

# **Real Estate (Regulation and Development) Act, 2016**

# Background of the Law

- (A) This act popularly known as RERA, RERDA and The Real Estate Act etc.
- (B) Central government have framed the act and the NODAL agency of Central government is MHUPA
- (C) The current presiding minister is Sh. Narendra Singh Tomar
- (D) MHUPA stand for Ministry of Housing and Urban Poverty alleviation
- (E) The various important dates are as below:
- (F) Entries 6 and 7 in List – III (Concurrent List) of the VIIth Schedule of the Constitution of India dealing with contracts and the Transfer of Property.
- (G) Entry 18 of List – II (State List) of the VIIth Schedule of the Constitution of India gives the States rights of legislate on Land.

S.No.	Particulars	Effective date
1.	Real Estate bill passed in Rajya Sabaha	10.03.2016
2.	Real Estate bill passed in Lok Sabha	15.03.2016
3.	Real Estate bill assented by president of India	25.03.2016
4.	Publication date in official Gazette of India	26.03.2016
5.	Notification of some sections	01.05.2016
6.	Last date for making of rules by appropriate government	31.10.2016
7.	Last date for establishment of Real Estate Regulatory Authority	30.04.2017
8.	Notification of remaining sections	01.05.2017
9.	Last date for registration of Real Estate Projects	31.07.2017

# Real Estate Act – Salient Features

- Act **extends to residential and commercial** real estate
- **Registration of Real Estate Projects with Regulatory Authority** - 500 square meters and above or 8 apartments and above
- **Registration of Real Estate Agents** who intend to sell any plot, apartment or building - which is required to be registered with the Regulatory Authority
- **Promoter to make disclosure of all relevant project information** for public view such as -
  - details of promoters, layout plan, plan of development works, land status, status of the statutory approvals, number of parking, time period for project completion etc.
  - proforma of agreements to be entered into with the buyers
  - names and addresses of agents, contractors, architect, engineer etc.
- **Promoter also comply with the following** -
  - adherence to approved plans and project specifications
  - obligations regarding authenticity of the advertisement or prospectus
  - rectify structural defects
  - refund money in cases of default
  - compulsory deposit of 70% of the amount realized from allottees in a separate account to cover the cost of construction and land cost
- Act provides for **establishment of Regulatory Authority** in each State/UT, or one Authority for two or more States/UT, by the Appropriate Government for implementation of Act
- Act provides for **appointment of one or more adjudicating officers by Regulatory Authority**, based upon need - to settle disputes and impose compensation and interest
  - **Regulatory Authority to** -
  - act as the nodal agency towards implementation of the Act
  - co-ordinate efforts regarding development of sector; and
  - render necessary advice to the appropriate Government

# Provisions of The Real Estate (Regulation and Development) Act, 2016

## **Object of the Act:-**

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

## **Important definitions:- Section (2)**

### **(k) "carpet area"**

means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation. — For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

### **(n) "common areas" mean—**

- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
- (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

**(q) "completion certificate"**

means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

**(za) "interest"**

means the rates of interest payable by the promoter or the allottee, as the case may be.

*Explanation.*—For the purpose of this clause—

- i. the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- ii. the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

**(zf) "occupancy certificate"**

means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

**(zk) "promoter" means,—**

- i. a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- ii. a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- iii. any development authority or any other public body in respect of allottees of—
  - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
  - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- iv. an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- v. any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- vi. such other person who constructs any building or apartment for sale to the general public.

*Explanation.*—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

## **Important sections of the Real Estate (Regulation and Development) Act, 2016**

Section 18(2)

Section 11(4)

Section 15

Section 2(n)

Section 2(zn)

# **Definition of on-going projects as per various state rules:**

## **As per The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016:**

### **Definition of ongoing projects as per Rules 2(h):**

Ongoing project means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules:

- i. Where services have been handed over to the Local Authority for maintenance.
- ii. Where common areas and facilities have been handed over to the Association of the Residents Welfare Association for maintenance.
- iii. Where all development work have been completed and sale/lease deed of Sixty percent of the apartments/houses/plots have been executed.
- iv. Where all development work have been completed and application has been filed with the competent authority for issue of completion certificate.

## **As per The National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016:**

As per rules there is no specific definition although rules have adopted the same meaning as defined in the act which means these rule is not diluted.

## **As per Haryana Real Estate (Regulation and Development) Rules, 2017:**

### **Definition of ongoing projects as per Rules 2(1)(n):**

“on going project” means a project where development is going on at site and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria, before the stipulated date of due registration under Section 3 (1) of the Act, namely:-

- (a) completion/part completion certificate in case of plotted colony has been issued by the competent authority under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975) and rules framed thereunder;
- (b) occupancy certificate for the building blocks of integrated complexes like group housing, commercial, cyber park or cyber city, has been issued by the competent authority under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Punjab Act 41 of 1963) and rules framed thereunder;

Explanation:- The remaining area/building blocks of the colony for which part completion/occupation certificate has not been granted/issued by the competent authority, shall not be excluded.

(c) The project for which application for grant of occupancy certificate/part completion certificate has been made, provided the same is granted by the competent authority within three months of the application.



## **As per The Rajasthan Real Estate (Regulation and Development) Rules, 2017:**

### **Definition of ongoing projects as per explanation to Rule 4(5):**

For the purpose of this rule “ongoing project” mean a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of commencement of relevant provisions of the Act:-

- i. Where common area and facilities have been handed over to the association of allottees or the competent authority, as the case may be, for maintenance;
- ii. Where sale/lease deed or possession letter or minimum sixty percent of the apartments/houses/plots in the phase/project have been executed;
- iii. Where all development works have been completed and completion certificate has been obtained from chartered engineer in practice as per prevalent Township policy.

