

The Real Estate (Regulation and Development) Act, 2016

BRIEF HISTORY

- 2009 - The National Conference of Ministers of Housing, Urban Development and Municipal Affairs proposed a law for real estate sector;
 - 2011 - Ministry of Law & Justice suggested central legislation for Real Estate Sector in July,2011
 - June 2013 - Union Cabinet approved the Real Estate Bill
 - Aug 2013 - Real Estate Bill,2013 introduced in Rajya Sabha
 - Sep 2013 - Referred to the Department Related Standing Committee
 - July 2015 - Select Committee of Rajya Sabha tabled its Report
 - Mar 2016 - Bill passed by both houses
 - May 2016 - Government notified 69 Section of RERA
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Key Highlights

- 1. Establishment of Real Estate Regularity Authority (RERA)**
 - 2. Applicability**
 - 3. Important Definition**
 - 4. Registration of Real Estate Project and Real Estate Agents**
 - 5. Public disclosure of all project details**
 - 6. Receipt of advance from the Customers**
 - 7. Adherence to approved plan and defect liability**
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 - 10. Creating fund for completion of project**
 - 11. Rights and Duties of Allottees**
 - 12. Functions and Duties of the Promoters**
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- 15. Functions of Real Estate Regulatory Authority**
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 - 25. Restriction of change of Promoters**
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Establishment of Real Estate Regularity Authority (RERA)

- **The Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority (RERA).**
 - **Until the establishment of RERA, the appropriate Govt. shall by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as Regulatory Authority of the purpose under the Act.**
 - **The Authority to publish and maintain a website of records of all real estate projects for which registration has been given, maintain a database and enter the names of defaulter promoters penalised under the Act including the project details, revocation of registration with reasons therefore, for access to the general public;**
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2. Applicability

- **Initially bill was drafted to cover residential real estate, however after amendment it covers both commercial and residential real estate.**
- **Bill is applicable to the Projects in PLANNING AREA and covers over 500 sq.mtrs of land area or having more than 8 Units. The area of land and the number of units exempted may be reduced by the appropriate Government.**

3. Important Definition

The Bill will bring standardization in the real estate industry and introduce definitions of apartment, building, carpet area, commencement certificate, common area, estimated cost, internal development work, external development work etc. **Measurement and sale of units on the basis of carpet area may become mandatory.**

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.

Common Area : 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;

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;
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4. Registration of Real Estate Project and Real Estate Agents

Mandatory registration with RERAs, of real estate project and the real estate agent prior to advertisement, booking, invitation to purchase.

Ongoing projects for which Completion Certificate has not been issued, has to get registered with RERA within 3 months of the commencement of the Act.

Where project is developed in phases, each phase shall be treated as stand alone project and separate registration is required.

It shall be mandatory for **RERAs to register or reject the application within 30 days** of the application for registration. If RERA failed to register/reject the project, the project shall be **deemed to be registered after expiry of 30 days of application**. Registration shall be effective for the completion period declared by the Promoter in the application for registration.

5. Revocation of Registration

RERAs shall have the power to revoke the registration, on breach of the conditions of registration.

Upon lapse/revocation of the registration under this Act, the Authority, may 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:

6. Public disclosure of all project details

The RERAs shall maintain the records of all the real estate projects on its website. **It shall be mandatory for the Promoters to update on the website details of its registration, brief of projects launched by promoter in last 5 years, project, layout plan, land status, carpet area & no. of apartments/plots booked, status of approvals, quarterly up-to-date status of the project, name & addresses of the real estate agents, contractors, architect, structural engineers, draft of proforma agreement to be executed with customers etc.**

7. Receipt of advance from the Customers

Promoter can't receive more than 10% of the cost of unit as advance from the customer, prior to entering into **registered agreement to sell with the customer.**

8. Adherence to approved plan

Project shall be developed strictly in accordance with the approved plans, structural design and specifications. **For altering plans, structural designs and specifications consent of two-third of the allottees are mandatory. Allottee, irrespective the numbers of the apartments/plots booked by him/her or in the name of his/her family, shall be considered one allottee only.**

9. Failure of Promoter to provide possession

If the promoter fails to complete or is unable to give possession of an apartment, plot or building:

- (a) in accordance with the terms of the agreement or, duly completed by the date specified therein or
- (b) due to discontinuance of his business as a developer or
- (c) for any other reason,

Then Allottee shall have the option:

- **For refund of money along with interest**
- **In case of Allottee continues with the booking, he shall be paid interest for every month of delay, till handing over of possession.**

10. Defect Liability

Promoter shall be liable to rectify any structural, workmanship, quality defects, brought to his notice within 5 years of handing over of possession.

