

**REAL ESATE
(REGULATION & DEVELOPMENT)
ACT 2016**

Referencer

**Prepared and compiled with the assistance of
Group of Chartered Accountants - Nagpur
(RERA Leaders)**

P R E F A C E

Dear Readers

We feel privileged to be able to bring out this book titled as “ RERA Referencer “ for introducing you to the purpose, structure and functioning of the Real Estate Regulation & Development Act 2016 (known as RERA) which came into effect from 1st May, 2017 across India.

We are also thrilled that under the leadership of CA. Prabhu Ramesha, Mumbai and CA. Vinay Thyagaraj, Bengaluru, had an opportunity to study detailed provisions of RERA, compare the Rules, Regulations, Circulars of various states and present the report to nearly 15 RERA Authorities across India in a 4 days RERA Leadership program organised by ICAI at Centre of Excellency, Hyderabad. We are also fortunate to present our recommendation in the 2nd Annual Conference of All India Forum of Real Estate Regulatory Authorities (AIFORERA) before RERA Chairperson’s and RERA members of different states of India and the officials of Ministry of Housing and Urban Affairs on 17th July, 2024 at Kodaikanal, Tamil Nadu.

Like every other new legislation, RERA has been tested on the ground as to the feasibility and effectiveness of its various sections in different forums like RERA, Appellate Tribunal, High Court and Supreme Court. We will also see many cases setting precedents and showing the way forward. Some provisions of the law may themselves be challenged in court, overturned, radically reinterpreted or toned down. Amendments in the Act, rules and guidelines may happen to remove the difficulties that arise.

We are thankful to CA Prabhu Ramesha and CA. Vinay Thyagaraj who have guided us to contribute to this material as well as edited the contents of this referencer and also giving their foreword to this book.

Our special thanks to Chartered Accountants of Nagpur, who have assisted to prepare this material for circulating to the participants of the Conference

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Jai Hind,
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8th August, 2024

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CHAPTER - 1

OVER VIEW OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

INTRODUCTION:

The real estate sector is governed by multiple laws of central and state government but largely remained unregulated. The real estate as the word suggests involves immovable property which are developed and under developed.

To name a few central laws such as Transfer of Property Act, 1882, Registration Act, 1908, Indian Stamp Act, 1899, Income Tax Act, 1961, Contract Act, 1872, Urban Land ceiling Act, 1976 (repealed in Maharashtra since Nov, 29, 2007), Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Consumer Protection Act, 1986 , Civil Procedure Code, Criminal Procedure Code and so on. Similarly, the state governments have enacted respective state land revenue codes, Regional Town Planning Acts, Development Control Rules and so on.

In spite of such having so many laws, the government realized that the real estate development need a comprehensive regulator to have orderly growth and accordingly enacted a new legislation called “ Real Estate (Regulation and Development) Act, 2016 which has completely become effective from 1st May 2017 across India including Jammu and Kashmir. When we are dealing with real estate transaction, we need to have complete holistic view of the various law governing it, role and responsibilities of various stakeholders involved in it. Some of the unscrupulous developers, builders, contractors, promoters of the real estate sector took the majority of the customers for a ride with following defects which lead to enacting the RERA.

1. Unregulated sectors in spite of many laws.
2. Lack of transparency in projects
3. No proper information about the builder / promoters
4. Lack of Easy and Quick Redressal
5. Possession not given in time.
6. Do not provide OC and Completion Certificate
7. Demand Additional amount in cash with various reasons
8. Do not Form the Societies or give conveyance / in time
9. Do not provide with all the agreed amenities.
10. No accounts are provided for maintenance collection
11. Parking and open spaces are sold
12. Fraud, cheating by unscrupulous builders
13. Approved Plans, title deed not provided.
14. Flat areas are sold at Super Built up etc.

SALIENT FEATURES OF THE ACT :

With the efforts of many NGOs and housing activists, the Real Estate (Regulation and Development) Act, 2016 is enacted by the central government as it falls in the concurrent list in Schedule 7 of the Constitution of India.

This pioneering legislation has been envisaged to bring accountability and transparency in the sector for improving governance, for protecting consumer interest and speedy mechanism for adjudication of disputes. This is expected to promote professionalism, standardization and orderly growth which will boost private investment in housing sector. Following are some of the key features of the RERA.

(a) Applicability of the Act (Sec 1 to 3) :

The Act is applicable across India including Jammu and Kashmir effective from 1st May, 2017. The Act is applicable to residential, commercial, plotted and all types of business of development and sale of real estate projects. The registration of real estate project has been made compulsory in the planning area, where the size of land proposed to be developed is more-than 500 sq meters' or where the number of apartments proposed to be developed are more than 8, where there is no marketing of any additional units or the completion certificate of which is received before 1st May, 2017 (before the commencement of the Act). Further the appropriate government has been permitted to bring down the above limits.

(b) Establishment of Real Estate Regulatory Authority (Sec 20 to 40)

For the purpose of regulation and implementation of the provisions of the Act, the appropriate government is mandated to establish one or more 'Real Estate Regulatory Authority' in each State/U^T, or one Authority for two or more States/U^Ts. For all the union Territories central government has notified the Rules and established the Regulatory Authorities and more than 15 states have also notified the Rules and states like Maharashtra, Madhya Pradesh have established the online system for registration of real estate projects, real estate agents and compliant redressal system.

(c) To appoint one or more adjudicating officers to settle disputes and impose interest and compensation (Sec 71 and 72) ;

The promoter for false advertisements, delay in delivery, defective construction and illegal construction or any violation of the approved plan or defective title which entitles the customer to receive the damages will be adjudicated by the adjudicating officer.

(d) Registration of Real Estate Projects Sec 3 to 8) :

Mandatory registration of real estate projects and real estate agents who intend to sell any plot, apartment or building, with the Real Estate Regulatory Authority with exceptions like the project developed under a land having less than 500 sq. meters or less than 8 units, only redevelopment without any sales or not in planning area or the completion certificate is obtained before 1st May 2017 (i.e before the commencement of the Act).

(e) Mandatory Public Disclosure of all project details (Sec 4 and 11) :

Mandatory public disclosure norms for all registered projects like details of the promoters, layout plan, plan of development works, land status, status of the statutory approvals, disclosure of proforma of allotment letters, agreement for sale, sale deed to individual consumers and the conveyance deed of common area to the association of allottees, disclosure of names and addresses of service providers like real estate agents, contractors, architect, structural engineer etc.;

(f) Functions and Duties of Promoter (Sec 3 to 8 and 11 to 18) :

- (i) Register the Real Estate Project before offering for sale, marketing, book (Sec 3 to 8)
- (ii) Register the Estate Agents who shall market only the registered projects (Sec 9 and 10)
- (iii) Disclosure of all relevant information relating to the project and update quarterly about the progress of the work (Section 4 and 11);
- (iv) Obligations regarding veracity of the advertisement or prospectus and any misleading Advertisement liable for payment of compensation and damages (Sec 12) ;
- (v) Register the agreement for sale in the prescribed form before receiving more than 10% of the sale price (Sec 13)
- (vi) Adherence to approved plans and project specifications as approved by competent authorities and no changes in the sanctioned plan may be done without taking consent from 2/3rd Allottees (Section 14) ;
- (vii) Rectification of structural defects for a period of five years of possession (Proviso to Sec 14);
- (viii) Transfer of the projects to the third parties can be done only after it is consented by 2/3rd Allottees and the regulatory Authority (Sec 15)
- (ix) Insurance of title and building need to be taken from the date of notification(Sec 16)
- (x) Registration of sale deed of apartment to respective purchasers , conveyance of common area to association of allottees or competent Authorities (Sec 17)
- (xi) Refund of money in cases of default with interest and compensation , pay the compensation and interest for delay in possession and compensation for defective title without any law of limitation (Sec 18) ;

(g) Compulsory deposit of seventy percent and do the Audit (Sec 4):

- (i) To compulsorily deposit seventy percent of the amounts realized for the real estate project from the allottees in a separate account in a scheduled bank directly to cover the cost of land and construction
- (ii) To be utilised only after obtaining the certificate from the Architect for the percentage of the work completed, Engineer about the cost of construction incurred and the Chartered Accountant regarding the cost of land and building incurred as per the books of account.
- (iii) Carry out the audit of the amount received from the customers and the utilization of the same within 6 months of close of the financial year.

(h) Registration of real Estate Agents and their functions (Sec 9 and 10) :

- (i) Real estate agents to sell properties registered with the Authority;
- (ii) Maintain books of accounts, records and documents;
- (iii) Not to involve in any unfair trade practices;

(i) Rights and Duties of Allottees (Sec 19)

- (i) Right to obtain stage-wise time schedule of project;
- (ii) Claim possession as per agreement
- (iii) Obtain refund with interest and compensation for default by the promoter;
- (iv) Allottees to make payments and fulfill responsibilities as per the agreement or pay interest for delay payment or liable for cancellation as per the terms of agreement in case of default ;

(j) Establishment and Functions of Real Estate Regulatory Authority (Sec 20 to 40) :

- (i) The Authority to enforce the provisions of the Act;
- (ii) To act as the nodal agency to co-ordinate efforts regarding development of the real estate sector and to render necessary advice to the appropriate Government
- (iii) To ensure the growth and promotion of a transparent, efficient and competitive real estate sector;

(k) Fast Track Dispute Settlement Mechanism:

- (i) Fast' track dispute resolution through adjudicating officers not below the rank of district judge (sec 71 and 72) within a period of 60 days for payment of damages;
- (ii) Other disputes before the Regulatory Authority to be resolved within 60 days.

(l) Establishment of Central Advisory Council (Sec 41 and 42)

- (i) To advise the Central Government on implementation of the Act, recommend policy measures, recommend measures towards protection of consumer interest and to foster growth and development of the real estate sector;

(m) Establishment of Real Estate Appellate Tribunal (Sec 43 to 58) :

- (ii) Real Estate Appellate Tribunal to hear appeals from the orders of the Authority and the adjudicating officer.
- (iii) The Appellate Tribunal is to be headed by a sitting or retired Judge of the High Court with one judicial and one administrative/technical member;

(n) Punitive Provisions (Sec 59 to 69) :

- (i) Punitive provisions to levy penalty from 5% of the cost of project to 10 % of the cost of the project to the promoters.
- (ii) De-registration of the project and penalties in case of contravention of the provisions of the Act or the orders of the Authority or the Tribunal;
- (iii) Imprisonment for not obeying the order of the Authority or the appellate Tribunal ranging from 1 year to 3 years to the promoter
- (iv) Penalty for contravention of any of the provisions by the Allottees penalty ranging from 5% to 10% of the cost of the apartment and imprisonment upto 1 year if orders are not adhered to.
- (v) Penalty to the estate agents ranging from 5% to 10% of the cost of the apartment and imprisonment upto 1 year if order are not adhered to.

(o) Other provisions (Sec 73 to 92)

- (i) Bar of Jurisdiction of Courts: Provision for barring jurisdiction of court and any authority from entertaining complaints in respect of matters covered under the Act;
- (ii) Power to make Rules and Regulations:
- Appropriate Government to have powers to make rules over subjects specified in the Act;
 - Regulatory Authority to have powers to make regulations.
- (iii) The existing laws shall continue to the extent they are not inconsistent with RERA and RERA shall have over riding effect
- (iv) Consumer Court remedy shall continue.

