sanctioned plans and rectification of structural defects and this in turn has the jurisprudential objective of imposing a 5-year strict statutory warranty for structural defects without extra cost.

RERA's Section 18 relates to full refund with interest and compensation for failure to give possession; and this in turn has the jurisprudential objective of establishing an absolute statutory restitution for breach of delivery timeline. Also, RERA's Section 40 on execution and recovery as arrears of land revenue corresponds to the jurisprudential objective of providing administrative enforcement of restitutionary money decrees via revenue recovery. (Table III).

Table III: Salient Features of the Provisions under RERA

RERA Provision	Legal Nature and Restitutionary Mechanism	Jurisprudential Objective
Sections 3 & 4	Mandatory Registration and 70 percent Escrow Account Deposit	Creates a statutory trust over buyer funds; prevents capital diversion and unjust enrichment.
Section 13	Cap on Advance Payment (Less than or equal to 10 percent) without registered Agreement for Sale	Limits pre-contractual exploitation and unequal bargaining leverage.
Section 14	Adherence to Sanctioned Plans & Rectification of Structural Defects	Imposes a 5-year strict statutory warranty for structural defects without additional cost.
Section 18	Full Refund + Interest + Compensation for Failure to Give Possession	Establishes absolute statutory restitution for breach of delivery timeline.
Section 40	Execution and Recovery as Arrears of Land Revenue	Provides administrative enforcement of restitutionary money decrees via Revenue Recovery.

Comparative Judicial Interpretation of Restitution Rights

The Supreme Court of India has affirmed the absolute, unconditional nature of Section 18 of RERA which relates to the restitutionary claims. This is evident from the following cases:

- I. *Imperia Structures Ltd. v. Anil Patni (2020)*: Held that remedies under RERA are concurrent with the Consumer Protection Act and that allottees cannot be compelled to wait indefinitely for possession.
- II. *Newtech Promoters and Developers Pvt. Ltd. v. State of UP (2021)*: Settled that the promoter's obligation to refund money under Section 18 upon delay is unconditional and absolute, irrespective of reasons offered for delay.
- III. *M/s. M3M India Pvt. Ltd. v. Dr. Dinesh Sharma (2020)*: Confirmed that regulatory authorities possess binding powers to direct full restitution and issue recovery certificates.

6. Implementation in Kerala: K-RERA Governance and Judicial Trends

Keralam set up the Kerala Real Estate Regulatory Authority (K-RERA) under the *Kerala Real Estate (Regulation and Development) Rules, 2018*. K-RERA's distinct legal challenges are:

- (i) *Land Title Fragmentation & Coastal Regulation Zone (CRZ) Violations*: Complex state-specific land tenure laws, wetlands preservation statutes (*Kerala Conservation of Paddy Land and Wetland Act, 2008*), and CRZ notifications frequently lead to statutory injunctions and project halts.
- (ii) *Interplay with Co-operative Housing and Banks*: Co-operative banks and ACHFs (Apex Co-operative Housing Federations) hold high mortgage market share in Keralam. When projects halt, co-operative lenders and house allottees face conflicting recovery claims.
- (iii) *Revenue Recovery Execution Delays*: While K-RERA regularly issues recovery certificates under Section 40 against defaulting developers, actual realization through the District Collectorate (under the *Kerala Revenue Recovery Act, 1968*) suffers from systemic administrative bottlenecks.

7. ESG Disclosures, Building Regulations, and Legal Compliance

Environmental, Social, and Governance (ESG) mandates are rapidly merging with real estate regulatory law in Kerala. Under Kerala's state ESG policy guidelines and strict building rules (*Kerala Municipality Building Rules, 2019*), developers face three new compliance duties and these relate to: (i) Statutory (mandatory) ESG disclosures, (ii) Environmental compliance, and (iii) Disaster-resilient structural warranties (Section 14 of K-RERA). (Figure V).

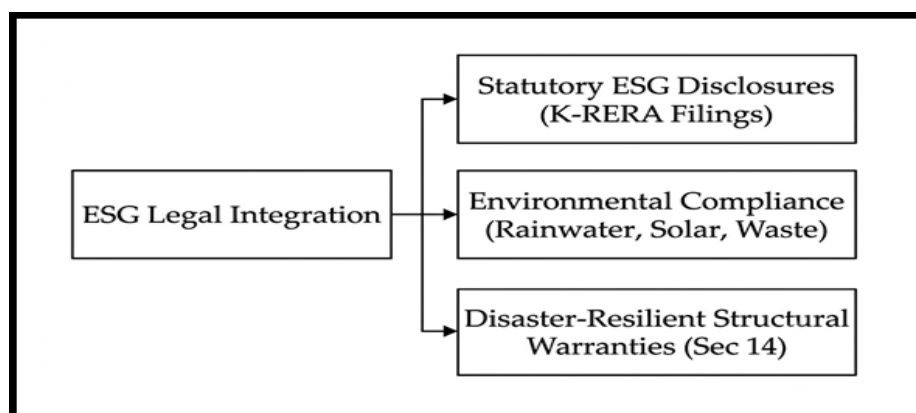


Figure V: ESG Legal Integration Framework

Further details regarding the ESG Legal integration (Figure V), its three main associated duties (compliances) and corresponding provisions under K-RERA are briefly noted below:

7.1. Mandatory Environmental Disclosures: Developers must submit verified environmental clearances, waste management plans, and water sustainability certifications to K-RERA before public offering. Non-disclosure constitutes misrepresentation under Section 12, triggering statutory rescission and compensation.

