

Challenges Ahead in Real Estate



- e) Uniform regulatory environment

Real Estate [Regulation and Development] Act, 2016

RERA - A significant development

- a) Establishes RERA for regulation and promotion of the real estate sector. It extends to the whole of India except the State of Jammu and Kashmir. As many as 14 states and union territories have implemented the Act and another 14 states are in the process of notifying the rules.
- b) It brings within its ambit both residential and commercial real estate projects and ensures fair play in the sector.
- c) Ensures efficiency and transparency in sale of plot, apartment or building, or sale of real estate project.
- d) Protects the interest of consumers in the real estate sector.
- e) Establishes an adjudicating mechanism for speedy dispute redressal.
- f) Establishes the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.
- g) More responsibilities and compliance requirements for Promoters.
- h) Registration has been made compulsory with RERA.
- i) RERA will improve operation in the real estate sector.

RERA - What does it ensure

- a) Maintains smooth financial operation and long-term fiscal health
- b) Transparency and accountability
- c) Compliance requirements by all stakeholders
- d) Promotes a positive and customer-centric situation



Who is a Promoter?

- a) A person who constructs building or develops land into a project for the purpose of selling;
- b) Any development authority or any other public body;
- c) An apex State level co-operative housing finance society and a primary co-operative housing society;
- d) Any other person who acts as a builder, contractor, developer or the holder of a power of attorney from the owner of land;
- e) Such other person who constructs any building or apartment for sale to the general public.

Promoters - Responsibility

- a) Creation of web page on the website of the Authority with details of the proposed project.
- b) Project registration with RERA.
- c) Quarterly up-to-date list of - bookings, approvals taken and pending, project status.
- d) Accuracy of advertisement or prospectus.
- e) Should mention website after registration.
- f) Declare stage wise time schedule of completion of the project.
- g) Obtain the completion certificate or occupancy certificate or lease certificate.
- h) Execute a registered conveyance deed.

- i) Cancellation of the allotment only as per the agreement for sale.
- j) Obligations regarding veracity of the advertisement or prospectus.
- k) Withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion method
- l) Alteration in project - approval of 2/3 allottees.
- m) Project accounts - Audit.
- n) No deposit or advance to be taken without first entering into agreement for sale-
- o) Adherence to sanctioned plans and project specifications-
- p) Obligations regarding insurance of real estate project.

- d) If any other provisions of the Real Estate Act are contravened - penalty up to 5% of the estimated cost of the project as determined by the Authority



Promoters - Liability

- a) If title of the land is defective.
- b) Unable to complete or give custody
- c) Any wrong information to allottee in relation to sanctioned plan or in adherence to it.
- d) If information of approved plan or stage wise time schedule of completion of project is not provided.
- e) In case project is allotted to third party without prior written consent.
- f) If the amount is not refunded within 6 months from the termination of sale agreement in dispute due to defect in the apartment.

Promoters - Penalties

- a) If the provisions of registration are breached - liable to penalty up to 10% of the estimated cost of project as determined by the Authority.
- b) If the orders, decisions or directions issued are not complied with or the provisions of registration are violated - punishable with imprisonment up to 3 years or with fine up to 10% of the estimated cost of the project, or with both.
- c) If wrong information is provided or provisions of registration of real estate projects are contravened - penalty up to 5% of the estimated cost of the project.

Project registration with RERA

Ongoing Real Estate Projects

- 1) Projects completed with the completion certificate as on the date of commencement of the Act - Does not require any registration
- 2) Project completed but completion certificate is pending - will require registration within a period of 3 months*
- 3) All Ongoing projects - Will require registration within a period of 3 months*

**from the date of notification of registration provisions under the Real Estate Act.*

Prior registration of all real estate projects

These need to be registered before the Promoter promotes, books, sells or invites people to purchase except if:

- a) The area of land proposed to be developed is not more than 500 Sq. m;
- b) The number of apartments proposed to be developed in all phases is not more than 8;
- c) The Promoter has received completion certificate for a project prior to commencement of the Act;

- d) The project is for renovation, repair or re-development not involving re-allotment and advertising, selling or new allotment of any apartments, plot or building in the project.

