

**Real Estate (Regulation & Development)  
Act, 2016**



**Introduction**

RERA was notified in the gazette of India on the 25<sup>th</sup> of March 2016. It extends to the whole of India except the state of Jammu & Kashmir. The object of RERA is to regulate and promote the real estate sector. The noble intent of the Union Government is to make the real estate sector efficient, transparent and thereby protecting the interest of consumers and also to establish an adjudicating mechanism for speedy dispute redressal.

RERA address the consumer's major grievances, i.e., false information of projects by the promoters; misuse of funds; delays in completion of real estate projects; and in consideration of promoters in calling for payments from consumers and changing building plans.

**The key Provisions of RERA are highlighted hereunder:-**

**1)** Real estate project where area of land proposed to be *developed exceeds 500 square meters and real estate agents are required to register with the Regulatory Authority* established under RERA. In case of on-going projects for which completion certificates not yet issued the promoter shall make an application to the Authority for registration within a period of 3 months from the date of commencement of RERA.

**2)** **Seventy percent of the amounts realized for the real estate project** from the allottees, from time to time, shall be deposited in a separate account to be maintained in a schedule bank to cover the cost of construction and the land cost and shall be used only for that purpose. Further, it has been provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project; Provided further that *withdrawals shall be certified by an engineer, architect and a chartered accountant in practice* that the said withdrawals are in proportion to the percentage of completion of the project. Provided that the *promoter shall get the accounts audited within 6 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 period have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of the completion of the project.

**3)** *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under sector 5,* after being satisfied that the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; the promoter violates any of the terms or conditions of the approval given by the competent authority; the promoter is involved in any kind of unfair practice or irregularities.

**4)** No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without

obtaining registration under this section. *Every real estate agent shall make an application to the Authority for registration* in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

**5) *The promoter shall, upon receiving his Login Id and password*** section 5, , create his web page on the website of the Authority and enter all details of the proposed project as provided as per section 4, in all the fields as provided, for public viewing, including – (a) details of the registration granted by the Authority; (b) *quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked:* (c) quarterly up-to-date the list of number of garages booked; (d) *quarterly up-to-date the list of approvals taken and the approvals* which are pending subsequent to commencement certificates; (e) quarterly up-to-date status of the project; and (f) such other information and documents as may be specified by the regulations made by the Authority. The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto. Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

**6) *A promoter shall not accept a sum more than ten percent*** of the cost of the apartment, plot, or building as the case may be, as an advance

payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

**7) *The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.***

**8) *In case any structural defect or any other defects in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.***

**9) *If the promoter fails to complete or is unable to give possession*** of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of

the possession, at such rate as may be prescribed. The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

**10)** The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided to this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter. The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of common areas, as per the declaration given by the promoter under sub-clause (c) of section 4. The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed as compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provision of this Act or the rules or regulations made thereunder.

**11) *If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent of***

***the estimated cost of the real estate project as determined by the Authority.*** If any promoter does not comply with the orders, decisions or directions issued or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent of the estimated cost of the real estate project, or with both. If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project, as determined by the Authority. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority. If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five percent of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority. If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the real estate project as determined by the Authority. If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years, or with fine for every day during which such default continues, which may cumulatively extend up to ten percent of the estimated cost of the real estate

project, or with both. If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent, of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the authority. If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both. If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five percent of the plot, apartment or building cost, as the case may be, as determined by the Authority. If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend upto one year or with fine for every day during which such default continues, which may cumulatively extend up to ten percent of the plot, apartment or building cost, as the case may be, or with both. Where an offence under this 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, provided that

nothing contained in this sub-section, shall render any such person liable to any punishable under this act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Notwithstanding anything contained above, where an offence under this act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Key Definitions & Other Provisions as per RERA requirements–**

**1) Definition of Apartment**



Means a separate and self-contained part of any immovable property intended to be used for the purpose

specified.

**2) Definition of Carpet Area**



The area covered by the internal partition walls of the apartment which will include kitchen & toilets. Carpet area do not include the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area which is appurtenant to internal area.

**3) Definition of Commencement certificate**

The permit given to the promoter by competent authority for beginning the development work on the immovable property

**4) Definition of Common areas**

Means the area which can be used and accessed commonly (eg: Stair cases, lifts, lobbies, common entrances/exits, common basements, terraces, parks, play areas, open parking areas and common storage spaces, accommodation of staff for management of property. Installation area of central services such as electricity, gas, water for common use of all community and commercial facilities)

## 5) Definition of Interest

Equal rate of interest for allottee and the promoter, in case of default. The default period for calculation of interest: For Promoter - from the date the promoter received the amount in full or part till the date the amount or part including interest is refunded. For Allottee -from the date the allottee defaults in payment till the date it is paid.

## 6) Definition of Promoter

The person who constructs or develops land into a project (need not be the one who constructs on the land) or a development authority or a developer who holds power of attorney of construction will be regarded as promoter. A person who develops and a person who sells the immovable property both will be considered as promoters and will be jointly liable.