## **FREQUENTLY ASKED QUESTIONS (FAQs)**

## **STATUS:**

**1. What is the status of the Act?**

The Real Estate Bill was passed by the Rajya Sabha on 10<sup>th</sup> March, 2016 and the Lok Sabha on 15<sup>th</sup> March, 2016. The Bill as passed by the Parliament was assented to by the Hon'ble President on 25<sup>th</sup> March, 2016. The Act as assented to by the Hon'ble President was published in the Official Gazette on 26<sup>th</sup> March, 2016 for public information.

**2. When did the Act come into force?**

Section 2, sections 20 to 39, sections 41 to 58, sections 71 to 78 and sections 81 to 92 were notified by the Central Government to come into effect from 1st May, 2016.

**3. Why have some sections of the Act not been notified yet?**

Some sections of the Act have not been notified yet, as the institutional structures, namely the establishment of the Regulatory Authority and the Appellate Tribunal are necessary prior to their enforcement. For e.g. projects can only be sold after they are registered with the Authority, thus, in the absence of the same there would be a vacuum.

**4. When would the remaining sections of the Act come into force?**

Sections 20 and section 43 provides that the Authority and the Appellate Tribunal need to be established within 1 year of the commencement of the Act. As the said sections were notified for commencement on 1<sup>st</sup> May, 2016 the Authority and the Appellate Tribunal are required to be established maximum by 30<sup>th</sup> April, 2017. Sections of the Act which have not been notified yet, would be notified maximum upon the expiry of that period.

## **OBJECTS AND REASONS:**

**5. What was the need for a regulatory law for the real estate sector?**

The real estate sector has grown in the recent years but has largely been unregulated from the perspective of consumer protection. Though, consumer protection laws are available, the recourse available therein are only curative, but not preventive. This has affected the overall potential growth of the sector due to absence of professionalism and standardization.

**6. What are the objects and reasons for which the Act has been framed?**

The Real Estate Act is intended to achieve the following objectives:

- a) ensure accountability towards allottees and protect their interest;
- b) infuse transparency, ensure fair-play and reduce frauds & delays;
- c) introduce professionalism and pan India standardization;
- d) establish symmetry of information between the promoter and allottee;
- e) imposing certain responsibilities on both promoter and allottees;
- f) establish regulatory oversight mechanism to enforce contracts;

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- g) establish fast- track dispute resolution mechanism;
  - h) promote good governance in the sector which in turn would create investor confidence.

## **CHAPTER I - PRELIMINARY**

### **7. Who is the 'appropriate Government' as per the Act?**

Section 2(g) of the Act defines 'appropriate Government' to mean as follows:

- (i) for the Union territory without Legislature, the Central Government;
- (ii) for the Union territory of Puducherry, the Union territory Government;
- (iii) for the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) for the State, the State Government.

### **8. What are the important responsibilities of the appropriate Government?**

- a) As per section 84 the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
- b) As per section 20 the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30<sup>th</sup> April, 2017.
- c) As per section 20 the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
- d) As per section 43 the appropriate Government is required to establish the Appellate Tribunal within 1 year from its commencement i.e. maximum by 30<sup>th</sup> April, 2017.
- e) As per section 43 the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
- f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
- g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
- h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
- i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.

**9. Does the definition of ‘promoter’ include public bodies such as Development Authorities and Housing Boards?**

The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term ‘promoter’ which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

**10. Does the definition of ‘promoter’ include all promoters in case of joint development?**

As per the Explanation to section 2(zk) “where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder”.

**11. What is the rate of interest payable in case of default by the ‘promoter’ or the ‘allottee’? Is the rate of interest payable by either party (promoter or allottee) the same?**

As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest is required to be specified by the appropriate Government in the Rules.

**12. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of ‘advertisement’?**

As per section 2(b), which defines ‘advertisement’ any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails.

**13. Does the term ‘allottee’ include secondary sales?**

As per section 2(d) an allottee includes a person who acquires the said ‘apartment / plot’ through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

**14. Is ‘open parking areas’ a part of ‘common areas’?**

Section 2(n) defines ‘common areas’ to include ‘open parking areas’, thus open parking areas cannot be sold to the allottees.

**15. Is ‘community and commercial facilities’ which are provided in a real estate project are part of ‘common areas’?**

Section 2(n) defines ‘common areas’ to include ‘community and commercial facilities’, thus they are an integral part of the project, to be handed over to the Association of Allottees.

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**16. What happens in case of jurisdictions (States/UTs) which do not provide for both the 'occupancy certificate' and the 'completion certificate'?**

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. The two definitions are very broad and use the term 'by whatever name called'. Thus, if in a State/UT only one certificate is issued which provides for both the aspects covered under the two definitions, it would suffice the requirements under the Act.

**17. What is the difference between the term 'completion certificate' and 'occupancy certificate'?**

Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

**18. The Act defines 'estimated cost of the real estate project', what is the significance of the definition?**

Section 2(v) defines 'estimated cost of the real estate project', which means "the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges". The determination of the estimated cost of the real estate project is necessary due to Chapter VIII of the Act, which provides that penalties would be imposed on the promoter, for violations prescribed under the Act, based on the estimated cost of the real estate project.

**19. What is the definition of 'garage' and can it be sold by the promoter independent of an 'apartment'?**

Section 2(y) defines the term 'garage', which can be sold to the allottee independent of the 'apartment'.

**20. What is the definition of 'real estate project'? Does the term 'project' connote a 'real estate project'?**

The term 'real estate project' has been defined under section 2(zn) and the term 'project' has been defined under section 2(zj), which have been interchangeably used under the Act.