11. Creating fund for completion of project

Promoter shall deposit 70% of the amounts realised for the real estate projects from the allottees, from time to time, in a separate account to be maintained in a scheduled bank to cover the cost of construction and the cost of land and shall be used for that purpose.

12. Rights and Duties of Allottees

Rights

- Obtain information relating to sanction plan and layout plan etc.
- Know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities.
- Entitled to claim the possession of apartment, plot or building,
- **Association of allottees shall be entitled to claim possession of common areas as per the declaration given by promoter.**
- **Claim the refund of amount paid along with interest and compensation, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, in terms of agreement to sell.**
- To have the necessary documents and plans, including that of common areas, after handing over the physical possession

Duties

- **Responsible to make necessary payments in the manner and within the time as specified in the agreement**
 - **Liable to pay interest, at such rate as may be prescribed, for any delay in payment.**
 - **Liability towards interest may be mutually agreed to between the promoter and such allottee.**
 - **To take possession of apartment within 2 months of the issuance of occupation certificate.**
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13. Functions and Duties of the Promoters

Functions : Shall provide the following updates on the RERA website.

- details of the registration granted by the Authority;
- quarterly up-to-date list of number and types of apartments or plots, as the case may be, booked;
- quarterly up-to-date the list of number of garages booked.
- quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate.
- quarterly up-to-date status of the project; and
- **Promoter may cancel the allotment only in terms of agreement to sell.**
- **Promoter shall take the insurance on:**
 - (i) **Title of land and building as part of real estate project.**
 - (ii) **Construction of real estate project.**
 - (iii) **Such insurance shall be transferred to the association of owners at the time of transferring of services.**

Duties

- Responsible for **structural defects even after conveyance deed.**
 - Responsible **for obtain occupation certificate.**
 - Responsible to **maintain essential services on reasonable charges, till the maintenance of project is handed over to association of owners.**
 - In the **absence of local laws, association of owners shall be formed within 3 months of the majority of allottees having booked their plot or apartment**
 - **Registration of conveyance deed in favour of allottee within 3 months of the receipt of Occupation Certificate.**
 - **Registration of conveyance deed and handing over of possession of the of undivided proportionate title in the common areas along with documents and plans, to the associations of allottees within 30 days of obtaining Occupation Certificate.**
 - **Any alteration or additions in the sanctioned plan, layout plans and specification to building or the common areas may be done with prior written consent of at least 2/3rd of the allottees.** Allottee, irrespective the numbers of the apartments/plots booked by him/her or in the name of his/her family, shall be considered one allottee only.
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14. Registration of Real Estate Agents

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 without obtaining registration with RERAs. They shall maintain books of accounts, records and documents and shall not involve in any unfair trade practices.

15. Functions of Real Estate Regulatory Authority

- To register and regulate real estate projects and real estate agents register under the Act.
 - To publish and maintain a website of records of all real estate projects for which registration has been given
 - To maintain a database, on its website, for public viewing and enter the names of promoters as defaulters including the project details, registration for which has been revoked or have been penalized under the Act, with reasons therefor, for access to the general public;
 - To maintain a database, on its website, of the real estate agents who have been registered or whose registration has been rejected or revoked;
 - **To fix through regulations for each areas under its jurisdiction the standard fees, to be levied on the allottees by the promoter or the association of allottees, as the case may be;**
 - **Creation of a single window system for ensuring time bound project approvals and clearances for timely completion of project;**
 - **Measure to encourage grading of projects on various parameters** of development including grading of promoters.
 - Measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations
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16. Powers of RERA

RERA suo moto or on complaint, can call upon the promoter, allottee or real estate agent for inquiry. RERA shall have the same power as are vested in Civil Courts for various purposes. **The Authority shall have powers to impose penalty or interest**, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him under the Act, it shall be recoverable from such promoter or allottee or real estate agent, as an arrears of land revenue.