CHAPTER – 2

JOURNEY & IMPLEMENTATION OF RERA & IMPORTANT CIRCULARS OF MAHARERA

1.02.1 IMPLEMENTATION OF ACT, 2016

1. January 20, 2009 National conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs proposing a law for Real Estate sector.
2. July, 2011 Ministry of Law & Justice suggested central legislation for RE sector under specified entries of concurrent list of the Constitution for regulation of contracts and transfer of property.
3. On June 4, 2013 Union Cabinet approved the Real Estate Bill, 2013.
4. On August 14, 2013 Real Estate Bill, 2013 introduced in Rajya Sabha.
5. On September 23, 2013 Bill was referred to the Department related Standing Committee February 2014 Report of the Standing Committee tabled in Rajya Sabha on February 13, 2014 and in Lok Sabha on February 17, 2014.
6. On February 9, 2015 Attorney General upheld the validity of central legislation for Real Estate sector and the competence of the Parliament.
7. On April 7, 2015 Union Cabinet approved official amendments based on Standing Committee Report.
8. On March 6, 2015 Real Estate Bill, 2013 and official amendments referred to the Select Committee of Rajya Sabha.
9. On July 30, 2015 Select Committee of Rajya Sabha tabled its Report along with Real Estate Bill, 2015.
10. On December 9, 2015 Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of Rajya Sabha for further consideration of the Parliament.
11. On March 10, 2016 Real Estate Bill, 2015 passed by Rajya Sabha March 15, 2016 Lok Sabha passed the Real Estate Bill, 2015.
12. On March 25, 2016 The President of India accorded his assent to the Real Estate Bill, 2015.
13. On March 26, 2016 Real Estate (Regulation and Development) Act, 2016 published in the Gazette for public information.
14. On April 27, 2016 59 Sections (Sections 2, 20-39, 41-58, 71-78, 81-92) of the Act notified by the Ministry of Housing & Urban Poverty Alleviation bringing the Act into force with effect from May 1, 2016.

1.02.2 IMPLEMENTATION OF RERA IN MAHARASHTRA

1. Around October 2016 Shri Gautam Chatterjee was appointed as the Interim Regulatory Authority by Government of Maharashtra.
2. Government of Maharashtra established Maharashtra Real Estate Regulatory Authority (MahaRERA) *vide* notification No. 23 dated 8th March, 2017.
3. By Notification No. 1216 dated 19th April, 2017 some more provisions of the Act came into force namely, Sections 3 to 19, Section 40, Sections 59 to 70 and 79, 80 with effect from 1st May, 2017.
4. State Government of Maharashtra *vide* Government Resolution (GR) dated 18th May, 2017 appointed Mr. Gautam Chatterjee as Chairman as well as Dr. Vijay Satbir Singh and Mr. B. D. Kapadnis as members of The Maharashtra Real Estate Regulatory Authority.
5. Various Rules and Regulations were notified as follows. Please note that the Rules and Regulations notified under The Real Estate (Regulation and Development) Act, 2016 have been amended from time to time.

Act, Rules, notifications, orders, circulars are **Available on MahaRERA website:**
www.maharera.maharashtra.gov.in

Sr. No.	Rules Name	Rule Date
1	Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of real Estate Agents, Rates of Interests and Disclosures on Website) Rules, 2017	20-04-2017
2	Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017	18-04-2017
3	Maharashtra Real Estate Regulatory Authority (Appointment and Service Conditions) Rules, 2017	17-04-2017
4	Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2017	01-04-2017
5	Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosures on website) Rules, 2017	20-04-2017

Sr. No.	Rules Name	Rule Date
6	Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.)	19-04-2017
7	Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interests and Disclosures on Website) (Amendment) Rules, 2019.	09-06-2019

Sr. No.	Regulations Name	Regulation Date
1	MahaRERA (General) Regulations, 2017	24-4-2017
2	MahaRERA General Amendment Regulations, 2017	10-03-2019
3	MahaRERA General - Second Amendment- Regulations, 2019	12-01-2019
4	MahaRERA (Recruitment and Conditions of Service of Employees) Regulations, 2017	24-04-2017
5	MahaRERA General (Amendment) Regulations, 2021	22-12-2021

MAHARERA ORDERS AND CIRCULARS SINCE INCEPTION TILL DECEMBER, 2023

(Available on MahaRERA website : www.maharera.maharashtra.gov.in)

Sr. No.	Date	Reference	Subject Matters
1	11-05-2017	No. Maha-RERA/LA/32/2017	OFFICE ORDER
2	17-05-2017	No. MahaRERA/Secretary/Order/15/2017	Charges for accessing MahaRERA web-based Application for registration of project and real estate agents, extension of registration for projects and real estate agents including updating website, database management and maintenance under

Sr. No.	Date	Reference	Subject Matters
			regulation 48 of the MahaRERA General Regulations, 2017.
3	25-05-2017	MahaRERA Order No. 02	
4	31-05-2017	Circular No. 1/2017	Clarification regarding “License Number” of Engineer.
4a	31-05-2017	Circular No. 2/2017	Recognition of heads of Finance Department of government controlled development authorities, autonomous bodies etc.
5	07-06-2017	Circular No. 3/2017	Declaration to be submitted by Promoters to the Bank
6		MahaRERA Order No. 3 (Resolution No. 1/4/17)	Designation of Hon. Member Shri. B D Kapadnis as adjudicating officer under section 71 of RERA Act, 2016
7	27-06-2017	MahaRERA Order No. 4 (Resolution No. 2/4/17)	Clarification regarding the period within which promoter has to transfer the title by executing conveyance
7a	28-06-2017	Circular No. 5/2017	Clarifications on Operating Designated Bank Account
8	04-07-2017	Circular No. 6/2017	Clarifications regarding Project Registration Process
9	04-07-2017	Circular No. 7/2017	Clarification on CA Certificates
10	17-07-2017	Circular No. 8/2017	Standard Operating Procedure for Updating Registered Projects and Revising Correcting Information with respect to Registered projects and Registered Real Estate Agents

Sr. No.	Date	Reference	Subject Matters
11	24-07-2017	Circular No. 9/2017	Standard Operating Procedure (S O P) for handling complaints
12	02-08-2017	Order Case No. 02	Order passed in the Maharashtra real estate regulatory authority meeting held on Wednesday, 02 August 2017 in regard to online applications received on 1st and 2nd August 2017 for registration for on going projects
13	10-08-2017	Order Case No. 03	Order passed in the Maharashtra real estate regulatory authority meeting held on Thursday 10th August, 2017 in regard to online applications received after 2nd August 2017 for registration of going projects.
14	08-9-2017	ORDER CASE NO. 4 of 2017	Order passed in the Maharashtra real estate regulatory authority meeting held on Friday 8th September, 2017 in regard to online applications received after 16th August, 2017 for registration of ongoing projects.
15	01-11-2017	Circular No. 14/2017	Amendment to the Circular on Standard Operating Procedure for Updating Registered Projects and Revising/Correcting Information with respect to Registered Project and Agents.
16	08-11-2017	Circular No. 11/2017	Procedure for transferring or assigning promoter's rights and liabilities to a third party
17	04-12-2017	Circular No. 12/2017	Land Owners/Investors having Area/Revenue Share in Real Estate Project to be treated as Promoter (landowner/investor)

Sr. No.	Date	Reference	Subject Matters
18	29-01-2018	Circular No. 15/2018	MahaRERA Conciliation & Dispute Resolution Forum
19	27-02-2018	Office Order	Appointment of Adjudicating Officers on the panel of MahaRERA
20	09-04-2018	Circular No. 16/2018	MahaRERA Divisional Office address of Pune & Nagpur
21	21-06-2018	CIRCULAR No. 17/2018	
22	17-07-2018	MahaRERA/Secy/File No. 27/692/2018	Standard Operating Procedure (SOP) for handling complaints
23	14-08-2018	Circular No. 19/2018	Source information Payment
24	15-10-2018	Circular No. 20/2018	Display of sanctioned plan, layout plan at Project Site.
25	26-11-2018	Order No. 5/2018	Quality Assurance Certificate-Form 2A.
26	26-11-2018	Circular No. 21/2018	Disclosure of Information regarding Project Professionals
27	26-11-2018	Circular No. 22/2018	Standard Operating Procedure (SOP) for handling information on Non-Registered Projects
28	26-11-2018	Circular No. 23/2018	Standard Operating Procedure (SOP) for handling complaint on Non-Registered Projects
29	29-11-2018	Order No. 06/2018	Procedure for referring complaints to MahaRERA Conciliation and Dispute Resolution Forum by MahaRERA or Adjudicating Officer of MahaRERA.
30	08-02-2019	Order No. 7/2019	Approval of Association of Allottees for order under Section 7(3) of the Act

Sr. No.	Date	Reference	Subject Matters
31	28-03-2019	Order No. 8/2019	Revocation on of Registration of Project
32	04-06-2019	Circular No. 24/09/2019	Procedure for transferring or assigning promoter's rights and liabilities to a third party
33	21-08-2019	Order No. 9 (Resolution No. 13/1/2019)	Release of additional charge as Adjudicating Officer of the Member-2/MahaRERA
34	11-10-2019	Order No. 10	Self-Regulatory Organization (SRO) for Promoters
35	11-10-2019	Circular No. 25/2019	Clarification regarding Registration of Agreement for Sale/Sale Deed for Real Estate Projects
36	23-10-2019	Order No. 11/2019	Further directions w. r. t. filing of complaints with MahaRERA
37	23-10-2019	Order No. 12/2019	Conversion of Applications filed before MahaRERA Conciliation and Dispute Resolution forum to <i>Suo Motu</i> Complaints by MahaRERA
38	01-11-2019	Order No. 26/2019	Additional mandatory document along with application for registration of projects
39	02-04-2020	Order No. 13/2020	Revision of Project Registration Validity and Extended Timeline for Statutory Compliances, in view of Covid-19 Pandemic
40	18-05-2020	Order No. 14/2020	Invoking Force Majeure for Covid-19 Pandemic
41	12-06-2020	Circular No. 27/2020	Standard Operating Procedure for online hearings through video Conferencing

Sr. No.	Date	Reference	Subject Matters
42	24-11-2020	Order No. 15/2020	Delegation of powers under Section 40 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the aforesaid Act) to the Secretary, MahaRERA, in case of failure to comply with Orders of interest or penalty or compensation imposed by MahaRERA and/or Adjudicating Officers
43	09-04-2021	Circular No. 29/2021	Promoter's disclosure of Sold/Booked Inventory (Building Wise) in the Project
44	12-04-2021	Order No. 16/2021	Committee for Capacity Building and Certification of Real Estate Agents in Maharashtra
45	18-05-2021	Circular No. 30/2021	Guidelines for determining the seniority of complaints filed before the MahaRERA.
46	18-05-2021	Circular No. 31/2021	Guidelines for functioning of MahaRERA Conciliation and Dispute Resolution Forum
47	07-06-2021	Circular No. 32/2021	Standardized Format for Declaration about Commencement Certificate. (Format -D)
48	21-06-2021	Circular No. 33	Amendment to Circular No. 30/2021 dated 18-05-2021
49	21-06-2021	Circular No. 34	Hearing of Complaints as per seniority.
50	25-06-2021	Circular No. 29	Promoter's disclosure of sold/booked Inventory (Building wise) in the Project.
51	06/07/2021	Circular No. 35	In the matter of Real Estate Agent registration and renewal of such registration.