**21. Are real estate agents covered under the Act? Does the term 'real estate agents' include web-portals engaged in selling of apartments or plots?**

Section 2(zm) defines the term 'real estate agents', which is a very broad and inclusive definition and covers all forms of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or

apartments are also covered under the Act and are required to comply with the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

**22. What happens in case a term is used under the Act but has not been defined?**

Section 2(zr) is an omnibus definition which provides that terms which have not been defined under the Act or the Rules and Regulations made thereunder, would have the same meaning as respectively assigned to them under the relevant Municipal laws or under any law for the time being in force.

## **CHAPTER II - REGISTRATION OF PROJECT AND AGENTS**

**23. Does the Act cover both residential and commercial real estate?** The Act covers both residential and commercial real estate. Section 2(e) defines 'apartment' and section 2(j) defines 'building' which include both residential and commercial real estate.

**24. Does the Act cover ongoing / incomplete projects?**

As regards the ambit of the Act, there is no distinction between an ongoing project and a future project, i.e. both ongoing / incomplete projects and future projects are covered under the Act.

Section 3(1) first proviso provides that promoters of 'all ongoing projects which have not received completion certificate will need to register their project with the Regulator Authority, within 3 months of its commencement'.

**25. Does the Act cover all projects in urban areas and in rural areas?**

Section 3(1) provides that all projects within a 'planning area' will require to be registered with the Authority. 'Planning Area' has been defined under section 2(zh).

However, section 3(1) second proviso gives powers to the Authority 'in the interest of allottees' to order / direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

**26. Which projects are exempt from the ambit of the Act?**

As per section 3(2) the following projects do not require to be registered under the Act:

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) 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

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case may be, under the real estate project.

**27. At what stage can a promoter start to advertise his project for sale?**

The promoter can advertise his project for sale after the project has been registered with the Regulatory Authority as provided in section 3(1).

**28. What are the details to be furnished at the time of application for registration of real estate project with the Regulatory Authority?**

Section 4 of the Act provides for details / information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the fees to be paid etc. are to be determined by the Rules made by the appropriate Government.

**29. What are the formalities for the registration of a real estate project with the Regulatory Authority?**

The promoter is required to make an application as per Form and fees prescribed by the Rules made by the appropriate Government, along with the documents / information and undertaking specified in section 4 to the Authority for registration of the project. In addition, the promoter is also required to append other / additional documents / information as specified in the Rules.

**30. In how many days is the Regulatory Authority required to register the real estate project?**

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

**31. What in case the application for registration of the real estate project is incomplete?**

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made thereunder, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

**32. Is there a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application?**

Section 5 of the Act provides that the Authority has to decide on the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.



**33. What is the period of validity of registration granted to a real estate project by the Regulatory Authority?**

As per section 4, the validity of the registration granted to a project shall be the period declared by the promoter under section 4(2)(l)(C), at the time of making the application for registration, within which he would complete the project.

**34. Is the promoter required to maintain an ‘escrow account’ or a ‘separate account’? Is a ‘separate account’ to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?**

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.

**35. On what basis is the promoter required to withdraw the money from the separate account?**

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:

**36. Is the promoter required to get his accounts audited?**

As per section 4(2)(l)(D) third proviso, the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

**37. Is the application for registration of a real estate project, proposed under the Act is manual or it can also be done online?**

Section 4 envisages that for a period of one year the application process can be both manual and online based, however, after one year it is mandatory to make the entire process online.

However, for the purposes of project information to the prospective consumers, it would

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help in establishing the web portal at the earliest.

**38. Can the period of registration granted to a real estate project by the Regulatory Authority be extended? What is the definition of force majeure?**

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstances, without the fault of the promoter, which shall not be more than a maximum period of 1 year.

Explanation to section 6 has defined force majeure to 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'.

**39. What are the terms and conditions for extension of registration?**

The terms and conditions, the application form and the fees payable for extension of registration shall be in the manner as prescribed by the Rules.

**40. Can the registration of a project be revoked?**

As per section 7 the Authority has the powers to revoke registration of a project, for violations specified under the said section. However, revocation of registration of a project is envisaged as a last resort and can only be done after providing a reasonable opportunity of being heard.

**41. What are the next steps that can be taken for project completion in case of revocation of a project?**

In case a project is revoked, section 8 provides for various mechanisms in which the project can be completed. However, in such a scenario, the association of allottees shall have the first right of refusal for carrying out the remaining development works.

**42. Does the Act also cover real estate agents? What are the duties and responsibilities of the real estate agents?**

Section 9 of the Act provides that real estate agents which engage in selling projects registered under the Act, can only do so after registering themselves with the Authority. The mechanisms for registration, the fees payable, the period of registration, subsequent renewal etc. are matters to be detailed vide the Rules.

Section 10 of the Act provides for detailed functions and duties of real estate agents.

## **CHAPTER III - FUNCTIONS AND DUTIES OF PROMOTER**

**43. What are the important functions and responsibilities of the promoter after registration of the project with the Authority?**

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

**44. What are the disclosures to be made on the website of the Regulatory Authority?**

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, the detailed list is required to be specified in the Rules.

**45. What is the promoter's obligations regarding veracity of the advertisement or prospectus?**

As per section 12 the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus. In case of any loss sustained by any person due to false information contained therein, the promoter is liable to make good the loss sustained due to the same.