Each Phase is to be treated as standalone project requiring fresh registration

Application process

Every Promoter shall make an application for registration to enclose:

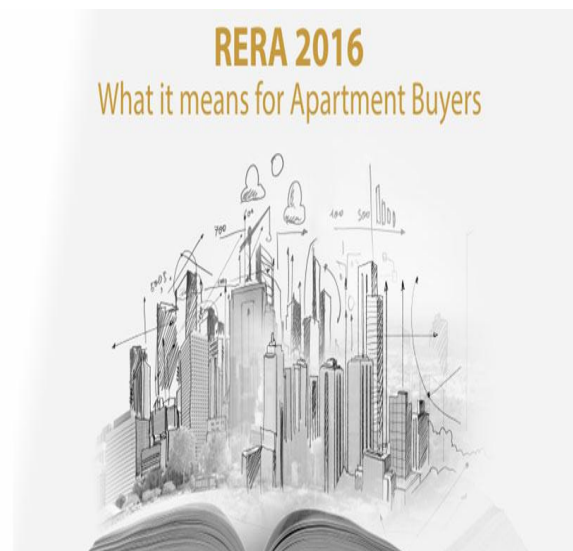
- 1) Details of the enterprise, location, registration particulars;
- 2) Details of the projects launched in the past 5 years including current status, delay in completion, cases pending, if any;
- 3) Authenticated copy of the commencement certificate from the appropriate authority (each phase);
- 4) Sanctioned plan, layout plan and specifications of the proposed project - whole project and each phase sanctioned by appropriate authority;
- 5) Development works plan and proposed facilities;
- 6) Location details;
- 7) Proforma of the allotment letter, agreement for sale, and the conveyance deed;
- 8) Sample agreements proposed to be signed with the allottees;
- 9) Number and the carpet area of apartments in the project;
- 10) Names and addresses of real estate agents, if any; Promoter needs to assure that the agent appointed should be registered and provides only such services that are intended to be offered;
- 11) Names and addresses of the contractors, architect, structural engineer, if any;
- 12) Declaration, supported by an affidavit, signed by the Developer or authorized person stating:
 - a) that the developer has a legal title to the land;
 - b) land is free from all encumbrances;

- c) Approximate period for completion of project.

- 13) 70%, of the amounts realized from the allottees shall be:

- a) deposited in a separate account in a scheduled bank;
- b) Utilization only for the cost of construction and land cost;
- c) Withdrawal only after certification from an engineer, architect and a Chartered Accountant in practice certifying the withdrawal is in proportion to the percentage of completion of project
- d) Accounts of the promoter needs to be audited within 6 months of every financial year end

- 14) Maximum advance / application fee that can be received by the Promoter, prior to executing a written agreement for sale is 10% of the cost of the apartment.



Real estate agent

- 1) Real estate agents who facilitate selling or purchase of properties must take prior registration from RERA.
- 2) The application must disclose the names and addresses of the pro-

moter's real estate agents, if any, and contractors, architects, structural engineers affiliated with the project

- 3) Penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the allottee.

Agreement for Sale between Promoter and Allottee

- a) It is an agreement entered into between the promoter and the allottee;
- b) Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees have to be submitted with the application for registration by the Promoter.
- c) The Promoter may cancel the allotment only in terms of the agreement for sale:
- d) No deposit or advance to be taken by promoter without first entering into agreement for sale.
- e) Register the said agreement for sale, under any law for the time being in force.

Other Points

Governing Bodies include -

- 1) Central Government which has established the Central Advisory Council
- 2) Central Advisory Council advises and recommends the Central Government on: matters concerning implementation of the Act, major questions of policy, protection of consumer interest, growth and development of the real estate sector
- 3) State Government - Setting up RERA
- 4) Municipality/ Local Authority
- 5) Developer and Broker / Agent – They take Approvals / Registrations from RERA

Strategic Objectives

- 1) The Act promises to bring in the long awaited transparency, accountability and efficiency in the real estate sector; its implementation is the beginning of an era where the consumer is king.
- 2) This legislation will protect home buyers and encourage genuine private players.
- 3) This is a landmark legislation becoming a reality nine years after regulation of real estate sector was first mooted in 2008".
- 4) It brings under the ambit of regulation both residential and commercial projects.
- 5) It is a win-win situation for both buyers and developers. Rights and obligations of buyers, developers and real estate agents are clearly defined and any aggrieved party can seek redressal for violation of the terms of agreement by the other party.
- 6) It is aimed at bringing in transparency and redefining the engagement between various stakeholders, can be a potential game-changing event.



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