Sr. No.	Date	Reference	Subject Matters
52	22/07/2021	Circular No. 28A	Clarification regarding Formats for consent of allottees
53	23/07/2021	Circular No. 24	Procedure for transferring or assigning promoter's rights and liabilities to a third party.
54	28/07/2021	Order No. 18/2021	Quarterly Update for Registered Projects
55	28/07/2021	Order No. 19/2021	Report from CERSAI whereas Ministry of Finance notified the establishment of the Central Registry Securitisation Asset Reconstruction and Security Interest of India (CERSAI), a Government Company, incorporated for the purpose of operating and maintaining the Central Registry under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The objective of setting up of Central Registry is to prevent frauds in loan cases involving multiple lending from different banks on the same immovable property.
56	28/07/2021	Order No. 20/2021	Execution of registered conveyance deed of a real estate project.
57	30/07/2021	Circular No. 36/2021	In the matter of "Garage", "covered parking space" and "open parking areas"
58	06/08/2021	Order No. 21/2021	Invoking Force Majeure for Covid-19 Pandemic second wave for a period of extension of project registration by 6 months w.e.f.15-04-2021.
59	25/08/2021	Circular No. 37/2021	Launch of MahaRERA Citizen Call Centre/Helpdesk

Sr. No.	Date	Reference	Subject Matters
60	02/09/2021	Order No. 22/2021	Direction about Roznama and next date of hearing in complaints
61	09/09/2021	Order No. 23/2021	New guidelines regarding Hearing of Complaint filed before the Authority
62	22/09/2021	Order No. 24/2021	SOP for deletion of projects from the list of lapsed projects
63	18/10/2021	Order No. 25/2021	Submission of Form 5 is extended till 31st December 2021
64	29/10/2021	Order No. 26/2021	Amendment in CERSAI Circular.
65	08/11/2021	Circular No. 38/2021	New Amendment in the Conciliation process.
66	07/12/2021	Order No. 27/2021	Circular regarding convenience document.
67	07/12/2021	Order No. 28/2021	Registration of Sale Component of Redevelopment and SRA projects.
68	29/12/2021	Circular No. 39/2021	Submit Form Nos. 1, 2, 3 to the bank for withdrawal from designated bank account.
69	14/01/2022	Circular No. 40/2022	Disclosure of information in public domain.
70	17/03/2022	Circular No. 39A/2022	Submission of certificates for withdrawal from designated account.
71	28/03/2022	Circular No. 41/2022	Modified version for filing Online Complaints.
72	25/04/2022	Order No. 29/2022	Standard Operating Procedure for filing cases arising from Regulatory functions of MahaRERA.
73	06/06/2022	Order No. 30/2022	Submission of Proforma of Allotment

Sr. No.	Date	Reference	Subject Matters
			Letter and Agreement for Sale at the time of registration.
74	04/07/2022	Order No. 31/2022	Amended Proforma of Allotment Letter
75	06/07/2022	Order No. 32/2022	New directions for submitting the applications for registration.
76	07/07/2022	Order No. 33/2022	Regular Updates on Registered Projects by Promoters.
77	27/07/2022	Order No. 34/2022	Declaration about Separate Bank Account for Real Estate Projects
78	29/07/2022	Order No. 34/2022	Correction in Order
79	12/08/2022	Order No. 35/2022	Submission of Proforma of the Allotment Letter and Agreement for Sale at the time of Registration of a Real Estate Project.
80	28/10/2022	Order No. 36/2022	Professional etiquette to be maintained at the hearing of complaints before the Authority.
81	16/12/2022	Order No. 38/2022	Non-negotiable clauses in the Agreement for Sale
82	19/12/2022	Circular No. 42/2022	Only SRO representatives are allowed in MahaRERA Office.
83	26/12/2022	Order No. 37/2022	Clarification of Commencement Certificate and Occupation Certificate for plotted development.
84	27/12/2022	Order No. 39/2022	Disclosure about the directors/members of the company of other organization.
85	27/12/2022	Order No. 40/2022	Additional conditions for the extension of the project under section 7(3).

Sr. No.	Date	Reference	Subject Matters
86	11/01/2023	Order No. 41/2023	Certification of Real Estate Agents and Training.
87	10/02/2023	Order No. 42/2023	De-registration of Real Estate Projects
88	13/02/2023	Order No. 43/2023	Submission of half-yearly reports by MahaRERA registered real estate agents
89	15/02/2023	Guidelines for Real Estate Agent	Real Estate Agent Training and Certification : Guidelines
90	20/02/2023	Circular No. 43/2023	Transfer of bank account.
91	20/02/2023	Order No. 44/2023	Agent registration for proprietary firm.
92	15/05/2023	Order No. 45/2023	Verification of commencement certificates and occupation certificates
93	15/05/2023	Order No. 40A/2023	Supplementary Order to MahaRERA Order No. 40 of 2022 dated 27-12-2022
94	29/05/2023	Order No. 46/2023	QR code is compulsory for promotions/advertising of projects
95	02/06/2023	Notice for submitting Objections	List of de-registration applications received by MahaRERA
96	02/06/2023	No. MahaRERA/Secy/Advisory/900/2023	Process for deletion of projects from the NCLT list
97	02/06/2023	Order No. 47/2023	Appointment of Real Estate Agents Organizations for training to Agents
98	09/06/2023	Circular No. 44/2023	Execution of warrants as per SOP of MLRC Code
99	09/06/2023	Circular No. 25A/2023	Conditions for exemption for registration of project

Sr. No.	Date	Reference	Subject Matters
100	08/06/2023	No. MahaRERA/Secy/Nonce/913/2023	Important guidelines for Real Estate Agents
101	16/06/2023	Circular - MahaRERA/CC/937/2023	Suggestions for grading of Real Estate Projects
102	19/06/2023	Circular- MahaRERA/Secy/de-reg/002/2023	Additional list of de-registration applications received by MahaRERA
103	12/07/2023	Notice for submitting Objections	Additional list of de-registration applications received by MahaRERA
104	12/07/2023	Further Notice for submitting Objections	Extension of time for submitting objections for de-registration of projects
105	17/07/2023	Circular- MahaRERA/Secy/de-reg/1014/2023	Information regarding verification of the Commencement Certificates/Occupation Certificate submitted by promoters
106	25/07/2023	Order No. 46A/2023	QR code is henceforth compulsory for promotions and advertisement.
107	14/08/2023	Circular- MahaRERA/Secy/de-reg/004/2023	Additional list of de-registration applications received by MahaRERA
108	18/08/2023	Order No. 48/2023	Increase in the levy of convenience fees
109	21/08/2023	Order No. 46B/2023	QR code is compulsory in promotions/advertisement
110	24/08/2023	Order No. 49/2023	Empanelment of SRO for Real Estate Agent Association
111	24/08/2023	Circular No. 45/2023	Every promoter should establish Grievance Redressal Cell for allottees
112	28/08/2023	Circular No. 46/2023	Introduction of MahaRERA Grading Matrix for projects

Sr. No.	Date	Reference	Subject Matters
113	20/09/2023	Order No. 41A/2023	Extension of timelines for obtaining MahaRERA Real Estate Agent Certificate of Competency.
114	04/12/2023	Circular- MahaRERA/CC/685/2023	Suggestions on consultation paper of Quality Assurance.
115	13/12/2023	Order No. 41B/2023	Final extension for registration of real estate agents
116	10/01/2024	Order No. 50/2024	One plot one registration
117	29/04/2024	Order No- 51/2024	SOP for De-registration of Real Estate Agent
118	29/04/2024	Order No-52/2024	Mandatory submission of competency certificate by Real Estate Agent
119	29/04/2024	Order No- 53/2024	Submitting details of Real Estate Agent by Promoter
120	29/04/2024	Order No- 54/2024	Parking information mandatory for sale deed and allotment letter
121	08/05/2024	Order No-55/2024	Regulation for Retirement Homes in the State of Maharashtra

Sr. No.	Date	Reference	Subject Matters
122	27/06/2024	Order No- 56/2024	Direction for Maintenance and Operation of Bank Accounts for MahaRERA Projects
123	30/07/2024	Order No-57/2024	Declaration of facilities/amenities for every project by the promoter
124	07/08/2024	Order No-58/2024	Implementation of MahaRERA CRITI (Complaint and Regulatory Integrated Technology Implementation) Software

MAHARERA WEBSITE AND CONTACT DETAILS

(1) MAHARERA WEBSITE:

<https://maharera.maharashtra.gov.in>

(2) CONTACT DETAILS:

(i) MUMBAI HEADQUARTERS

Maharashtra Real Estate Regulatory Authority

3rd & 9th Floor, Housefin Bhavan, Plot No. C - 21, E - Block, Bandra Kurla Complex, Bandra (E), Mumbai 400051 Tel. No. 022 68111600

(ii) MUMBAI DIVISION OFFICE

(Hon. Member 1 and Hon. Member 2) **Maharashtra Real Estate Regulatory Authority**

501, Express Building, 14-E Road

Churchgate, Mumbai-400020

(iii) MUMBAI SUBURBAN DIVISION OFFICE

(Conciliation and Adjudication) **Maharashtra Real Estate Regulatory Authority**

3rd Floor, A-Wing, SRA Administrative Building, Anant Kanekar Marg, Bandra East,
Mumbai, Maharashtra 400051.

(iv) PUNE DIVISION OFFICE

Maharashtra Real Estate Regulatory Authority

109 to 113, First Floor,
Sayajirao Gaikwad Udyog Bhavan,
Aundh, Pune - 411 007
Tel. No. : 020 29806545

(v) NAGPUR DIVISION OFFICE

Maharashtra Real Estate Regulatory Authority

Administrative Building No. 1, 1st Floor
Adjacent to Udyog Bhavan, Civil Line,
Nagpur – 440001.
Tel. No. : 0712 2551400

CHAPTER -3

PROTECTION AND BENEFITS FOR FLAT PURCHASERS UNDER RERA

With the Real Estate (Regulation and Development) Act, 2016, the government is expecting to bring transparency and fair practices to the real estate sector. The Real Estate (Regulation and Development) Act came into force in Maharashtra on 01st May 2017. This law will bring the change in the experience of the home-buying who wish to purchase the property. There are few importance points under RERA which is as follow:

BENEFIT TO CUSTOMERS:-

1. The customers can view all the documents in respect of the Project, as the promoter is required to submit all documents related to the project which is considered necessary under RERA.
2. Upload of sanctions plans received from the Competent Authority on receipts basis and the project details in 3 months from the date Act came into force i.e. 01.05.2017. However, it was suggested to do at earliest.
3. If the Promoter want to amend, modify or change any plans and layouts, then the Promoter has to take the permission and consent from 2/3rd buyers/allottees.
4. If the Promoter desire to leave the project mid-way by selling to another Promoter or party, then in such case the Promoter is require to take written approval of 2/3rd buyers/allottee who have booked or purchased their Premises and also the prior approval of the RERA. If a consumer or his family holds more than one unit in the project then he/she will be considered as one consumer only.
5. The Promoter has to specify the time limit for completion of project in the RERA application form. Accordingly, the Promoter is accountable to follow the timelines otherwise Promoter will suffer losses/ penalties.
6. Customers will only pay for carpet area.
7. The Promoter has to form and register the Society within three months from the date 51% of the flats booked, in such a building or a wing, even if the project is under construction.
8. Project cost estimation where bifurcation of Land Cost and the Construction cost has to be mentioned, this will benefit the public at large as they will be aware about the profit that will be earned by Promoter.
9. To repair any structural defects in the construction even after 5 years of handover of the project.
10. If due to a change in government policy, the promoter is entitled to additional FSI etc., the promoter can build additional floors in a registered ongoing project where initially those floors were not planned but with consent of allottees
11. Section 13(1) of the Act prohibits the promoter from taking more than 10% of the cost of apartment without entering into a written agreement for sale, duly registered.

OBLIGATION OF DEVELOPER:-

1. The Promoter has to register the project before he starts any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.
2. It is mandatory for the Promoter to register the project with the RERA and obtain a valid registration number before proceeding.
3. The Promoter must deposit 70% of the payment received from the consumers in an escrow account and ensure that the amount is solely used for the development of the project for which it was taken.
4. Every phase will be considered a standalone and separate real estate project and the Promoter have to obtain registration under this Act for each phase. If the project is being done phase wise and in the 1st phase we are not providing common amenities like Club House etc., then promoter cannot put ads and make brochures showing common amenities.
5. At the time of registration, the Promoters shall provide the details of past 5 years projects done and even what was the possession date promised and when was possession given.
6. The Promoter shall provide the details of FSI proposed and approved.
7. The Promoter must adhere to the project plan at all times.
8. Estimated figures given can be changed. However, many of information under RERA which cannot be changed. Therefore, the Promoter shall be very careful while submitting such information.
9. Both the Developers and the Landlord or any such party which is the beneficiary of a sale of a project & receives payments from consumers and allottee as real estate developers (Promoters) are liable to adhere to the Act. The same is applicable where the land owner is a Co-operative Housing Society in case of Re Development.
10. The Promoter must share quarterly progress report of the project, receipt of pending approvals and other such declarations which are related to project delivery on a regular basis.
11. Sale or allotment of Open Parking Areas by the Promoter is not allowed and permissible. However, the Covered Parking and Garage as defined under RERA is permitted to be sold to the customers.
12. Promoter shall execute a registered conveyance deed in favour of the Association or Co-operative Housing Society formed by the allottees within three months from date of issue of occupancy certificate or fifty one per cent of the total number of Purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.
13. The file size limit is 1MB per file and only PDF files can be uploaded on the application. The Promoter shall upload copy of the organization's PAN Card
14. If your project has no encumbrances, then you can upload a self-certification stating that your project has no encumbrances.
15. MOFA has not been repealed, however, in case of inconsistent provisions; the provisions of the Central Act (RERA) shall applicable and prevail.

BENEFITS OF AGENTS:-

As per the government rules, only registered agents are legally allowed to function in the real estate business. Also, the RERA makes it mandatory for a developer to make a declaration about the real estate agents, architects, structural engineers and similar parties to the appellate Tribunal of the RERA.