## 7) Sec 3 - Registration requirement

- Ongoing assignment for which the completion certificate has not been issued. (Application to be made within a period of three months from commencement of the Act)
- Projects on atleast 500 sq.m or with 8 flats
- Repairs/renovation/redevelopment which requires advertisement or allotment Until registration is obtained no advertisement/booking/allotment can be made

## 8) Sec 4 - Application of registration

- Online application
- Every promoter to be registered



REGISTRATION

- Need to deposit 70% of amounts realized in separate scheduled bank account
- Withdrawal in proportion to percentage of completion after obtaining certificate from engineer/architect/chartered accountant in practice
- The promoter is also required to get his accounts audited within six months after the end of every financial year by a practicing chartered accountant.

Further, he is required to produce a statement of accounts duly certified and signed by such chartered accountant, and it shall be verified during the audit that

- (i) the amounts collected for a particular project have been utilised for the project; and
- (ii) the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

- The application should be supported with following documents:
  - a. Details of the promoter (such as its registered address, type of enterprise such proprietorship, societies, partnership, companies, competent authority);
  - b. A brief detail of the projects launched by the promoter, in the past five years, whether already completed or being developed, including the current status of the projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
  - c. An authenticated copy of the approval and commencement certificate received from the competent authority and where the project is proposed to be developed in phases, an authenticated copy of the approval and commencement certificate of each of such phases;
  - d. The sanctioned plan, layout plan and specifications of the project, plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof and the locational details of the project;

- e. Proforma of the allotment letter, agreement for sale and conveyance deed proposed to be signed with the allottees;
- f. Number, type and carpet area of the apartments and the number and areas of garages for sale in the project;
- g. The names and addresses of the promoter's real estate agents, if any, and contractors, architects, structural engineers affiliated with the project; and
- h. A declaration by the promoter supported by an affidavit stating that:
  - i. he has a legal title to the land, free from all encumbrances, and in case there is an encumbrance, then details of such encumbrances on the land including any right, title, interest or name of any party in or over such land along with the details;
  - j. the time period within which he undertakes to complete the project or the phase; and 70% of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.

**9) Sec-5 Grant of Registration**

- Within 30 days of application
- Automatic registration within 7 days from the expiry of 30 days in-case the authority fails to provide registration
- Validity of registration till the date of completion of the project.
- Grant of login ID & Password to access the Authority's website and create own web page in it which should include:
  - a. details of the registration granted by the Regulatory Authority;
  - b. quarterly up-to-date list of the number and types of apartments or plots or garages, as the case may be, booked;
  - c. quarterly up-to-date status of the project along with the list of approvals obtained and approvals

pending subsequent to commencement certificate; and such other information and documents as may be specified by the regulations made by the Regulatory Authority.

**10) Sec-7 Revocation of registration**

On receipt of compliant / suo moto / recommendation of competent authority

Grounds on which registration can be revoked:

- a. Promoter makes default in doing anything required by or under the Act or the rules or the regulations
- b. The promoter violates any of the terms or conditions of the approval given by the competent authority

The promoter is involved in any kind of unfair practice or irregularities

**11) Sec-8 Obligation of authority upon lapse of or on revocation of registration**

After lapse of the registration or on revocation and after dismissal of appeals, authority may take appropriate actions including carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner. However, before taking such decision the association of allottees shall have the first right of refusal for carrying out of the remaining development works

**12) Sec-9: Registration of real estate agents**

Real estate agents need to register along with proper documents for giving any services related to properties registered under the Act.

**13) Sec-10: Functions of Real Estate Agents**

- a) Agent cannot facilitate the transactions in a real estate project which is not registered with the Authority;
- b) Maintain and preserve books of account, records and documents
- c) Not involve himself in any unfair trade practices
- d) Facilitate the possession of all the information and documents to the allottee at the time of booking.

**14) Sec 11-18: Functions & Duties of Promoter**

a. Quarterly updating on webpage on authority site:

- Number of flats booked,
- Approvals obtained
- Status of project, etc

b. Disclosure of all relevant information of project in advertisements (incl.registration no.& webpage link on Authority's website)

- Refund of investment amount along with interest incase of false statement included in advertisement.

c. Disclosure of sanctioned plans and stage wise time schedule of completion of project to the allottee at the time of booking.

d. Adherence to approved plans and project specifications, if any changes are to be made then prior approval of authority and allottees is to be taken (no approval in case of minor alteration).

e. Before transferring / assigning majority rights and liabilities to third party / doing major alterations in sanctioned plans of real estate project, prior written consent from two-third allottees,except the promoter, and approval from the Authority is required.

f. Insurance of real estate project to be made as per the rules and the premium to be paid by promoter till the transfer of project to the society. The insurance papers should be handed over to society.

g. If the promoter fails to complete the project as per the agreement of sale or due to discontinuance of business as developer then on demand from allottees the refund should be provided with interest.

h. In case allottee does not demand for refund, the promoter shall pay interest for delay in months for providing possession.