17. Fast Track dispute Settlement Mechanism

Fast track dispute resolution through adjudicating officers (District Judge).

18. Establishment of Central Advisory Council

To advise the Central Government on implantation of the Act, recommend policy, protection of consumer interest and to faster growth and development of real estate sector Central Advisory Council will take major policy decision under the Act.

19. The Real Estate Appellate Tribunal

The appropriate Government shall, within a period of one year from the date of coming into force of the Act, by notification, establish an Appellate Tribunal to be known as The Real Estate Appellate Tribunal. The Appellate Tribunal to be headed by a sitting or retired High Court Judge with one judicial and one administrative/technical member.

Any person aggrieved by any direction or decision or order made by the RERA may prefer an **appeal within 60 days of the receipt of copy of order, before the Appellate Tribunal.** Appellate Tribunal shall decide the appeal within 60 days of its filing. Every order made by the Appellate Tribunal under the Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall be entertained, only after deposit of 30% of the penalty, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both.

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of 60 days from the date of communication of the decision or order of the Appellate Tribunal.

20. Punitive Provisions

- a. **Defaults by Promoters:** Under various provision fine upto 10% of the cost of Project and imprisonment which may extent upto 3 years.
- b. **Defaults by Real Estate Agent:** Under various provision fine upto 10% of the cost of unit agent is dealing with and imprisonment which may extent upto 1 years.
- c. **Defaults by Allottee:** Under various provision fine upto 10% of the cost of unit of the allottee and imprisonment which may extent upto 1 years

However punishment may be compounded by the Court on such terms and conditions and on payment of such sums as may be prescribed.

21. Offence by Companies

Where an offence under the Act has been committed by a company, every person who, at the time, the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

22. Calculation of Compensation

For adjudicating compensation under various sections, the appropriate govt. may appoint an adjudicating officer for holding inquiry, who shall dispose of the application within 60 days.

While adjudging the quantum of compensation or interest, the adjudicating officer shall have due regard to the following factors, namely:—

- **the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;**
- **the amount of loss caused as a result of the default.**
- **the repetitive nature of the default**

23. Bar of Jurisdiction of Civil Courts

Jurisdiction of Civil Courts are barred for the matters RERA is empowered to deal with.

24. Act to have overriding effects

The Central Act has overriding effect and in case of inconsistency between Central and State Act, Central Act shall prevail.

25. Restriction of change of Promoters

Promoter can transfer his majority of right and liabilities in the Project to a third party with prior written consent of at least 2/3rd of the allottees and RERA. Allottee, irrespective the numbers of the apartments/plots booked by him/her or in the name of his/her family, shall be considered one allottee only.

TIMELINES

FOR CENTRAL / STATE GOVERNMENT	
Establishment of Real Estate Regulatory Authority	1 year from the commencement of Act i.e. by 30.04.17
Formation of rules by Central / State Govt	6 months from commencement of Act i.e. by 31.10.16
FOR ADJUDICATION OF COMPENSATION	
Govt. may appoint Adjudicating Officer who shall decide the compensation payable under the Act	Within 60 days of application
FOR REAL ESTATE REGULATORY AUTHORITY	
Frame its regulations	Within 3 months of formation
Accept/Reject the application of registration of Project	Within 30 days else deemed registration
Time limit for deciding the matter	60 days
Time limit to file appeal against the order of RERA	60 days from the date of receipt of copy of order
Time limit to file appeal against the order of Appellate Tribunal	60 days from the date of receipt of copy of order

FOR PROMOTER	
Registration of ongoing Projects	3 months from enforcement of particular sections for registration
Defect Liability Period	5 years from the date of possession
Formation of Association of Owners	Within 3 months of booking of majority of inventory
Registration of Conveyance Deed in favour of Allottee	Within 3 months of receipt of Occupation Certificate
Registration of Conveyance Deeds of common areas in favour of the Association of Owners	Within 30 days of receipt of Occupation Certificate
ALLOTTEE	
To accept possession	Within 2 months of Occupation Certificate

THANK YOU