PENALTY AND COMPLAINT

1. The penalties are quite high.
2. Refund the money taken from the consumers with an applicable interest as mention in the Rules in case the project cannot be completed.
3. Compensate the consumer for the time delay if any as per the Rules.
4. Everything is online and visible in the website. Therefore, it is not require visiting the RERA office except for hearings conducted in respect of complaints filed by the Complainant under RERA.

CERTIFICATE FROM THE PROFESSIONAL:-

If the Promoter want to withdraw the amount from the RERA Separate Account, then the Promoter is require to obtain the certificate in the prescribed form from three professionals such as Architect regarding the percentage of completion of the project, Engineer regarding the estimated cost of project and Chartered Accountant regarding the amount actually spent on the project towards land cost and construction cost.

CHAPTER -4

REGISTRATION OF THE REAL ESTATE PROJECT WITH REAL ESTATE REGULATORY AUTHORITY (RERA)

(I) INTRODUCTION :

Section 3(1) of the Act which provides for registration of the Real estate project before the advertisement, sale, marketing of any real estate projects. The proviso to this section has given a period of 3 months to register the on going projects which do not have completion or occupation certificate as the case may be.

Section 3(2) exempts following projects from the requirement of registration

- a) where the area of land proposed to be developed does not exceed five hundred square meters or
- b) Where the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;
- c) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- d) Where the project is developed for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Therefore every real estate project whose area is more than 500 sq. meters and more than 8 including all the phases and all types units like commercial , residential etc, are required to be registered with RERA.

(II) APPLICATION FOR REGISTRATION OF THE PROJECT AND THE DOCUMENTS REQUIRED:

Details /Documents Required For Registration Of A Real Estate Project And The Authors Remark At the end. Reference of Rule of Maharashtra RERA Rules, 2017 has been given in the third column.

Sr. No	Nature of the Documents	Provision U/s o rU/R
1	A brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority),	U/s 4(2)(a)

Sr. No	Nature of the Documents	Provision U/s o rU/R
2	Particulars of registration of the promoter legal entity like registration certificate of Trust, Association, Firm, Company as the case may be	U/s 4(2)(a)
3	Partnership deed, Memorandum of Association, Articles of Association, Rules and regulation etc. governing the legal entity of the promoter.	U/s 4(2)(a)
4	Names of proprietor/ Partners/ Directors/ Committee members, Authorised Signatories etc.	U/s 4(2)(a) & U/R 3(2)(b)
5	Photographs of the promoter such as proprietor, all the partners/ chairman, directors/ authorized signatory etc and and the authorized representative in case of other entities	U/s 4(2)(a) & U/R 3(2)(b)
6	Pan Number and Self Attested copy of Pan Card of the Promoter entity	U/R 3(2) (a)
7	A brief detail of the projects launched by him, in the past five years, (a) whether already completed or being developed, as the case may be, including the (b)current status of the said projects, (c) any delay in its completion, (d)details of cases pending, (e)details of type of land and (f) payments pending;	U/s 4(2) (b)
8	A copy of the legal title report reflecting the flow of title of the owner or promoter to the land on which development is proposed, with authentication of such title by practicing advocate	U/R 3(2)(c)
9	Where the promoter is not the owner of the land on which development is proposed, (a) a copy of the collaboration agreement, (b)development agreement, (c) joint development agreement or (d) any other form of agreement, as the case may be, entered into between the promoter and such owner, reflecting the consent of the owner of the land and (e) authenticated copies of legal title report reflecting the title of such owner, on the land proposed to be developed	U/R 3(2) (d)
10	(a) Co-promoters Name/s, (b) legal entity, (c) contact details of promoter, (d), Pan and Photo of proprietor/partners, directors or authorized signatory (e) Designated bank account details of the co-promoter, if they share area	As per MahaRERA order dated 11 th May, 2017

Sr. No	Nature of the Documents	Provision U/s o rU/R
11	The information relating to the encumbrances in respect of the land where the real estate project is proposed to be undertaken and the details regarding the proceedings which are sub-judice (if any) in respect of such land	U/R 3(2) (e)
12	(a)An authenticated copy of the approvals and (b)commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and (c) where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;	U/s 4(2) (c)
13	Sanctioned plan where the project is being developed along with information relating to the FSI/ TDR and other entitlements which are proposed to be utilized in accordance with the relevant Development Control Regulations for the time being in force, for carrying out such sanctioned plan and the amenities and common facilities (including common areas, parking spaces) to be provided in accordance with the sanctioned plan;	U/s R 3(2) (f) (i)
14	The Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter;	U/s R 3(2) (f) (ii)
15	proposed Floor Space Index to be consumed and sanctioned Floor Space Index. In case the sanctioned Floor Space Index is different than what is proposed to be consumed by the promoter, then the proposed Floor Space Index shall be disclosed at the time of registration and as and when the Floor Space Index is sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;	U/s R 3(2) (f) (iii)
16	Proposed Number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s). In case the sanctioned number of building (s) or wing(s) is different than what is proposed to be constructed by the promoter, then the proposed number of building (s) or wing(s) shall be disclosed at the time of registration and as and when the additional number of building (s) or wing (s) are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;	U/s R 3(2) (f) (iv)

Sr. No	Nature of the Documents	Provision U/s o rU/R
17	Proposed number of floors in respect of each of the building or wing to be constructed and sanctioned number of floors in respect of each of the building or wing. In case the sanctioned number of floors is different than what is proposed to be constructed by the promoter, then the proposed number of floors shall be disclosed at the time of registration and as and when the additional number of floors are sanctioned, the same shall be uploaded on the website of the Authority by the promoter from time to time;	U/s R 3(2) (f) (v)
18	Aggregate area in sq. meters of the recreation open space;	U/s R 3(2) (f) (vi)
19	The number of covered parking spaces	U/s R 3(2) (f) (vii)
20	(a)The sanctioned plan, (b) layout plan and specifications of the proposed project or the phase thereof, and (c) the whole project as sanctioned by the competent authority;	U/s 4(2) (d)
21	(a)The plan of development works to be executed in the proposed project and (b)the proposed facilities to be provided thereof including (c) fire fighting facilities, (d) drinking water facilities, (e) emergency evacuation services, (f) use of renewable energy;	U/s 4(2) (e)
22	The particulars in respect of Architecture and Design Standards, Type of Construction Technology, Earthquake Resistant Measures and the like to be adopted for Buildings and for Common Areas and of amenities / facilities in the Layout Plan of the real estate project;	U/R 3(2)(g)
23	The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;	U/s 4(2)(f)
24	Proforma of the (a)allotment letter, (b)agreement for sale, and (c) the conveyance deed proposed to be signed with the allottees;	U/s 4(2) (g)

Sr. No	Nature of the Documents	Provision U/s or U/R
25	The nature of the organisation of allottees to be constituted and to which the title of such land parcels is to be conveyed and the specific local laws to govern such organisation of allottees on completion of real estate project;	
26	(a) The number of apartments, (b) type and (c) the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and (d) the exclusive open terrace areas apartment with the apartment, if any;	U/s 4(2)(h)
27	The number and areas of garage for sale in the project;	U/s 4(2)(i)
28	The names and addresses of his real estate agents, if any, for the proposed project;	U/s 4(2)(j)
29	The names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;	U/s 4(2)(k)
30	A declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating the details mentioned in form B of the MahaRERA Rules, 2017.	U/s 4(2) (l)
31	(a) Land cost in the real estate project for the purposes of sub-clause (D) of clause (1) of sub-section (2) of section 4; (b) Cost of construction in real estate project for the purposes of sub-clause (D) of clause (1) of sub-section (2) of section 4; (c) “Estimated cost of the real estate project,” within the meaning of clause (v) of section 2.	U/R 3(8)
32	Such other information and documents as may be prescribed. / The promoter shall also provide such other information and documents, as may be required by the Authority under these rules or the regulations	U/s 4 (2) (m) U/R 3(2)(i)
33	In the case of on Going Projects : The Promoter shall submit a certificate from the practicing project Architect certifying the percentage of completion of construction work of each of the building / wing of the project. This should be in form 1 provided in MahaRERA (General)Regulations	U/R 4(2) No. 4 of MahaRERA (G) Regulations , 2017

Sr. No	Nature of the Documents	Provision U/s o rU/R
34	A certificate from the Engineer for the estimated balance cost to complete the construction work of each of the building / wing of the project, This should be in form 2 provided in MahaRERA (General)Regulations	U/R 4(2) No. 4 of MahaRERA (G) Regulations , 2017
35	A certificate from a practicing Chartered Accountant, for the estimated balance cost to complete the project. This should be in form 3 provided in MahaRERA (General)Regulations	U/R 4(2) No. 4 of MahaRERA (G) Regulations , 2017
36	A certificate from a practicing Chartered Accountant, certifying the balance amount of receivables from the apartments / flats / premises sold or allotted and in respect of which agreement have been executed and estimated amount of receivables in respect of unsold apartments / flats / premises calculated at the prevailing ASR rate on the date of certificate.	U/R 4(2) No. 4 of MahaRERA (G) Regulations , 2017
37	The Promoter shall disclose the number of the apartments sold or allotted to the allottees and further disclose the size of the apartment based on carpet area even if such apartments are sold earlier on any other basis, such as super area, super built up area etc	U/R 4(3) (a)
38	In case of plotted development, the promoter shall disclose the area of the plots sold to the allottees including extent of share of common areas and amenities etc	U/R 4(3) (b)
39	Additional Information which the promoter would like to submit at the time of registration of the project like mortgage details or any other matters.	

AUTHORS GUIDANCE REGARDING THE REQUIREMENTS:

- (1) The promoter and the person responsible to carry out the registration formalities for any real estate project need to obtain all the above information and ready with all the documents.
- (2) Whatever documents or details you want to submit to the authorities, it is advisable to make a detailed scheme of the project and include in the Form B as an attachment or annexure to the declaration cum affidavit.
- (3) Many promoters may conclude that the information which is not provided or demanded in the application or online submission of the application need not be given. The central theme of the Act is to have clear transparency and therefore, it is advisable to make a complete working and in detail the entire project details should be given in a very descriptive manner.
- (i) Registration fees : Appropriate Government RERA rules have provided the fees to be paid at the time of registration of the real estate projects.

(III) PROCEDURE TO GRANT, WITHDRAW OR REJECT THE APPLICATION:

- (1) Section 5 of the Act provides for the Authority has to scrutinize the application and grant or reject the same within 30 days from the date of application . After the expiry of 30 days it is deemed to have been registered
- (2) On granting or deemed to have been registered, the Authority shall give the login and password of the Authority website where , the complete details of the project shall be uploaded for the public viewing and also to update on quarterly basis the progress of the work and all the approvals already received and subsequently received for the benefit of the clients.
- (3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.”

(IV) PROCEDURE TO GET THE EXTENSION OF THE REGISTRATION?

Section 6 of the Act provides regarding the extension of the period of registration.

The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority: The maximum extension that can be given for the project is one year.

Explanation.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

(V) SITUATIONS AND THE PROCEDURE TO BE FOLLOWED BY THE AUTHORITY BEFORE CANCELLATION OF THE PROJECT?

(1) Section 7 of the Act provides for the cancellation of the registered real estate project by the Authority on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that the promoter has really done serious violations or for unfair trade practices.

(2) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) Shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) Shall direct the bank holding the project bank account, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) May, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

(VI) CONSEQUENCES OF LAPSE OR REVOCATION OF THE REGISTRATION?