i. The promoter shall rectify defects within 30 days if any structural defect or any other defect is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession. If rectification not done

then the aggrieved allottee shall be entitled to receive compensation

j. Promoter to enable the formation of an association or society of the allottees (if no local law applicable then formation within three months of majority of allottee having booked their plots)

k. Promoter to pay all outgoings until he transfers the physical possession of the real estate project to the associations of allottees which he has collected from the allottees, for the payment of outing.

l. A promoter cannot accept more than 10% percent of the cost of the apartment as an advance or as an application fee from a person without first entering & registering a written agreement of sale.

m. The promoter may cancel the allotment only in terms of the agreement for sale

n. After the promoter executes an agreement for sale for any apartment, plot or building, no mortgage or charge can be created by the promoter on such apartment

**15) Sec-19 Rights & Duties of Allottees**

a) Right to obtain stage-wise time schedule of project

b) Claim possession as per promoter declaration.

c) Refund along-with interest and compensation for default by the promoter

d) Obtain possession within two months from the date of occupancy certificate.

e) To make payments and fulfill responsibilities as per agreement along with interest in-case of delay

**16) Offences and Penalty**

• If promoter does not register its project with the Regulatory Authority – the penalty may be up to 10% of the estimated cost of the project as determined by the Regulatory Authority;

• If promoter does not comply with the aforesaid order of the Regulatory Authority - imprisonment of up to three years and a further penalty of up to 10% of the estimated cost, or both; and

**PENALTY**

- In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act – the penalty may be up to 5% of the estimated cost of the project or construction. These penal provisions have also been prescribed for any contravention or violation committed by the real estate agent or the allottee.
  - a. If any allottee fails to comply with orders of the Regularity Authority penalty may extend up to 5% of the cost of the plot or apartment as determined by the Regulatory Authority.
  - b. Further, if any allottee fails to comply with orders of the Appellate Tribunal, imprisonment up to one year or fine for every day during which such default continues may cumulatively extend up to 10% of the cost of the plot or both.

## Conclusion

This regulation has noble intent, however, it may increase the cost of construction and also there are number of practical difficulties and hardships that the developers may face on ground zero. On account of several provisions that impact the real estate developer and have the potential of dual interpretations it is expected that the RERA would increase litigations, disputes and cost of compliances rather than simplifying matters. As far as buyers/ consumers are concerned this Act will go a long way in protecting their interests and rights.

## Press speak:



### 1. Extract of article from Indian Express - Mar 26, 2016

The RERA aims at bringing cheer to the buyers of property, by providing a framework for reducing conflict with developers, and creates a regulatory authority for this sector. The Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR) and RERA reflect the changes in political perception what both laws fail to recognize is the root of the problem — **over-regulation**. The high prices in real estate are a reflection of an artificial **scarcity caused by over-regulation**. There are strict penalties, including imprisonment, for developers if they slip up. There is hardly any provision to make the various government authorities more accountable. The RERA could very well increase the disputes between developers and authorities, which will **increase the cost of compliance and the cost of the project**. Over time, such costs would get built into the project cost, thus increasing the price of property. The RERA's requirement that 70% of capital from a particular project be restricted for use only for that project is well-intentioned but may have little economic merit. **The law is likely to raise the cost of capital**. The RERA also lays out a dispute settlement mechanism. But given the experience of consumer courts, it's only a matter of time before the new mechanism gets as clogged as some of the others. Other sectors have flourished due to the relatively light hand of government, including tax holidays. If the real-estate sector was really unregulated and free, it could have been a global force by now.

Source-

<http://indianexpress.com/article/opinion/columns/real-estate-regulatory-act-2016-rera-real-estate-non-rescue-homebuyers/>

**2. Extract of article from Indian Express -  
Mar 16, 2016**

Despite a strong objection from the state government, the new Bill has a clause, which states that the Maharashtra Housing (Regulation and Development) Act (MHA), 2012, **will be repealed** once the Centre's Act comes into force. About 45,000 housing societies in the state are yet to be handed ownership of the lands and would be impacted by the Centre's move as centre's bill **does not contain provisions to grant deemed conveyance**. It was also pointed out that the MHA disallows sale of apartments before registration of a project with the Housing Regulator, whereas the Central Act permits 10 per cent flats to be sold prior to registration

Source-

<http://indianexpress.com/article/cities/mumbai/mah>

[arashtra-real-estate-bill-nullifies-key-provision-in-state-act/#sthash.qoLQavOJ.dpuf](http://arashtra-real-estate-bill-nullifies-key-provision-in-state-act/#sthash.qoLQavOJ.dpuf)

**3. Extract of article from DNA - Dec 2015**

It would not only protect the consumer, but encourage individual buyers and financial institutions, both domestic and international, to invest in the real estate market.

However, it will ensure **only well capitalised developers start and remain operative**.

The central government has to ensure that apart from making developer community regulated, state government and various state-run approval bodies are aligned and made more accountable

Source-<http://www.dnaindia.com/money/report-new-real-estate-regulatory-act-sword-on-our-heads-credai-2155138>

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