

The Model Tenancy Act 2021: Impact On Real Estate Investment
written by Rajdev Singh | July 8, 2021



The enactment concerning the proper mechanism of rent control in India and other allied issues between the landlord and tenant came into effect vide approval of the Union Cabinet on June 2nd 2021, thereby introducing the Model Tenancy Act 2021 (“Act”).

The Act aims to establish Rent Authority to regulate renting of premises and to protect the interests of landlords and tenants and provide a speedy adjudication mechanism for resolution of disputes and matters connected therewith or incidental thereto. Currently, all State governments modulate rental housing through various legislation together with rent control laws and thereby preventing landlords from charging unreasonable and inordinate rent and ensuring affordable housing. Going forward, we will be discussing the contemporary provisions that will have an impact on real estate and investment markets.

Impact Of Model Tenancy Act 2021 Upon Real Estate

The pandemic has severely affected the housing sector, especially the rental property sector. There has been a considerate slowdown in residential rental business segments, which has also brought about a complete halt to any construction and or sale activities across the entire real estate sector. People working in different States/UTs migrated to their cities, causing large tracts of rental properties to be vacated – many of which continue to remain unoccupied. The Model Tenancy Act 2021 aims to bring change in the current scenario of the rental housing sector by implementing these newly approved policies which seek to provide benefits to both landlords and tenants.

It is speculated that post the commencement of the Model Tenancy Act 2021, the stagnation of the real estate sector should hopefully cease and further, provide aid and clarity to landlords and tenants alike. For example, there was no clear recourse of action on rented premises being squatted in by the tenants even after the expiration of the tenancy period, which would result in landlords keeping their premises vacant instead of putting them on lease. The Model Tenancy Act 2021 has provided a clear solution for this issue through the provision of rent courts and tribunals which will deal solely with all landlord-tenant disputes – a major step for the housing sector. The Act also aims to address issues concerning homelessness by providing all income groups with preferred options for rental housing – which in turn ought

to boost the real estate sector due to the easy availability of vacant premises in the market coupled with reasonable monetary transactions between landlord and tenant.

The rights and duties of landlords/tenants provided by the Model Tenancy Act 2021 also seek to bridge the trust deficit between the tenants and landlords. The parties will have the right to negotiate and execute the agreement on mutually agreed terms. These are all extremely healthy signs for a market that has been stagnating since the beginning of March 2020.

Impact of The Model Tenancy Act 2021 Upon Real Estate Investment

It is further speculated that the Model Tenancy Act 2021 will help boost investment activity in the Indian real estate sector which is also a good sign since it is the second-largest employment generator and further, is hoped to usher in a period of heightened professionalism in the governance of real estate assets. The prevailing rent control laws have proven to be obstructive and have hurt rental housing growth. There was an urgent need for the new tenancy act since historically, landlords have witnessed a myriad number of issues arising out of complex and unclear legislation while renting out their properties.

As noted above, the Model Tenancy Act 2021 is expected to reverse the trend of vacant housing caused by the pandemic and previously murky, obstructive and promote investments into the real estate sector once it is implemented across states. This is useful since with India becoming a real estate investment hub, many NRIs have been buying residential properties. Despite that, so far, they have mostly avoided renting it out in the fear that tenants might not vacate the property in the absence of the owner. Such scenarios are what leave the infrastructure unutilized and unproductive. Chapter V of the Act protects the interest and legal rights of the landlords in case of eviction and recovery of possession of premises. At the same time, many tenants usually face numerous hurdles when they seek a property to rent. Chapter III and IV of the Act detail certain rights and obligations of landlord and tenant which condemn the practice of charging rent arbitrarily. The Act also aims to formalize the renting and leasing activity of real estate properties in the country. This additional clarity on leasing laws is expected to boost institutional investment in residential real estate properties. The HNI/NRI investment was primarily seen in commercial properties due to the sheer scale, size, and high rental yields versus residential properties. The new Act ought to provide a similar lift in confidence and should drive institutional investment towards residential real estate too.

Tenants have also felt understandably apprehensive and insecure when making a financial investment in rental properties as opposed to striving for their full owned premises. The main apprehension tenants experience is the risk of getting evicted by the landlord during the subsistence of the tenancy agreement for reasons such as irregular deduction in security deposit as well as period accumulated for depositing security deposit.

The Model Tenancy Act 2021 provides a resolution to these issues faced by the tenant for investing in rental premises. Section 8 of the Act states that the tenants will not be evicted during the tenancy agreement period unless otherwise agreed to in writing by both parties. The establishment of the rental agreement will be further monitored by Rent Authorities. Further, Section 11 of the Act places a limit to the security deposit, that is to be

paid by a tenant in advance to – a) not exceed two months' rent in case of residential premises, and b) not exceed six months' rent in case of non-residential premises.

One of the most significant pain points in leasing out the properties was the fear in the NRIs, overseas investors, or even people who stay outstation that the tenant may not vacate the property post expiration of lease tenure. Section 21 and Section 22 of the Act resolves this by the imposition of a penalty on the tenant in cases of failure to vacate the premise post expiration of the lease period. The Act thus safeguards the rights of the landlord as well as the tenants.

Chapter VII of the Act strengthens the foundation of the rent courts and tribunals vis-à-vis the procedure that is to be followed. The Model Tenancy Act 2021 further paves the way for uniform methods of addressing real estate investors' rental and leasing issues. Investor-friendly laws that will help attract global investment into the Indian real estate industry. The Model Tenancy Act 2021 has the potential to attract investment in the residential real estate segment and institutionalize the renting business in India. This Act ensures that landlords and tenants have a common platform for understanding the market dynamics; the rental housing segment will march towards transparency and a formalized setup. The Cabinet approval for the Act is a landmark reform that will usher in a new era for the real estate sector in the country.

Denouement

The Model Tenancy Act 2021 comes as a boon for the investment in the rental sector of the real estate business as laws have been clearly defined to protect the tenant as well as the landlords by legally binding them through a written agreement which can be duly challenged before the appropriate authorities under the Act. However, it can be observed that there are few ambiguities in the Model Tenancy Act 2021. The major issue is the applicability of the Model Tenancy Act 2021 by the State and UT's.

The Model is still a matter of choice with the State/UTs and is not binding as the land and urban development falls under the State List of Constitution of India. The imperative provisions under the Act, like the establishment of rent authority, rent court and tribunals, written agreement, security deposits, terms of tenancy, eviction of tenancy and ceiling on sub-letting are discretionary and may be either implemented by the State and UT's or an amendment can be brought under the state enactments – making it non-binding in nature, which could be an issue.

On one hand, prodigious protection has been granted to the landlord by way of application for eviction to rent authority and sub-letting, but on the other hand, it lacks the applicability of the same by State/UTs. Furthermore, landlords have been greatly affected by COVID-19 which has thus far hit their sales in the market and the Act does not address this since it includes a 'force majeure' clause for natural disasters or events which, though discretionary, lacks the terms 'pandemic' or 'epidemic' in the definition of 'force majeure'.

As the Model Tenancy Act 2021 has been enacted only recently, we are likely to witness developing pros and cons in the coming future which shall help us to determine its impact on real estate investment in a better and more rational way.

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