(1) **As per Section 8** , it is an obligation on the Authority upon lapse of the registration or on revocation of the registration under this Act, to consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

(VII) ABOUT SEPARATE DESIGNATED ACCOUNT TO DEPOSIT OF 70% OF THE SUM RECEIVED FROM THE CUSTOMER:

- (1) Section 4(2)(l)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal. Section 4(2)(l)(D) clearly provides that the funds can only be used for construction and land cost.
- (2) As per section 4(2)(l)(D) first and second proviso, the promoter is required to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. In addition, the promoter is permitted to withdraw from the separate account after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

(VIII) WHAT ARE THE OBLIGATIONS OF THE PROMOTER POST REGISTRATION:

- (1) As per Section 11 (1) the promoter shall, upon receiving his Login Id and password create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—
 - (a) Details of the registration granted by the Authority;
 - (b) Quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
 - (c) Quarterly up-to-date the list of number of garages booked;
 - (d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
 - (e) Quarterly up-to-date status of the project; and
 - (f) Such other information and documents as may be specified by the regulations made by the Authority.
- (2) As per Section 11 (2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

- (3) As per Section 11(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—
- (a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;
 - (b) The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.
- (4) As per Section 4(2)(I)(D) provides that 70% of the collection from the buyers should be deposited in a separate designated account which should be utilised only for the purpose of land cost and construction as per the certificate issued by Architect, Engineer and Chartered Accountant.
- (5) As per Section 4(2)(I)(D) provides for the Annual Audit to be done by a practicing Chartered Accountant.

(IX) PENALTY FOR NON REGISTRATION:

- (1) As per section 59. (1) If any promoter contravenes the provisions of section 3 (regarding the registration of the real estate project), he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.
- (2) As per section 59 (2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both..

Therefore it is in the interest of the developer / promoter to register the project before effecting any sale, advertising or marketing of any real estate projects.

CHAPTER - 5

REGISTRATION OF ESTATE AGENTS AND THEIR DUTIES UNDER RERA

The Real Estate (Regulation and Development) Act 2016 brings the start on controlling the real estate sector of India which is not so controlled till date. The Builders and developers and real Estate Agents were not serious in implementing or fulfilling the promises made by them to the buyers of the flat. There was no control on the estate agents activities previously. The RERA has made the real estate agent who deals in the real estate projects to sale the flats, shops, plot, apartment, buildings to get himself or itself registered with the Authority and also puts duties and functions of the Real Estate Agent in the act.

This article enlightened on the registration of the agents with the authority under the RERA and the functions and duties to be discharge by the Real Estate Agents.

Need for Registration of Real Estate Agent-

Section 9 (1) of the act clearly states that No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.

As per Section 9 (2) of the act Real estate agent need to make application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

As per Section 9 (3) Authority shall after satisfying itself on the fulfillment of such conditions

- a. grant a single registration to the real estate agent for the entire State or Union territory, as the case may be
- b. Reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

The Real estate agent shall make the application to the authority as per the state law and rules and file the application in such a manner the state authority has prescribed.

As per **Section 9 (4)** Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

As per section As per **Section 9 (5)** Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.

Every agent shall mention his Registration No. on the every documents send by him and shall only sale or advertise such projects which are registered under RERA.

As per section As per **Section 9 (6)** Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

After the expiry of such period the agent has to apply for the renewal of the registration.

As per section As per **Section 9 (7)** Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

Functions of the Real Estate Agent

RERA has defined some Functions for the Real Estate Agents. These functions will help to provide the smooth activities in the real estate sector. These functions will ensure the fair and transparent work from the Real Estate Agent.

Section 10 deals with Functions of real estate agents

Every real estate agent registered under section 9 shall—

- (a) Not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;

- (b) Maintain and preserve such books of account, records and documents as may be prescribed;
- (c) Not involve himself in any unfair trade practices, namely:—
 - (i) The practice of making any statement, whether orally or in writing or by visible representation which—
 - (A) Falsely represents that the services are of a particular standard or grade;
 - (B) Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - (C) makes a false or misleading representation concerning the services;
 - (ii) Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- (d) Facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
- (e) Discharge such other functions as may be prescribed

CHAPTER - 6

FUNCTIONS AND DUTIES OF THE PROMOTER

(1) INTRODUCTION :

Promoter is a person who is involved in the real estate business and is considered as a trustee of the flat purchasers till the project is completed in all respect and handed over the possession to the customers. Considering this back ground, the functions of the real estate promoter has been provided in the Act and the Rules.

(2) TO GET THE REAL ESTATE PROJECT REGISTERED WITH THE REAL ESTATE REGULATORY AUTHORITY [Sec. Prov to section 3(1)]

Every promoter before advertising, marketing or booking , sale of the new project require to register the real estate project with RERA. As for as ongoing project without occupation certificate or completion certificate as on the date of commencement of the RERA should be registered with RERA within three months from the date of commencement of RERA i.e., on or before 31st July, 2017. Of course small projects which are having less than 8 apartments or developed on land of less than 500 sq. Meters , no sales in the reconstructed building.

(3) NOT TO ADVERTISE, MARKET OR OFFER FOR SALE WITHOUT REGISTERING PROJECT WITH RERA AUTHORITY [Sec.3 (1)].

All the new before sale , advertisement and marketing and on going projects without completion certificate within 3 months of the commencement of the Act need to be registered with RERA.

(4) SUBMIT ALL INFORMATION OF THE PROMOTER AND THE PROJECT TO THE REGULATORY AUTHORITY WHILE APPLICATION FOR REGISTRATION OF THE PROJECT (SECTION 4)

All the detail of the project like layout sanction, building sanction, number of flats, common area, title report , promoters past 5 years experience etc will have to be submitted at the time of application for registration of the real estate project.

(5) TO KEEP 70% OF THE AMOUNT RECEIVED FROM ALLOTTEES IN SEPARATE BANK ACCOUNT [Sec.4(2)(1)(d)]

With a view to execute that amount of consideration paid by the allottees for allotment of apartment or plot in a particular project only, the promoter is required to deposit 70% of the amount realised from the allottees from time to time in a separate bank account with a scheduled bank for the project. The promoter shall be entitled to withdraw the amounts from such bank account as per the Certificates issued by an engineer, an architect and a chartered accountant in practice as provided under Section 4(2)(1)(d) of the RERA.

(6) DISCLOSE ALL INFORMATION ON THE WEBPAGE OF AUTHORITY [Sec.11 (1)]

Upon granting the registration of the real estate project or on deemed to be registered the project, the authority provide each of the promoter their Login ID and password. On receiving such password and login, it is the duty of the promoter to create his webpage on the website of the RERA Authority and enter all details of the proposed real estate project for public viewing, including—

- (1) Details of the registration of the project granted by the Authority;
- (2) Quarterly up-to-date list of (i) number and types of apartments or plots, as the case may be, booked by the promoter, (ii) number of garages booked by the promoter and (iii) approvals taken and the approvals which are pending subsequent to commencement certificate;
- (3) Quarterly up-to-date status of the project; and
- (4) Such other information and documents as may be specified by the regulations made by the Authority.

(7) ADVERTISEMENT OR PROSPECTUS BY THE PROMOTER [Sec.11 (2)] :

As per section 11(2) of RERA the promoter is required to mention prominently in all advertisements and/or prospectus issued by the promoter the website address of the Authority which contains all the details of the registered project as well as the registration number obtained from the Authority and such other matters incidental thereto.

(8) TO MAKE AVAILABLE CERTAIN DOCUMENTS AT THE TIME OF BOOKING AND ISSUE OF ALLOTMENT LETTER [Sec.11(3)]

As per section 11(3) of RERA at the time of the booking and issue of allotment letter to the allottee the promoter shall be responsible to make available to the allottee the sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority and the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(9) PROMOTER RESPONSIBLE FOR ALL OBLIGATIONS AND RESPONSIBILITIES AS PER AGREEMENT FOR SALE [Sec.11(4)]:

The promoter shall be responsible for all obligations, responsibilities and functions under the provisions of RERA or the rules and regulations made thereunder or to the allottees as per the agreement for sale executed by and between the promoter and the allottees, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the conveyance of the common areas to the association of allottees or the competent authority, as the case may be.

(10) TO OBTAIN THE COMPLETION CERTIFICATE OR THE OCCUPANCY CERTIFICATE [Sec.11 (4)(b)]:

It will be the responsibility of the promoter to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the authority concerned as per applicable law and furnish the same to the allottees or to the association of allottees, as the case may be.

(11) TO OBTAIN THE LEASE CERTIFICATE [Sec.11 (4)(c)]:

If the real estate project is developed on a leasehold land it will be the responsibility of the Promoter to obtain the lease certificate, specifying the period of lease and certifying that all dues and charges in regard to the leasehold land have been paid, and to provide such lease certificate to the allottees individually or to association of the allottees, as the case may be.

(12) TO PROVIDE AND MAINTAIN ESSENTIAL SERVICES [Sec.11 (4)(d)]:

The Promoter shall be responsible for provision and maintenance of the essential services, on reasonable charges, till the time the maintenance of the project is taken over by the association of the allottees.

(13) TO FORM THE ASSOCIATION OR SOCIETY OF ALLOTTEES [Sec.11 (4)(e)]:

To enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the association of allottees in accordance with the applicable laws. Provided that in the absence of local laws, the association of allottees, shall be formed within a period of three months of the majority of allottees having booked their apartment or building or plot, as the case may be, in the project.

(14) TO EXECUTE CONVEYANCE [Sec.11 (4)(f)] READ WITH SECTION 17 OF THE ACT:

The Promoter shall be responsible to execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of RERA.

(15) TO PAY ALL OUTGOINGS [Sec.11 (4)(g)]:

The Promoter shall be responsible to pay all outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges) until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, out of the amount which he has collected from the allottees, for the payment of outgoings. The promoter shall be responsible for payment of mortgage loan and interest thereon or other encumbrances in respect of the project.

(16) NOT TO MORTGAGE OR CREATE A CHARGE AFTER EXECUTION OF AGREEMENT [Sec.11 (4)(h)]:

The promoter after he executes an agreement for sale for any apartment, plot or building, as the case may be, shall not mortgage or create a charge on such apartment, plot or building, and if any such mortgage or charge is made or created the Promoter alone shall be responsible to clear the same.

(17) CANCELLATION OF ALLOTMENT [Sec.11(5)]:

The promoter can cancel the allotment of apartment or building or plot, as the case may be, only in terms of the agreement for sale executed by and between the promoter and the allottee. If the Allottee is aggrieved by such cancellation and if such cancellation is not in accordance with the terms of the agreement for sale, the allottee may approach the Authority for relief.

(18) PREPARE AND MAINTAIN OTHER DETAILS [Sec.11 (6)]:

The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

(19) PROMOTER TO ENSURE VERACITY OF ADVERTISEMENT [Sec.12]:

The promoter must ensure that any advertisement, prospectus or any other advertisement inviting the public to purchase any apartment or plot do not contain any incorrect, false or misleading information. If any person makes an advance or a deposit to the promoter on the basis of the incorrect, false or misleading information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building and sustains any loss or damage by reason of such incorrect, false or misleading information the promoter shall be liable to compensate such person as provided under the RERA

(20) PROMOTER NOT TO ACCEPT ANY ADVANCE OR DEPOSIT EXCEEDING 10% OF COST WITHOUT EXECUTING WRITTEN AGREEMENT FOR SALE [Sec.13]:

A promoter cannot accept a sum exceeding ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or deposit or an application fee, from a person without first entering into a written agreement for sale with such person and register such agreement for sale in accordance with the applicable law. [Section 13(1)].

(21) TO ADHERE TO SANCTIONED PLANS AND SPECIFICATIONS [Sec.14]:

- (1) The promoter is under obligation to develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities and which are disclosed to the allottees.
- (2) The promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken by the allottee, without the previous written consent of that allottee.

The promoter shall not make any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

(22) PROMOTER'S LIABILITY FOR STRUCTURAL DEFECT [Sec.14 (3)]:

Section 14(3) of RERA provides for the promoter's responsibility in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to the project. In the event if the allottee finds any structural defect or any other defect in workmanship, quality or provision of service or any other obligation of the promoter as per agreement for sale within a period of five years from the date of handing over possession and the allottee brings such defects to the notice of the promoter, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event if the promoter fails to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation from the promoter in the manner as provided under the RERA..

(23) PROMOTER NOT TO TRANSFER OR ASSIGN HIS MAJORITY RIGHTS AND LIABILITIES TO A THIRD PARTY [Sec.15]:

After registration of the project and having commenced sale/booking of apartment or plot the promoter shall not be entitled to transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority. It is also provided that any such transfer or assignment even if permitted / approved shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

(24) PROMOTER TO GET THE REAL ESTATE PROJECT INSURED [Sec.16]

1. The promoter has to get the real estate project insured. The promoter is under obligation to obtain all such insurances as may be notified by the appropriate Government, including to obtain insurance in respect of (i) title of the land and building and (ii) construction of the real estate project.
2. The promoter is liable to pay all the premium and charges in respect of all such insurances and he shall pay the same till the project with the insurance is transferred by him to the association of the allottees.
3. The insurance as specified hereinabove shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.
4. All the documents relating to the insurance shall be handed over by the promoter to the association of the allottees upon formation of the association of the allottees.