**46. Can the promoter collect any amount of money towards booking of the apartment /plot?**

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment / plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

**47. What is the 'Agreement for Sale' and is it binding on the 'promoter' and the 'allottee'?**

As per section 13(2) the appropriate Government is required to specify through Rules the 'Agreement for Sale' to be entered into between the promoter and the allottee. This Agreement is binding on the parties, however, internal flexibility could be provided in the said Agreement for Sale, for determination / insertion of other provisions as decided between the parties.

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**48. Can the promoter modify / amend the sanctioned plans or project specifications after having been approved by the competent authority and disclosed to the allottees?**

As per section 14 of the Act the promoter can only modify / amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification / alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

**49. What is the period for which the promoter is liable for any structural defects etc. in the project / apartment etc.?**

As per section 14(2) the promoter shall be liable for 5 years form the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

**50. What is the obligation of the promoter as regard transfer of the project to a third party?**

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two-third of allottees and the Regulatory Authority.

In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

**51. What is the obligation of the promoter as regards insurance of real estate project?**

As per section 16 the promoter is required to seek an insurance of the real estate project towards title of the land and towards construction of the project.

However, the said section provides that this provision shall only come into effect after and in the manner as may be notified by the appropriate Government.

**52. What is the obligation of the promoter as regards transfer of title of the apartment /plot?**

Section 17 of the Act provides for detailed provisions regarding transfer of title of the apartment and the project to the allottee and to the association of the allottees respectively.

**53. What is obligation of the promoter towards return of amount and compensation to the allottee?**

Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

## **CHAPTER IV - RIGHTS AND DUTIES OF ALLOTTEES**

**54. What are the rights and duties of the allottees under the Act?**

Section 19 provides for the various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered into with the allottees, namely – stage-wise schedule of completion of the project and the services, claim timely possession of the apartment / plot, entitlement to necessary documents and plans etc.

Section 20 provides for the various duties of the allottees, which provide for matters relating to payment regarding the apartment / plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association etc.

## **CHAPTER V - THE REAL ESTATE REGULATORY AUTHORITY**

**55. What is the timelines for establishment of the Regulatory Authority?**

As per section 20 the Regulatory Authority is required to be established within 1 year of the commencement of the said section. As section 20 has been notified with effect from 1<sup>st</sup> May, 2016, the Authority is required to be established maximum by 30<sup>th</sup> April, 2017. However, for speedy implementation of the Act, section 20 empowers the 'appropriate Government' to appoint an interim Regulatory Authority, until the establishment of the full time Authority.

**56. How are the Chairman and the Members of the Authority required to be appointed?**

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Chairman and the Members.

**57. What are the important responsibilities of the 'Regulatory Authority'?**

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

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;

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- c) Renewal of registration of the real estate agent and its revocation;
  - d) As per section 34 the Authority is responsible to maintain a website of records for public viewing of –
    - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website;
    - details of promoters with photographs of promoters;
    - details of projects in case of revocation of registration or where any project penalized under the Act;
    - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
  - 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.

**58. How can a complaint be filed with the Authority for any violations under the Act?**

Section 31 of the Act provides for filing of complaint by an aggrieved with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are to be specified by Rules to be made by the appropriate Government.

**59. What is the time period within which the Authority is required to dispose of any matter that is brought to it for consideration?**

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 VI - CENTRAL ADVISORY COUNCIL**

**60. What is the composition of the Central Advisory Council?**

The Central Advisory Council, to be headed by the Union Minister for Housing, is a multi-member body comprising of representatives of specified Central Ministries, five representatives of State Governments to be selected by rotation, five representatives of Regulatory Authorities to be selected by rotation and any other central government department as notified.

The Central Advisory Council is also required to have representatives of consumers, real estate industry, real estate agents, construction labourers, NGOs, and academic / research institutions.

**61. What is the role and responsibility of the Central Advisory Council?**

The Central Advisory Council is required to advise the Central Government on matters relating to implementation of the Act, questions of policy, protection of consumer interest, foster growth and development of the real estate sector, and other matters as may be assigned to it by the Central Government.

## **CHAPTER VII - THE REAL ESTATE APPELLATE TRIBUNAL**

**62. What is the timelines for establishment of the Appellate Tribunal under the Act?**

As per section 43 of the Act, the Appellate Tribunal is required to be established within 1 year of the commencement of section 43. As section 43 has been notified with effect from 1<sup>st</sup> May, 2016, the Appellate Tribunal is required to be established maximum by 30<sup>th</sup> April, 2017.

However, for speedy implementation of the Act, section 43 empowers the 'appropriate Government' to designate an existing Appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act.

**63. What are the important responsibilities of the Appellate 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.

**64. Can an appeal be filed against the decision or the orders of the Appellate Tribunal?**

Any person aggrieved by the decision or order of the Appellate Tribunal can file and appeal with the High Court.

**65. What is the time period within which the Appellate Tribunal is required to dispose of the appeal?**

Section 44 provides that the Appellate Tribunal should endeavour to dispose of the appeal as expeditiously as possible but not later than sixty days from filing the appeal. However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same.

**66. How are the Chairman and the Members of the Appellate Tribunal required to be appointed?**

As per section 46 the Chairman of the Appellate Tribunal shall be a sitting or retired Judge of the High Court. Section 46 also provides that the Appellate Tribunal shall comprise of at-least two Members one of whom shall be a Judicial Member and the other shall be a

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Technical or Administrative Member.

As per section 46 the Members of the Appellate Tribunal are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Judicial / Administrative Members.

## **CHAPTER VIII - OFFENCES, PENALTIES AND ADJUDICATION**

**67. What is the punishment prescribed for non-registration of a project under the Act?**

As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project.

However, in case the promoter consistently defaults or does not comply with the directions / orders of the Authority as regards registration of the project with the Authority, he shall be liable to additional fine of ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.