7.2. Green Mortgages and Sustainable Property Rights: Integrating green building certifications (IGBC/GRIHA) with institutional housing finance creates a legal basis for concessional interest rates and statutory fast-tracking of approvals.

7.3. Disaster-Resilient Construction & Strict Liability: Following severe flood and landslide incidents in Kerala, failure to build according to disaster-resilient zoning maps constitutes a statutory breach of structural warranty under Section 14, obligating the developer to make full restitution for repairs within 5 years.

8. Legal and Policy Suggestions

Based on the foregoing analysis a legal and policy roadmap being suggested has got four main aspects [Legislative harmony, Adjudication speed, Revenue recovery and ESG Statutory duty].

- (i) *Harmonizing RERA and IBC Conflict*: Amend the *Insolvency and Bankruptcy Code, 2016 (IBC)* and RERA to ensure that home-allottees' restitution claims under RERA Section 18 are granted statutory priority over unsecured financial creditors during corporate insolvency resolution.
- (ii) *Direct Enforcement Powers for K-RERA*: Amend Section 40 of RERA to empower K-RERA execution officers directly with civil court powers of attachment and sale of developer properties, bypassing delays in state Revenue Recovery departments.
- (iii) *Standardized Restitutionary Valuation*: Establish a uniform statutory rule for calculating compounding interest rates on refunded monies, tied to the highest Marginal Cost of Funds Based Lending Rate (MCLR) of the State Bank of India plus 2%.
- (iv) *Mandatory ESG Audit as Restitution Defense*: Require developers to undergo independent structural and environmental audits as a precondition for project completion certificates, preventing future structural defects and misrepresentation claims.

The legal and policy roadmap that is suggested based on this analytical study is depicted in Figure VI. The four duties involved and their respective outcomes are shown. (Figure VI).

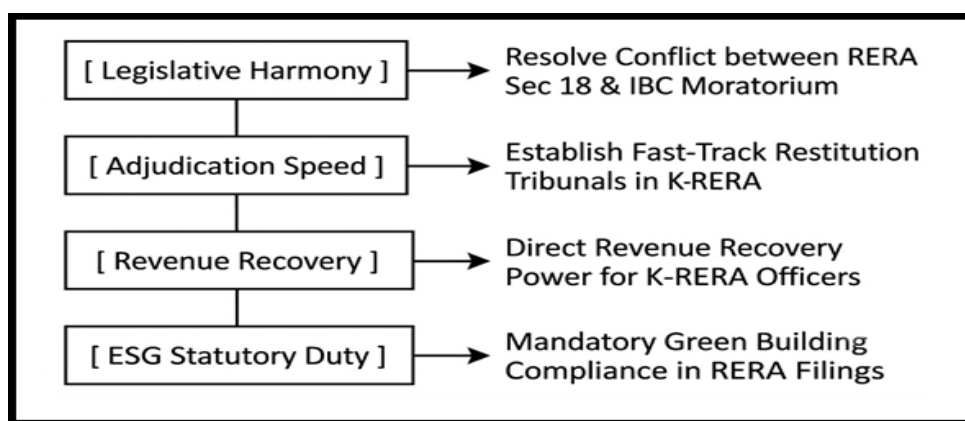


Figure VI: Legal and Policy Implementation Roadmap

9. Conclusion

The enactment of RERA could fundamentally reshape the jurisprudence of India's RRE sector. RERA could replace unfair contractual terms with robust, statutory restitutionary remedies. For instance, RERA's Section 18 could operationalize the core doctrines of unjust enrichment law, and ensure that home-buyers are protected against project delays, capital diversion, and default. In Keralam, its K-RERA implementation could play a vital role in balancing urban growth, consumer protection, ICT integration, and environmental sustainability.

It may be noted that by way of strengthening revenue recovery execution under Section 40, harmonizing legal overlaps with the IBC, and embedding mandatory ESG compliances, India can establish a transparent, accountable, and resilient legal framework for its RRE sector.

Among the States in India, Keralam (Kerala) will be one of the most significant achievers in this RERA regime, if K-RERA is meaningfully implemented for the holistic growth of the States's RRE sector.

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