(25) PROMOTER TO EXECUTE CONVEYANCE [Sec.17]:

Section 17 of the RERA provides for the promoter's obligation to execute the conveyance:

- (1) The promoter shall be responsible to execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and he shall hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and he shall handover the common areas to the association of the allottees or the competent authority, as the case may be. The promoter shall also handover the sanctioned plans and the other title documents pertaining to the real estate project within specified period as provided under the local laws. It is also provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under Section 17 of the RERA shall be executed by the promoter within three months from date of issue of occupancy certificate or when 51% of the total number of allottees in the building or wing have paid to the promoter the full consideration whichever is earlier. In case of allotment of plots, the promoter has to convey the title to the allottees within 3 months from the date the allottees have paid full consideration to the promoter.

(26) PROMOTER LIABLE TO REFUND THE AMOUNT RECEIVED FROM THE ALLOTTEE IN CASE OF FAILURE TO GIVE POSSESSION IN TIME [Sec.18]:

Under section 18 of the RERA the promoter is under the obligation to complete the project and give possession of the apartment, plot or building, as the case may be, in time as agreed with the allottees.

- (1) If the promoter fails to complete the project or if he is unable to give possession of an apartment, plot or building to the allottees (a) in accordance with the terms of the agreement

for sale or, as the case may be, duly completed by the date specified in the agreement or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the RERA or for any other reason, then in such an event the promoter shall be liable on demand to pay to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter from such allottee in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under the RERA.

However in the event where an allottee does not intend to withdraw from the project, such allottee shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- (2) In the event of any defective title of the land, on which the project is being developed or has been developed the

Promoter shall be liable to compensate the allottees in case of any loss caused to the allottees, in the manner as provided under the RERA, and the claim for compensation under sub-section (2) of Section 18 shall not be barred by limitation provided under any law for the time being in force.

- (3) In the event if the promoter fails to discharge any other obligations imposed on the promoter under the RERA or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale executed by and between the promoter and the allottees, the promoter shall be liable to pay such compensation to the allottees, in the manner as provided under the RERA.

CHAPTER - 7

PROFESSIONALS SERVICES THAT CAN BE AVAILBED AND OFFERED BY A CHARTERED ACCOUNTANT

A Practicing chartered accountant is well versed with the commercial and business laws. He is expert in accounting and audit. Direct and indirect tax, financial planning is the day to day work of a chartered Accountant. Therefore, the promoter may avail the following services from Chartered Accountant firm.

1. REGISTRATION OF REAL ESTATE PROJECT

Chartered Accountant firm can understand the various elements involved in the initial stage of the project till the completion of the project by outlining the following important points.

- (1) The title of the land and the various issues related to the same including the conveyance of the land to the association of allottees as provided under the Act.
- (2) Review the Development Control Regulations under which the project is being developed and list down the potential FSI, TDR etc and the present approval obtained, balance approval pending and the proposed development in due course.
- (3) Review of various documents related to the present project like Allotment letter, advertisement material, receipts, booking letter, web site contents, agreement for sale and the conveyance deed, agreements to be executed with the contractor and the service providers etc.
- (4) Designing the various policy documents and other compliances as may be required from time to time.
- (5) Coordinate with the various professionals involved in the process of registration of the real estate project
- (6) Upload the information on the website for registration of the project and attend the hearing if required to get the project registered with RERA.

2. INTERACTIVE TRAINING SESSION

Chartered Accountant firm may be engaged to arrange the 1 day interactive training session for the management and staff of the client to provide the overview on the RERA. Answers to the questions/ queries arising in the minds of the staff and management relating Registration, timely updates, compliance required, operation separate accounts for each project as per RERA guidelines, RERA audit requirements, CA and Architect and Engineer certification requirements etc.

3. PROJECT TRACKING DETAILS

- (1) All the details of the real estate project to be registered provided by the client.
- (2) Meeting with other professionals involved in the same and also the staff who is in charge of the project.
- (3) Guide the person in charge of the real estate project to comply with the timely requirements of RERA.
- (4) Review the project report details received from the architect, engineer and the Chartered Accountant.
- (5) The Promoter details for the last 5 years need to be compiled with the various projects undertaken and completed or pending for completion from the financial year 2012-13 onwards till 2016-17. The various project details and its other details as per RERA requirements.

4. REGISTRATION OF PROJECT

- (A) Providing the detail list of the documents and information required for the registration of project.
- (B) Compilation of all the data and the documents provided by the promoter for the purpose of the registration.
- (C) Study and verification of the data and documents so as to check whether it meets requirements under the RERA.
- (D) Uploading of all the information provided by the promoter on the website of RERA.
- (E) Preparation of declaration in form B.

5 DRAFTING AND VETTING OF DOCUMENTS AS PER RERA REQUIRED FOR REGISTRATION

- (A) Draft allotment letter.
- (B) Agreement for sale.
- (C) Conveyance Deed
- (D) Booking Letter.
- (E) Agreement with the Engineer and Architect

6. RETAINERSHIP SERVICES

- (A) Providing the guidance to the promoters for the timely compliances to be made as per **RERA**.
- (B) Verification and the certification of records as per the **RERA** on quarterly basis.
- (C) Quarterly status uploading of the Project on the RERA portal.

7. CONSULTANCY ON MANAGEMENT OF THE FUNDS AS PER RERA

- (A) Every project require to have a separate designated account in the scheduled bank for the purpose of regulating and operating 70% of the money received from the buyers in a separate account.
- (B) Review each of the certificates issued by the architect, engineer and the chartered accountant issued for the purpose of withdrawal of the funds from the designated account.
- (C) Review the utilization of 100% funds received from the customers and facilitates to complete the accounts and submit for audit as early as possible.

8. PREPARATION OF ANNUAL STATEMENT

- (A) PROVIDING THE AUDIT CERTIFICATE AS PER THE RERA AT THE YEARLY BASIS.
- (B) YEARLY COMPLIANCES ADVISORY AND GUIDANCE.

9 RERA AUDIT

- (A) It will include the verification of various documents and records relating to following points.
 1. Details of the money received as the booking amount.
 2. Withdrawals made accordingly are as per the guidelines given by the RERA.
 3. All the agreements executed with the customers in for the particular project.
 4. Whether amount collected from the particular project has been utilized for the same project.

10 OTHER SERVICES TO PROVIDE

- (A) Consultancy on case to case basis.
- (B) Written opinion on the project after verifying the details.
- (C) Appearing and representation before RERA authority or appellate tribunal.
- (D) Application filing before the adjudicating authority.

CHAPTER – 8

RIGHTS AND DUTIES OF ALLOTTEES

The Real Estate (Regulation & Development) Act, 2016 is a legislation which regulates the activities of all stakeholders namely, the promoters, agents and allottees. The allottee being one of the parties to the transaction is bound by all the terms and conditions of the Agreement of Sale executed in terms of The Real Estate (Regulation and Development) Act, 2016. The Act in Chapter IV lays down the rights of the allottee which he has against the promoter and which are to be enforced by the Regulatory Authority.

(1) RIGHTS OF THE ALLOTTEES TO OBTAIN INFORMATION [SEC. 19 (1)]

1. The allottee has right to obtain information relating to the project including the information about the sanctioned plan/ layout plan and the specifications as approved by the competent authority..
2. In case the promoter intends to make any additional construction beyond the sanctioned plan subject to the Promoter disclose to the allottees.
3. The Promoters can amend the sanctioned plan by obtaining prior written consent of at least 2/3rd number of allottees.
4. The allottee is also entitled to all other information which is related to matters provided under The Real Estate (Regulation & Development) Act, 2016, rules or regulations made thereunder or, in the agreement for sale.

(2) TO KNOW STAGE-WISE TIME SCHEDULE OF COMPLETION [SEC. 19(2)]

The Promoter has to disclose and displayed on the website the time scheduled for the completion. The allottee is entitled to obtain the information regarding water, sanitation, electricity and other amenities and services as agreed with the promoter in the agreement for sale.

(3) TO CLAIM POSSESSION [SEC. 19(3)]

The allottee is entitled to claim possession of the building, apartment or plot as per the declaration given by the promoter in his application for registration of the project. The possession of the building apartment or plot is to be given to the allottee and the common area is to be handed over to the Association or the Society formed under Co-operative Societies Act or any legal body formed by the allottees.

(4) TO CLAIM REFUND IN THE EVENT OF NON-COMPLETION [SEC. 19 (4)]

In the event the promoter fails to give possession in accordance with the terms of the agreement for sale, in such case the allottee is entitled to claim the refund of the amount paid along with interest at the prescribed rates, and compensation as may be determined by the adjudicating authority.

(5) TO OBTAIN DOCUMENTS AND PLANS [SEC. 19(5)]

The allottees are entitled to have the copies of documents and plans including that of common area after the possession are handed over by the promoter to allottee or the Association or the Society formed under Maharashtra Co-operative Societies Act 1960 or Companies formed under Companies Act or any legal body formed by the allottees.

(6) RESPONSIBILITIES OF ALLOTTEES TO MAKE PAYMENT [SEC. 19(6)]

Every allottee, who has entered into an agreement to purchase an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and pay the consideration at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, as may be payable.

The obligation to make payment within specified time may be changed with mutual agreement.

(7) TO PAY INTEREST AT PRESCRIBED RATE [SEC. 19 (7) & (8)]

The allottee is liable to make the payment together with the interest at the rate prescribed for any delay which is due in respect of cost, maintenance, registration or under any other head.

The interest may be reduced by the mutual agreement between the promoter and the allottee.

(8) TO PARTICIPATE TOWARDS FORMATION OF SOCIETY/ASSOCIATION [SEC. 19(9)]

Every allottee of the building apartment or plot is required to participate in the formation of an association or Society formed under Maharashtra Co-operative Societies Act 1960 or Companies formed under Companies Act or any legal body of the allottees or a federation.

(9) TO TAKE PHYSICAL POSSESSION [SEC. 19(10)]

Allottee shall take physical possession of the building, apartment or plot within a period of two months of the issue of occupancy certificate.

(10) TO PARTICIPATE IN REGISTRATION OF CONVEYANCE DEED [SEC. 19(11)]

Under section 17(11), the promoter is required to execute a registered conveyance deed of the building, apartment or plot in favour of the allottee and of the undivided proportionate title in the common areas in favour of their association.

The primary responsibility of the promoter to convey the title,

The allottee is responsible to participate in the process and extend all cooperation in the matter.

(11) PENAL CONSEQUENCES IN CASE OF FAILURE [SEC. 67]

The Allottee in case fails to comply with or contravene any order decision or direction of the RERA, is liable to pay a penalty computed per day for the period during which such default continues.

The penalty may cumulatively extend up to 5% of the cost of the building, apartment or plot allotted to allottee as may be determined by the authority.

In case allottee fails to comply with or contravenes any order or direction of the Real Estate Appellate Tribunal, then the allottee can be punished with imprisonment for a term upto one year or with fine for everyday during which such default continues which may extend upto 10% of the cost of the building, apartment or plot. He may also be punished by imprisonment as well as fine in appropriate case under sec. 68 of The Real Estate (Regulation & Development) Act, 2016.

CHAPTER – 9

FUNCTIONS OF REAL ESTATE REGULATORY AUTHORITY

FUNCTIONS OF REAL ESTATE REGULATORY AUTHORITY

1. The Authority shall perform regulatory as well as advisory functions.
2. Regulator will ensure compliance of the obligations cast upon the promoters,
3. The allottees and the real estate agents will perform incidental functions necessary for discharge of such duties.
4. Any person can file a complaint before Authority for any violation or contravention of the provisions of this Act, rules and regulations against any promoter, allottee or real estate agent.
5. Advisory body will act independently as they deem fit for State administration. Their main objective is to facilitate and assist the growth, enlargement and promotion of a transparent, efficient and competitive in the real estate sector.
6. They can recommend either *suo-moto* or on request from State Government in respect to development of real estate sector.
7. The Act grants and provides to establish council in respect to advise the Central Government in certain specified matters.