**68. What is the punishment prescribed for violation of section 4 which provides for application for registration of the project?**

As per section 60 if the promoter defaults as regards matters covered under section 4, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

**69. What is the punishment prescribed for violation of other provisions of the Act by the promoter?**

As per section 61 if the promoter defaults any other provision of the Act or the Rules and Regulations made thereunder, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

**70. What is the punishment prescribed for non-compliance of the orders of the Authority by the promoter?**

As per section 63 if the promoter fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the estimated cost of the real estate project.

**71. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the promoter?**

As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto



ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend upto three years or with both.

**72. What is the punishment prescribed for non-registration of by a real estate agent under the Act?**

As per section 62, where under the Act, it is obligatory for the real estate agent to register himself with the Authority, and the real estate agent fails to do the same, he shall be liable to a penalty upto of rupees ten thousand per day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

**73. What is the punishment prescribed for non-compliance of the orders of the Authority by the real estate agent?**

As per section 65 if the real estate agent fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

**74. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the real estate agent?**

As per section 66 if the real estate agent fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment, for which the sale has been facilitated by him or with imprisonment for a term which may extend upto one year or with both.

**75. What is the punishment prescribed for non-compliance of the orders of the Authority by the allottee?**

As per section 67 if the allottee fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment.

**76. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the allottee?**

As per section 68 if the allottee fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment or with imprisonment for a term which may extend upto one year or with both.

**77. Can an offence which provides for imprisonment be compounded?**

As per section 70 if any person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions which may be prescribed by Rules

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made by the appropriate Government. In addition, the fine payable in lieu of imprisonment needs to be specified by the said Rules, which cannot be more than the maximum fine payable for that offence.

**78. What is the role of the Adjudicating Officer?**

The Adjudicating Officer is a quasi-judicial person who is mandated to adjudicate on disputes arising under section 12, 14, 18 and section 19. The Adjudicating Officer shall be a person who is or has been a District Judge.

**79. What are the factors that need to be taken into account by the Adjudicating Officer while deciding a dispute under sections 12, 14, 18 and 19 of the Act?**

The Adjudicating Officer shall, while deciding the disputes under section 12, 14, 18 and 19 of the Act, have regard to – the amount of disproportionate gain or unfair advantage, the amount of loss, repetitive nature of the default and such other factors that the Adjudicating Officer may consider necessary in furtherance of justice.

## **CHAPTER IX - FINANCE, ACCOUNTS, AUDITS AND REPORTS**

**80. What is the mechanism to finance the functioning of the Authority?**

The Central Government or the State Government as the case may be, may through due appropriation make grants and loans to the Authority.

**81. Who is required to constitute the Real Estate Regulatory Fund? What are the purposes for which the Fund is supposed to be used?**

The appropriate Government is required to constitute the Real Estate Regulatory Fund, which is to be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

The said Fund is required to be used towards payment of salary and allowances to the Chairperson and the Members of the Authority and the Appellate Tribunal and such other expenses of the Authority in connection with the functions and purposes specified under the Act.

**82. Can the penalties imposed under the Act be deposited in the Real Estate Regulatory Fund?**

As per section 76 penalties recovered under the Act are to be deposited in the Consolidated Fund of India (in case of Authority established by the Central Government) and in the State Account (in case of Authority established by the State Government).

However, as per section 75, grants received by the Authority, fees received under the Act / Rules and the interest accrued thereon shall be credited to the Real Estate Regulatory Fund.

**83. Is the Authority required to prepare a budget and maintain proper accounts and other relevant records? Are the accounts of the Authority required to be audited?**

As per section 77 the Authority is required to prepare a budget and maintain proper accounts and other relevant records and also prepare an annual statement of accounts in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, section 77 provides that the accounts of the Authority are required to be audited by the Comptroller and Auditor General of India.

The accounts of the Authority as certified by the Comptroller and Auditor General of India (audit report) is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

**84. Is the Authority required to prepare an Annual Report?**

As per section 78 the Authority is required to prepare an Annual Report in the manner as may be prescribed by Rules made by the appropriate Government.

In addition, the said Annual Report is required to be forwarded to the appropriate Government for it to be laid before the Parliament or the State Legislature, as the case may be.

## **CHAPTER X - MISCELLANEOUS**

**85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?**

As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act.

Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

**86. Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?**

The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.

**87. Can the Authority delegate any of its functions under the Act?**

As per section 81, the Authority is empowered to delegate such of its powers and functions under the Act to any Member, officer or any other person subject to conditions specified in the order issued for the same. However, the Authority cannot delegate the responsibility of making Regulations under section 85 under the Act.

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**88. What is the timeline for notification of the Rules by the appropriate Government under the Act?**

As per section 84 of the Act, Rules are required to be prepared by the “appropriate Government” within 6 months of the commencement of the Act. As section 84 commenced with effect from 1<sup>st</sup> May, 2016, Rules were required to be prepared by the ‘appropriate Government’ by 31<sup>st</sup> October, 2016.

**89. What is the timeline for notification of the Regulations by the Authority under the Act?**

As per section 85 of the Act, Regulations are required to be notified by the ‘Regulatory Authority’ within 3 months of its establishment.

**90. Are the Rules, Regulations etc. notified required to laid before the Parliament or the State Legislature?**

As per section 86 every Rule, Regulation, notification issued by the appropriate Government or the Authority, is required to be laid before the Parliament or the State Legislature, as the case may be.

**91. Does the Government have the power to issue Orders towards Removal of Difficulties while implementing the Act?**

The Central Government, under section 91, has been empowered to notify Orders towards removal of difficulties while implementing the Act. However, such removal of difficulties Order cannot be issued after the expiry of a period of two years since its commencement.

**92. Why was section 92 repealing the Maharashtra Housing (Regulation and Development) Act, 2012 provided under the Act?**

The Maharashtra Housing Act, 2012 was received for seeking presidential assent under Article 254(2) of the Constitution of India, when the Real Estate Bill was not enacted. For the sake of uniform application across the country, the said State Act, was repealed under Article 254(2) proviso of the Constitution of India.

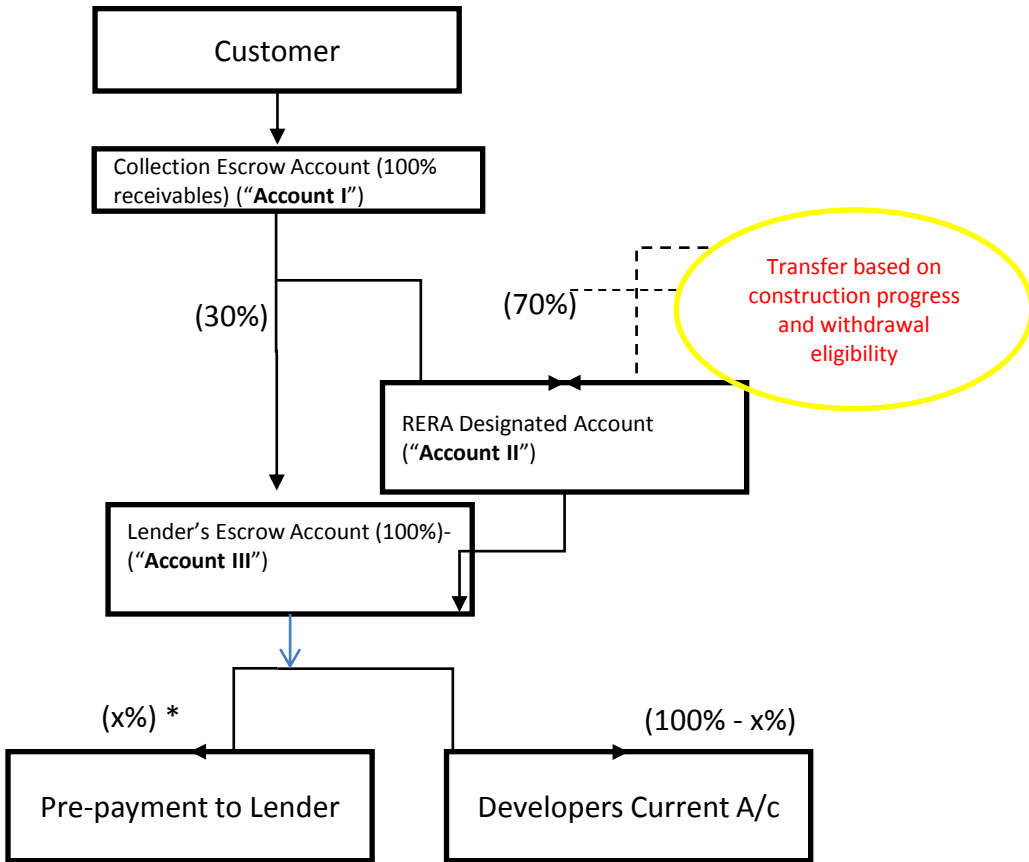
# Important activities to be done by Promoter Company

- (A) Promoter to get registered with the full fledged Real Estate Regulatory Authority or else with the interim regulator.
- (B) To make internal system, controls, SOP's RERA compliant. (i.e. Redesigning business)
- (C) Amendment, change, modification in the sales and marketing documents viz., Agreement to sell, allotment letter, payment plan, flat or apartment specifications by whatever name called.
- (D) To open "RERA designated account" with the concerned Banker
- (E) Modification in the existing lender / credit facility provider loan documents, escrow agreements etc.
- (F) To deposit all customer's collection directly to the "RERA designated account"
- (G) Make sure any amount realised from any customer in any form the same shall be deposit to the "RERA Escrow account".
- (H) May arrange for addendum / supplement / fresh agreement with the existing customers to accommodate with the new changes as per act and the rules and regulations made thereunder.
- (I) To arrange for Carpet Area, Balcony Area and Total Area of the flat / apartment / building / floor etc.
- (J) To make sure that project completion date shall be accurate and promoter / builder / developer must adhered to the same.
- (K) The project must be complete by that date otherwise there may be huge repercussion.
- (L) For every withdrawal from "RERA Escrow account" have to submit Project Architect, Engineer and CA. Certificate in the prescribed format.
- (M) To manage and planning of working capital as the major amount (i.e. 70%) will go to the "RERA Escrow account" which is a substantial amount and due to this project activities may suffer.
- (N) Every Sales, Marketing, Branding document must contain RERA registration no. including newspaper advertisement.
- (O) The RERA registration number may be use as marketing tool.
- (P) Builder has to obtain insurance for any structural defect up to 5 (Five) years.
- (Q) Developer has to create a back-to-back warranty with suppliers in case a challenge comes up starting from the point of contracting to execution and finally handing over, documentation has to be clearly spelled out.