REGULATORY FUNCTIONS: -

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibilities of the Regulatory Authority are:

Registration of the real estate project and the real estate agent;

1. Extension of registration of the real estate project and its revocation;
2. Renewal of registration of the real estate agent and its revocation;
3. Section 34 of The Real Estate (Regulation and Development) Act, 2016 provide the regulatory functions for an implementation and ensure smooth construction, sale, transfer and management of building/ apartment or plots which are as follow:-
4. To publish and maintain records in the website of all real estate projects for public viewing for the project which is register.
5. To maintain a database on its website, for public viewing
 - a. Enter the details such as names and photographs of promoters as defaulters include their project details, registration has been revoked or have been penalized under The Real Estate (Regulation and Development) Act, 2016, with reasons for access to the general public;
 - b. Enter the details such as names and photographs of real estate agents who have applied and registered under The Real Estate (Regulation and Development) Act, 2016 including whose registration has been rejected or revoked.

6. To fix the standard fees to be levied on allottees, promoter or real estate agent, as the case may be through regulations for each areas under its jurisdiction.
 - a. to ensure compliance of obligation of the promoters under RERA, 2016
 - b. to ensure compliance of the allottees as provided under RERA. 2016
 - c. to ensure compliance of the real estate agents as per RERA, 2016
 - d. to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;
 - e. As per section 71 the Authority is required to appoint one or more ‘adjudicating officer’ in consultation with appropriate Government.
 - f. As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
 - g. As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

7. **The Authority has to perform such other functions that will be assigned and conveyed by appropriate Government for carrying out the necessary provisions under the Real Estate (Regulation and Development) Act, 2016.**
 - a. In the section 35 of The Real Estate (Regulation and Development) Act, 2016, the Authority can considers it expedient to do so, on a complaint or *suo-moto*, relating to this Act or the rules or regulations made thereunder. The Authority may or by an order in writing and recording reasons therefor, call upon any promoter , allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may deem fit and require.
 - b. The Authority can appoint either one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.
 - c. If the Authority during an inquiry satisfy that any promoter, allottee or real estate agent has conducted, committed and continues to be committed the breach under The Real Estate (Regulation and Development) Act, 2016, then the Authority may, by order, can restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party,as the Authority deems fit and necessary..
 - d. The Authority has to prepare and submit every year report regarding description of its activities and annual accounts of the previous year before the appropriate Government
 - e. Section 29 provides that the Authority should endeavour to dispose of the questions / complaints as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it could not be disposed of during the said period the Authority is required to record its reasons for the same.

CHAPTER – 10

FUNCTIONS AND POWER OF REAL ESTATE APPELLATE TRIBUNAL

The Act recognises the need for an effective implementing arm for various statutory provisions relating to construction, sale, management and transfer of apartments, plots and building as also a forum for providing speedy resolution of disputes in matters decided by the RERA in the course of monitoring and regulation of these activities. Accordingly, the Act in section 43, provides for establishment of mechanism for speedy dispute redressal and to establish an Appellate Tribunal known as the "Real Estate Appellate Tribunal (REAT)", to be set up by the State Government by notification in the official Gazette, to adjudicate any dispute and hear and dispose of appeal against any direction, decision or order of the Real Estate Regulatory Authority or the Adjudicating Authority. Part VII of the Act constituting of sections 43 to 58 deals with matters relating to such tribunal. Section 43 requires the Appropriate Government to establish an Appellate Tribunal to be known as the "(name of the state/union territory) Real Estate Appellate Tribunal".

The Tribunal in Maharashtra will, for instance, be known as Maharashtra Real Estate Appellate Tribunal. Depending upon the work to be handled, the appropriate governments have been permitted to constitute one or more benches of the Tribunal in their State/Union Territory. Also two or more Appropriate Governments can join to form a single Tribunal.

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

CONSTITUTION

1. The Real Estate Appellate Tribunal will function in benches and each bench will consist of a Chairperson and atleast two whole time members, one of whom will be Judicial Member and another Administrative or Technical member, to be appointed by the State Government. The Selection of the chairperson shall be made by the Government in consultation with the Chief Justice of the High Court or his nominee. The Judicial and Technical or Administrative member shall be appointed on the recommendation of a select committee consisting of the Chief Justice of the High Court or his nominee, Secretary of the department handling housing and the law secretary.
2. Pending the constitution of the regular tribunal, the law provides for any Appellate Tribunal functioning under any law to be designated by the Appropriate Government to function as a tribunal under this Act. Once a regular tribunal is established, all the proceedings before such designated tribunal shall stand transferred to the regular REAT.

TERM OF OFFICE

The Members of REAT will hold office for maximum five years from the date they enter upon the office or until they attain the age of sixty-five years, whichever expires earlier. The chairperson, if appointed after being a High Court Judge, can hold office for a term of five years or till he attains the age of sixty- seven years.

APPLICATION FOR SETTLEMENT OF DISPUTES AND APPEALS TO REAT

1. Appeal lies to the REAT against the decisions of the Real Estate Regularity Authority or the Adjudicating officer in discharge of their functions. Any person aggrieved, including the Appropriate Government or the Competent Authority, may prefer appeal to the REAT against their decisions or directions.
2. The appeal filed by the Promoter against any order imposing penalty shall however, not be entertained unless he deposits atleast 30% of the penalty imposed or such higher amount as may be determined by the tribunal. In case the promoter has been directed to make any payment to the allottee, the appeal can be entertained only when the total amount payable including interest and compensation has been deposited. Although not specifically mentioned, an appeal will lie to the REAT, inter-alia, against the following direction or decision or orders of RERA or Adjudicating Officer -
 - (i) Denying registration of the project [Section 5 (1) (b)]
 - (ii) Denying extension of registration [Sec. 6]
 - (iii) Revoking registration of the project and debaring the promoter from accessing to website [Section 7].
 - (iv) Passed under section 8 ordering completion of the construction of remaining uncompleted work in cases where the registration is revoked [Sec. 8]
 - (v) Imposing penalty for contravention of Section 3 [Sec. 59].
 - (vi) Imposing penalty for failure to make application for registration or providing false information [Sec. 60].
 - (vii) Imposing penalty for contravention of any other provision including failure to complete the project in time, accepting more than 10% amount before executing the agreement for sale, not depositing 70% of the receipt in separate bank account and other defaults [Sec. 61].
 - (viii) Imposing penalty on allottees for failure to comply with or contravening the orders of the RERA [Sec. 67]
 - (ix) Imposing penalty on the promoters for non-compliance with the orders of RERA [Sec. 63].
 - (x) Imposing penalty on real estate agents for failure to comply with the provisions of the Act [Sec. 62].

- (xi) Imposing penalty on real estate agent for contravening the orders or directions of RERA [Sec. 65]
- (xii) Adjudication Authority determining the amount of interest and compensation u/s 12,14,18 and 19 [Sec. 71]

PROCEDURE FOR FILING APPEAL

3. Appeal to RE AT is required to be preferred within 60 days from the date on which the copy of order appealed against was received by the appellant. The same should be in such form and accompanied by such fees as may be prescribed. The fees prescribed by most of the States is Rs. 1,000/- payable by the demand draft on a nationalize bank. The Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeals Etc.) Rules 2017 provide for a fee of Rs. 5000 through NEFT or RTGS system or any other digital transaction mode. The REAT has the discretion to admit the appeal even after 60 days on satisfaction about existence of sufficient cause for the delay.
4. **Every appeal shall be filed along with the following documents:-**
 - (a) An attested true copy of the order against which the appeal is filed;
 - (b) Copies of the documents relied upon by the appellant and referred to in the appeal;
 - (c) An index of the documents.

In Maharashtra, appeal is to be filed in Form Q in triplicate accompanied by the prescribed documents and fees.

5. The order will be passed by the REAT after giving the parties a reasonable opportunity of being heard. After the order is passed, a copy of the order is to be sent to the Authority or the Adjudicating Officer and the Appellant.
6. The REAT is supposed to decide the appeal as expeditiously as possible and shall endeavour to dispose of the appeal within 60 days from the date of receipt of the appeal. In case it is not disposed of within 60 days, it will be required to record reasons for not disposing it of within this period.

POWERS OF REAL ESTATE APPELLATE TRIBUNAL

1. The REAT, for the purposes of deciding the appeals has the same powers as are vested in a civil court under the Code Of Civil Procedure while trying a suit, in the matter of
 - (i) summoning and enforcing attendance,
 - (ii) requiring discovery and production of documents,
 - (iii) receiving evidence on affidavits,
 - (iv) issuing commissions,
 - (v) reviewing its decisions,
 - (vi) dismissing application or deciding them ex-parte and
 - (vii) any other matter that may be prescribed. The REAT shall not be bound by the procedure laid down by the Code of Civil Procedure 1908 but shall be guided by the principle of natural justice. It shall also not be bound by the rules of evidence contained in the Indian Evidence Act 1872.
2. Additional powers of the Appellate Tribunal.- The Appellate Tribunal may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, town planning, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any inquiry or proceedings before it.
3. All proceedings before the REAT shall be deemed to be judicial proceedings within the meaning of Sec. 193, 219 and 228 for purposes of Sec. 196 of the IPC and the REAT shall be deemed to be a Civil Court for purposes of Sec. 195 and Chapter XXVI of Code of Criminal Procedure 1973.

APPEAL TO THE HIGH COURT

Any person aggrieved by any decision or order of the Real Estate Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Real Estate Appellate Tribunal where the Real Estate Project is situated.

EXECUTION OF THE ORDERS OF THE REAT

- a) Every order passed by the Real Estate Appellate Tribunal under this Act shall be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of the civil court. For this purpose the REAT shall have all powers of a Civil Court. The REAT is also competent to transmit any of its order to a Civil Court having local jurisdiction for execution in the same manner as if it was a decree of that Civil Court.

JURISDICTION OF CIVIL COURTS BARRED

1. Matters contained under the Act shall be dealt with in appeal only before the Real Estate Appellate Tribunal. Under section 79 of the Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Adjudicating Officer, the Real Estate Regulatory Authority or Real Estate Appellate Tribunal is empowered by or under this Act to determine. However, the Consumer Forum (National, State or District) have not been barred from the ambit of the Act. Since the laws of the country do not permit forum shopping, the Ministry of Housing has clarified that an aggrieved can only approach one of the two for disputes over the same matter.
2. No court shall take cognizance of offence punishable under this Act except on a complaint in writing made by the Authority or by any officer of the Authority duly authorized by it for this purpose. It is further provided that no court inferior to that of a metropolitan magistrate or a Judicial Magistrate first class shall try any offence punishable under this Act.

CHAPTER – 11

FUNCTIONS AND POWER OF ADJUDICATING OFFICER

In order to decide the matter of compensation for violation of the sections 12, 14, 18 and 19 of the Act, the Authority consultation with the appropriate Government can appoint one or more judicial officer. Judicial officer appointed shall or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

The matters which are pending before Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act for the similar complaint which can be filed before the adjudicating officer under sections 12, 14, 18 and section 19 of Ac after the same is withdrawn from the respective forum/ commission.

The application for adjudging compensation under above shall be dealt with by the adjudicating officer and dispose of the same within a period of sixty days from the date of receipt of the application:

While holding an inquiry the adjudicating officer have power to issue summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to provide evidence and to produce any document which in the opinion of the adjudicating officer, is useful for or relevant to the subject matter of the inquiry and on such inquiry, if, he is satisfied that the person has failed to comply with the provisions of any of the sections specified above, then he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections.

Factors to be taken into account by the adjudicating officer

In section 71 of The Real Estate (Regulation and Development) Act, 2016, the adjudicating officer shall have due regard to the following factors, namely:—

- a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b) The amount of loss caused as a result of the default;
- c) Other factors which the adjudicating officer considers necessary for justice.

CHAPTER – 12

OFFENCES AND PENALTIES

In Section 59 to 70 of The Real Estate (Regulation and Development) Act, 2016, it is obligations on the promoters, allottees and real estate agents to provide for consequences for defaults by way of penalty, fine and imprisonment for contravening those provisions by them.

A - PENAL CONSEQUENCES OF DEFAULTS BY THE PROMOTERS

(i) CONTRAVENTION OF SECTION-3 DEALING WITH REGISTRATION OF THE PROJECT (SEC. 59)

1. Under section 3 the Promoter requires to registered the project with the RERA .
2. If the Promoter fails to register their project with RERA, then it prohibits them from advertising, marketing, booking, selling, offering for sale or inviting people in any other manner for purchasing the buildings, apartments or plots.
3. In case the promoter contravenes the provisions and does any such publicity without registration, in such case the Promoter can be liable to pay penalty which can be of an amount up to 10% of the estimated cost of the project.
4. In case the promoter continues to default even after the order imposing penalty as mentioned above, then in such case he can be punished either with imprisonment upto three years or with fine upto 10% of the estimated cost of the project or with imprisonment as well as fine.
5. The amount of penalty and the estimated cost of the project are to be determined by the Authority.

(ii) CONTRAVENTION OF SECTION-4 OBLIGATING THE PROMOTER TO MAKE APPLICATION FOR REGISTRATION & FURNISH INFORMATION (SEC. 60)

1. In order to registered the project the promoter is to make an application u/s. 4 to the Authority within the prescribed time.
2. The application is to be accompanied by the documents containing information prescribed in sub-section (2) of section 4 of The Real Estate (Regulation and Development) Act, 2016 and declarations to the effect mentioned in (A) to (D) of Clause (1) to section 4 (2) of The Real Estate (Regulation and Development) Act, 2016.
3. If the promoter does not act as per the provisions or submits information or, makes false declarations, then in such case, the Promoter can liable to penalty upto the maximum amount equal to 5% of the estimated cost of the project as may be determined by the Authority.

(iii) CONTRAVENTION OF OTHER PROVISIONS OF THE ACT (SEC. 61)

1. Punishment for contravening any provisions of the Act or rules or regulations there under, except provisions of Section 3 and 4 in respect of which consequences are provided separately in terms of Section 61, is made punishable with penalty which can be upto an amount equal to 5% of the estimated cost of the project as determined by the Authority.
2. The provisions take within its ambit contravention of all the provisions (except Sec. 3 and 4) without specifying individual defaults which can be made punishable.
3. The provisions under The Real Estate (Regulation and Development) Act, 2016 for penal consequence provided in the section may, interalia, be for contravention of following provisions: -
 - a) Failure to enter details on website
 - b) Failure to quote website address in advertisement for sale
 - c) Failure to make prescribed information available at the time of booking and issue of allotment letter
 - d) Failure to obtain completion/ occupancy certificate and make it available to allottee
 - e) Failure to obtain lease certificate in respect of leasehold land for development
 - f) Failure to provide and maintain essential services
 - g) Failure to enable formation of a society or any other association of allottee
 - h) Failure to execute conveyance deed in favour of allottee and association of allottees
 - i) Failure to pay outgoings until transfer of possession
 - j) Mortgaging or creating a charge on property after executing agreement for sale
 - k) Failure to prepare and maintain details as may be specified by the Authority.
 - l) Accepting more than 10% of the cost without executing and registering agreement for sale
 - m) Not adhering to sanctioned plan and project specifications
 - n) Not rectifying defects brought to notice within five years
 - o) Transferring or assigning majority rights without obtaining prior consent of two-third allottees
 - p) Failure to get notified insurances
 - q) Failure to complete the project in time and give possession as per agreed terms
4. The penal provision is common for all these defaults and other contraventions/defaults. A view is possible that the amount of maximum penalty specified as upto five percent of estimated cost is for all the defaults taken together.
5. This appears to be a contentious view. Considering that the specified amount if applied to individual defaults might involve unintended harsh punishment particularly in cases where one default necessarily follow the other, the Authority in such cases is likely to take a reasonable view taking the nature of default into consideration.

(iv) FAILURE TO COMPLY WITH THE ORDERS OF THE AUTHORITY (SEC. 63)

A promoter who fails to comply with or contravenes any of the orders or directions of the Authority is made punishable by penalty calculated at the determined amount per day for the period during which the default continues subject to the maximum imposable penalty of amount equal to 5% of the estimated cost of the project as may be determined by the authority.

(v) FAILURE TO COMPLY WITH ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 64)

- I. If the Promoter fails to comply with the orders, decisions or directions of the Real Estate Appellate Tribunal, then the Promoter is made punishable with imprisonment for a term upto three years or with fine for every day of default or, with both.
- II. The fine to be imposed can be of an amount upto 10% of the estimated cost of the real estate project.

B - DEFAULTS COMMITTED BY THE ALLOTTEES

(I) FAILURE TO COMPLY WITH THE ORDER OF THE AUTHORITY (SEC. 67)

- I. If the allottee fail to comply with any order, decision or direction of the Regulatory Authority, then the allottee will be liable for penalty as may be determined by the Authority for the period during which such default continues.
- II. The total penalty so imposable can be upto an amount equal to 5% of the cost of building, apartment or plot as determined by the authority.

(II) FAILURE TO COMPLY WITH THE ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 68)

- I. If any allottee fails to comply with or contravenes any of the orders or directions of the Real Estate Appellate Tribunal, then the allottee can be made punishable with imprisonment for a term upto one year or with fine for every day during which such default continues or with both.
- II. The fine so determined as payable can be upto an amount equal to 10% of the cost of building, apartment or plot in respect of which the defaulter is an allottee.

C - PENAL CONSEQUENCES FOR DEFAULT BY AGENTS

(I) FAILURE TO FACILITATE SALE/ PURCHASE WITHOUT REGISTRATION (SEC. 62)

- I. Section 9(1) of The Real Estate (Regulation and Development) Act, 2016, if the real estate agent fails to register with the RERA, then real estate agent is prohibited from facilitating the sale or purchase of a building, apartment or plot in a registered real estate project or acting on behalf of any person for such facilitation.
- II. If, any violation of the provisions made by real estate agent, then real estate agent is liable for the penalty of Rs. 10,000/- per day of default.
- III. The total amount of penalty shall be subject to maximum amount equal to 5% of the cost of building, apartment or plot, sale or purchase of which was facilitated by him.

(II) FAILURE TO PERFORM THE FUNCTIONS UNDER THE ACT (SEC. 62)

- I. Section 10 of The Real Estate (Regulation and Development) Act, 2016 lays down the functions of the real estate agent which he is required to perform under the Act.
- II. If real estate agent fails to perform such functions in the way laid down in the Act, then real estate agent can be made liable to punish with penalty computed at Rs. 10,000/- for every day of the default which can cumulatively go upto 5% of the cost of building, apartment or plot of which he facilitated the sale or purchase.

(III) FAILURE TO COMPLY WITH ORDERS OF THE AUTHORITY (SEC. 65)

If any real estate agent, fails to comply with, or contravenes any orders or directions of the Authority, then real estate agent shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated by him and as determined by the Authority.

(IV) FAILURE TO COMPLY WITH ORDERS OF THE REAL ESTATE APPELLATE TRIBUNAL (SEC. 66)

If any real estate agent, fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, then the real estate agent shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent, of the

estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated, or with both.

NATURE OF PRESCRIBED PUNISHMENT

1. Chapter VIII of The Real Estate (Regulation and Development) Act, 2016 deals with the "Offences Penalties and Adjudication" which prescribes the consequences for various defaults.
2. For most of the defaults barring -
 - a. Continued default by the promoters u/s 3 and
 - b. Contravention of the orders, decisions or directions of Appellate Tribunal by the promoter, the agent or the allottee,
3. The punishment is by way of penalty which is to be computed with reference to the estimated cost of the project or the cost of the building, apartment or plot.
4. The Act does not specify whether the penalties are civil penalties or penalties for contraventions considered as offence.
5. The title of the chapter mentions 'offence' as well as 'penalties' which seem to indicate that while some of the punishments are for default considered as offence and involve prosecution.
6. The others are of the nature of civil penalties to be imposed by the Authority.
7. The distinction is material because of the different principles of jurisprudence applicable to them. While a civil penalty mainly considers the fact of defaults simply, conviction requires establishing the intention of the defaulter, his guilty mind, motive and other factors pointing to the state of mind which play a decisive role.
8. Wherever penalty is provided, the maximum amount of penalty is to be determined with reference to the estimated cost of the real estate project or of building, apartment or plot in question as determined by the Authority.
9. These penalties appear to be of the nature of civil penalties and can be imposed by the Regulatory Authority on the establishment of default within the maximum amount laid down under the Act without a decisive consideration of the motive or mental state of the offender.
10. These are the penalties prescribed under The Real Estate (Regulation and Development) Act, 2016 is as follow:-

Sr. No	Section	Particular
1	Section 59 (1)	default u/s 3
2	Section 60	default u/s 4
3	Section 61	default by promoter under other section
4	Section 62	default by agent u/s 9(1)
5	Section 63	Breach and Contempt by promoter of the orders of RERA
6	Section 65	Breach and Contempt by the agent of the orders of RERA
7	Section 67	Breach and Contempt by allottee of the orders of RERA

11. The proceeding in respect of these penalties will be initiated and carried out by the Regulatory Authority.
12. In The Real Estate (Regulation and Development) Act, 2016 penalty provided under the following provisions recommend the punishment of imprisonment or fine or both:-

Sr. No	Section	Particular
1	Section 59 (2)	Continue default by the promoter u/s 3
2	Section 64	Breach and Contempt by promoter of the directions of Real Estate Appellate Tribunal
3	Section 66	Breach and Contempt by agent of the directions of Real Estate Appellate Tribunal
4	Section 68	Breach and Contempt by allottee of the directions of Real Estate Appellate Tribunal

13. These are provisions in respect of default by the promoter and Breach/Contempt of orders of the Appellate Tribunal by the promoter, allottee and the real estate agent.
14. These provisions prescribe prosecution for defaults considered as offence proceedings in respect of which are not before the Regulatory Authority.
15. These are provisions for prosecution as is indicated by prescription of 'fine' and 'imprisonment' instead of penalty and the absence of expression 'as determined by the Authority' used in other sections.

16. For offences described under 59(2), 64, 66, and 68, the penal action by way of prosecution will be on a complaint by the Authority.
17. The provision contained in Section 80 where no court shall take cognizance of any offence punishable under the Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorized by it for the purpose.

OFFENCES BY COMPANIES

1. If the offence punishable under The Real Estate (Regulation and Development) Act, 2016 is committed by a company, every person who, at the time of the offence, was in charge of the conduct of the business of the company or was responsible for its conduct as well as the Company will be deemed to be the person committing the offence and shall be proceeded against in accordance with the provisions of the Act.
2. However, it will not apply if the person in charge of or responsible for the conduct of business proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.
3. It is not only the person in charge or responsible for the conduct of business who can be punishable but also the director, manager, secretary or any other officer of the company who can be charged for the offence if it can be proved that the offence was committed with his consent or connivance or was attributable to any neglect on his part.

COMPOUNDING OF OFFENCES

1. If any person is punishable for an offence under The Real Estate (Regulation and Development) Act, 2016, he can either before or after the initiation of proceedings, seek compounding of the offences by the court and the Act permits such compounding subject to the terms and conditions and on payment of fees as may be prescribed in the rules to be framed.
2. It is also provided that the amount to be charged on compounding will not exceed the maximum amount of fine imposable under the Act for that offence.

3. The compounding fees prescribed by most of the states as per the rules are as under;

Offence	Compensation for the Offence
Imprisonment under sub section (2) of section 59.	10 % of the estimated cost of the real estate project.
Imprisonment under section 64.	10% of the estimated cost of the real estate project.
Imprisonment under section 66.	10% of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.
Imprisonment under section 68.	10% of the estimated cost of the plot, apartment or building, as the case may be.

4. As per Maharashtra Real Estate Rules and Regulation 2017 the compounding fees is 5% under all the sections subject to the maximum of 10% of the estimated cost or the cost of plot/ apartment/ building.
5. On payment of the sum of money in accordance with above mentioned table any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such person in any court.
6. The acceptance of the sum of money for an offence in accordance with the above mentioned table, by the Court shall be deemed to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)
7. The promoter, allottee or real estate agent, as the case may be, shall comply with the orders of the Authority or the Appellate Tribunal, within the period specified by the court, which shall not be more than 30 days from the date of compounding of the offence

For Private Circulation