## **Changes to be made in Sales, Marketing, Legal documents**

- a) Rate of Interest:- Interest rate shall be the State Bank of Indian highest marginal cost of funds based Lending rate plus Two per cent. (As per NCT of Delhi Rules)
- b) Area of the unit:- The promoter has to bifurcate Carpet Area, Balcony Area and Total Area

# Flow Chart of model RERA and Lender Banking mechanism



# **The National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016**

**Chapter 1 – Preliminary** (Short title and commencement, Definitions)

**Chapter 2 – Real Estate Project** (Information and documents to be furnished by the promoter for registration of project, Additional disclosure by promoters of on-going projects, Grant or rejection of registration of the project, Extension of registration of project, Revocation of registration of the project)

**Chapter 3 - Real Estate Agent** (Application for registration, grant & renewal of registration, revocation of registration, maintenance of books of accounts, other functions)

**Chapter 4 – Details to be published on the website of the Authority**

**Chapter 5 – Interest payable by promoter / allottee & timelines for refund**

**Chapter 6 – Real Estate Regulatory Authority**

**Chapter 7 – Real Estate Appellate Tribunal**

**Chapter 8 – Offences and penalties** (terms and conditions and the fine payable for compounding of offence)

**Chapter 9 – Filing of complaint with authority and adjudicating officer**

**Chapter 10 – Budget and Annual Report**



# Chapter 2 of Rules – Real Estate Project

- **Information and documents to be furnished by the promoter for registration of project - In addition to documents provided in Act – Rule 3**
- PAN Card, annual report (P&L account, BS, cash flow statement, directors report, auditors report), number of parking areas, copy of land title, details of encumbrances etc.
- File details as per Form 'A' with Authority
- Pay application fees –
  - = Group Housing Project – Rs. 5 / Rs. 10 for 1000 sqm / above 1000 sqm, maximum 5 lakhs
  - = Mixed Development – Rs. 10 / Rs. 15 for 1000 sqm / above 1000 sqm, maximum 7 lakhs
  - = Commercial Projects – Rs. 20 / Rs. 25 for 1000 sqm / above 1000 sqm, maximum 10 lakhs
  - = Plotted Development - Rs. 5 per sqm, maximum 2 lakhs
- Declaration to be submitted as per section 4(2)(l) – time for completion of project, deposit funds in separate account etc. – as per Form 'B'
- Declaration to be given that promoter shall not discriminate on any grounds whatsoever – as part of Form 'B'
- Additional disclosure by promoters of on-going projects – Rule – 4 (Disclosure in addition to those under rule 3)
  - Original sanctioned plan, layout plan etc. including modifications and existing plans
  - Money collected – spent on project and balance lying with promoter
  - Status of project – extent of development, original time to complete, time period required to complete etc.
  - Promoter disclose size of apartment based on carpet area - but shall not affect validity of agreement to that extent
  - In case of plotted development disclose area of plot
  - Deposit 70 % of funds collected (minus the amount already spent on land & construction) in separate account
- **Grant or rejection of registration of the project – Rule 5** – provides for forms in which registration shall be granted or rejected – Form 'C' and 'D'

## Chapter 2 & 3 of Rules – Real Estate Project & Real Estate Agent

### Extension of the project – Rule 6

Extension of registration shall be granted on an application before 3 months of expiry of registration – Form 'E' and 'F' – Extension fees of half the registration fee – along with explanatory note, however, where due to force majeure no extension fees

- **Revocation of registration of the project – Rule 7** – Provides for form in which revocation is to be communicated – Form 'D'
- **Real Estate Agent**
  - Application for registration – Rule 8** – apply with details such as - enterprise details, PAN, photographs, address for business etc. – Form 'G' - **Fees** – rs. 10 thousand for individual, 50 thousand for other than individual
  - grant of registration – Rule 9** - to be issued in a particular form, valid for 5 years – Form 'H'
  - renewal of registration – Rule 10** - submit afresh all documents, pay fees, renewal for 5 yrs. – renewal only if agent in compliance with Act and rules – Form 'J' and 'K' - **Fees** – Rs. 5 thousand for individual, 25 thousand for other than individual
  - revocation of registration – Rule 11** – provides for form for intimation – Form 'I'
  - maintenance of books of accounts – Rule 12** - as provided under Income Tax Act
  - other functions – Rule 13** – provide assistance to promoter and buyer

## **Chapter 4, 5, 6, 7, 8 of Rules – Website of Authority, Rate of interest, Authority, Tribunal**

### **Details to be published on the website of the Authority – Rule 14**

Provides all details to be captured on the website vis-à-vis the project and the agent etc.

Prepare a monthly back up of all data

- **Rate of interest payable by promoter and allottee – Rule 15**

SBI highest Marginal Cost of Lending Rate (MCLR) + 2 per cent

- **Timelines for refund – Rule 16 – within 45 days of amount due (PA)**

- **Real Estate Appellate Tribunal – Rule 25 to 32**

form 'L' for filing appeal with fees of Rs. 5 thousand, manner of selection, salary and allowances to members, procedure for inquiry of charges, salary and allowances of employees, additional powers of tribunal, administrative powers of chairperson, functioning of Tribunal etc.

## Chapter 9, 10, 11 of Rules – Offences and Penalties, Filing Complaint, Finance

- **Offences and penalties – Rule 33** - terms and conditions and the fine payable for compounding of offence
  - Imprisonment for non-registration - compounding fee of 10 % of project cost
  - Imprisonment for non compliance of order of Tribunal by promoter - compounding fee of 10 % of project cost
  - Imprisonment for non compliance of order of Tribunal by agent - compounding fee of 10 % of apartment cost for which sale facilitated
  - Imprisonment for non compliance of order of Tribunal by allottee- compounding fee of 10 % of apartment cost purchased
  - Comply with reasons for punishment within 30 days of compounding
  - Compounding deemed to be acquittal of accused
- **Manner of filing complaint with authority and adjudicating officer provided – Rule 34 and 35**  
– Form ‘M’ and ‘N’ – fees payable Rs. 1000
- **Manner in which Authority shall prepare budget, maintain accounts and prepare annual statement provided – Rule 36** – Form ‘O’

**Manner in which Authority shall prepare annual report – Rule 37** – Form ‘P’

### **As per Haryana Real Estate (Regulation and Development) Rules, 2017:-**

Definition of on going project : Section – 2(1)(o)

Definition of structural defects : Section – 2(1)(u)

Additional disclosure by promoters of ongoing project : Section – 4

# The National Capital Territory of Delhi Real Estate (Regulation and Development) (Agreement for Sale) Rules, 2016

**Chapter 1 – Preliminary** (Short title and commencement, Definitions)

**Chapter 2 – Agreement for Sale**

- Agreement to be in the form as per Annexure

- Any application letter, allotment letter, or any other document etc. not to affect Agreement for Sale

**Annexure - Agreement for Sale provides for the following details:**

Duties and responsibilities of the promoter and the allottee

Details of cost of apartment / plot

Details of cost of garage / covered parking

Mode of payment

Matters relating to compliance of laws relating to remittances

Matters regarding adjustment/ appropriate of payments made by allottee

Time being of essence

Construction of the project as per plans etc.

Schedule of possession of apartment / plot

Representations and warranties of the promoter

Events of defaults and consequences by promoter / allottee

Conveyance of apartment

Maintenance of building / apartment / project

Defect liability

Right to enter the apartment for repairs

Usage of the basement and service areas

General Compliance with respect to apartment

Compliance of laws, notifications etc. by parties

Additional Construction

Promoter not to mortgage or create a charge

Provisions applicable on allottee / subsequent allottee

Issue of notice - Dispute Resolution

Promoter to provide description of apartment/plot and garage/covered parking; Provide the floor plan and the payment plan; Provide specifications, amenities, facilities forming part of apartment / plot; and Provide specification forming part of project

## **Important point for issuance of CA. Certificate**

- (a) CA. Certificate to be required on each withdrawal of amount from “RERA Designated Account” / “RERA Escrow Account”
- (b) The certificate must be in Form – 3 (Vide Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017)
- (c) Before issuance of CA. certificate we must make sure for the following mentioned parameters.
- (d) We should know all the running Bank accounts of our client.
- (e) We have to obtain Bank account statement for all Bank accounts for the period covered under the certificate so that it will make sure there may not be any diversion of funds.
- (f) CA. Institute must come forward for the Guidance Note on CA. certificate to be issued in RERA compliances.

- (g) The above mentioned attachment related to the Maha RERA.

## **Important points and grey areas of RERA**

- (A) The Real Estate Regulator should be form by Central Government but there may be hue and cry on this as the Land is state subject.
- (B) There is clear dilution of RERA rules by state governments as this is the Builders – Babus – Ministers nexus.
- (C) There is Question mark on the Infrastructure placed by the State Governments as the last date for registration for RERA is 31.07.2017 but still states are not ready with their own set of Rules & Regulations along with “Real Estate Regulatory Authority” officials and Website.
- (D) On the very first day there was 15,000 complaints lodged / filed with the UP RERA Authority Website so one can imagine what type of infrastructure should be required to handle all these stuff.
- (E) In our point of view these state centric RERA Authorities are another medium of malpractices and corruption and work will be done with the liaisoning.
- (F) The Builders are deliberately manipulating the Project end date by increased it from the original sanctioned dated (Legal Authority – 4(2)(l)(C).

# Various practical situations related to the applicability of RERA

- Q. A Real Estate project registered under RERA and received completion certificate
- A. If “A” project registered with Authority on dated 28.07.2017 and will received completion certificate on dated 31.12.2017 than all the amounts lying in RERA designated account may be withdrawn from Bank account and there will not be any RERA Escrow arrangements further. (Legal authority – Point No. – (iii) of Clarification on CA. Certificate dated 04.07.2017 of Maha RERA.
- Q. Real Estate Project not available for sale to buyer than registration with Authority not required.
- A. If “A” project started on dated 28.07.2017 with the intention not to sell the same to the buyers or no marketing and publicity involved than registration not required.
- A. In the above situation if the promoter decided to sell the same project on dated 31.12.2017 than registration with the respective state Real Estate Regulatory Authority required.

S.No.	Particulars	Dates
1.	Original date of commencement of project	01.04.2011
2.	Original completion date of the project	30.06.2017
3.	Applied for Completion Certificate with the concerned local authority	01.01.2017
4.	Last date for registration with the concerned state Real Estate Regulatory Authority	31.07.2017
5.	Revised date for completion of project to be provided to State RERA Authority	31.12.2017
6.	Receipt of Completion / Occupancy Certificate	30.09.2017
7.	Completion of RERA Designated Escrow Account mechanism	30.09.2017
8.	Handover of units to the allottees and common area to the association of allottees along with registry	30.11.2016
9.	Validity of registration with the Authority	31.12.2017
10.	Last date U/S 14(3)	30.11.2021
11.	Last date to Ist Proviso U/S 17(1)	31.12.2017
12.	Last date to Ist Proviso U/S 17(2)	30.10.2016
13.	Last date U/s 19(10)	30.11.2016



S.No.	Particulars	Dates
14.	Date of majority of allottees have booked their flats	31.05.2017
15.	Last date to Proviso to Section 11(4)(e)	31.08.2017

## Difference showing between various State / UT rules

S.No.	Particulars	U.P.	Haryana	NCT of Delhi
1.	Status of the Project (Additional disclosure by promoters of ongoing projects)	4(2)	4(1)(b)	4(2)(C)
2.	Compounding of offence (Section – 70)	32(1)	27(2)	32(1)

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**Thank You**