

CHAPTER 14: REAL ESTATE REGULATION & DEVELOPMENT ACT

1. **RERA has been created with following objective**
 - (a) To regulate and promote the real estate sector.
 - (b) To protect the interest of consumers in real estate sector.
 - (c) To ensure that the sale of apartment in any real estate project is done in an efficient manner.

2. **Advantages of RERA**
 - (i) Increased FDI
 - (ii) Customer management.
 - (iii) Timely completion of the project.
 - (iv) Project planning
 - (v) Transparency
 - (vi) Reduction in litigation.

DEFINITIONS

3. **Allottee** – In a real estate project, it means any person to whom a plot/apartment/building has been allotted or sold and further also includes a person who has subsequently acquired the same, but it does not include a person who has been given the same on rent.

4. **Apartment** – includes a dwelling unit, flat, office, showroom, shop, godown, premises, intended to be used for any residential or commercial purpose.

5. **Carpet area** means the net usable floor area which includes the area covered by internal walls of the apartment but does not include:
- (a) The area covered by external walls.
 - (b) Exclusive balcony.
 - (c) Exclusive open terrace.
 - (d) Area under service shafts.
6. **Common area includes the following:**
- (a) The entire common land of project. /In case a project been developed into phases the entire land of phase.
 - (b) Staircase, lift, lobbies, fire escape.
 - (c) Common basement, park, play area.
 - (d) The premise for lodging of staff in project.
 - (e) Water tank / motor / compressors and all other devices connected for common use.
7. **Appropriate Govt**
- Union Territory without legislature → Central Govt.
Union Territory of Puducherry → UT Govt.
Union Territory of Delhi → Central Ministry of Urban Development
For State → State Govt.
8. **Registration of real estate project:**
- No promoter shall launch, pre-launch, advertise, book any apartment or plot unless prior registered.

9. Promoter means and includes: -

- (a) A person who constructs / causes to be constructed any independent building or converts existing land into new project for purpose of selling all or some of apartments.*
- (b) A person who develops a land into project either with or without structure for purpose of selling for some or all of the units.*
- (c) Any development authority or public body which is going to construct / causes to be constructed any apartment for its people.*
- (d) An apex state level cooperative housing finance society and primary cooperative housing society which constructs apartments/buildings for its members or in respect of allottees of such apartments/buildings.*
- (e) Any person who acts as developer, builder and contractor in any project.*

Note: *The act does not apply on those projects which have already received completion certificate but for those projects which are yet to receive a completion certificate must get the same registered within period of 3 months from commencement of this act.*

APPLICATION

- 10.** *Any project which requires registration under the act must file an application with the RERA along with the prescribed documents and fees.*
- 11.** *Further, the application must be accepted or rejected within a period of 30 days; and if no response is received then the same should be deemed to be approved.*
- 12.** *Once the registration is complete the promoter will be provided with a registration no and a login id, password for the applicant.*

13. The promoter should file the following documents while applying for registration: -
- (a) Details of the enterprise including its name, address and type.
 - (b) Details of the project launched by him in the previous 5 years and the current status.
 - (c) Copy of the approvals received from the competent authority.
 - (d) The sanctioned plan, layout plan.
 - (e) All the facilities to be provided in project.
 - (f) The location detail of project including clear demarcation of land
 - (g) Proforma of the allotment letter, agreement for sale and conveyance deed.
 - (h) The number and type of apartments as well as carpet area.
 - (i) The number of garages for sale in the project.
 - (j) The names of the professionals in the project which includes its architects, engineers and any other contractor.
 - (k) A declaration on an affidavit signed by the promoter stating that the promoter:
 - (i) Has legal title over the land which is proposed to be developed and if leased then the lease deed is in his name.
 - (ii) The land is free from all encumbrances.
 - (iii) The time period within which the project shall be completed.
 - (iv) 70% of the amount realised shall be kept in a separate bank account and the withdrawal from such account should be for purpose of covering the cost of construction and the withdrawal should always be in proportion of the percentage of work completed.

The withdrawal requires a certificate to be issued by engineer, architect and CA assuring that the withdrawal is in proportion to the completion of project.

The promoter shall get its account audited within six months.
14. Within 30 days from application the Authority may either approve or reject the application and in the event of rejection, OOBH has to be given.
15. If no reply is given within 30 days the same is deemed to be approved and the Authority should within the next 7 days provide registration and login Id, password to promoter.

16. Projects which are exempted from registration

- (a) For those projects which have already received completion certificate before commencement of this Act.*
- (b) Repairing, Renovation which does not involve any new allotment or sale.*
- (c) Where the area proposed to be developed is less than 500 sq. metres or the number of apartments does not exceed 8.*

17. Extension of registration

- (i) The main essence of the Act is timely delivery of the real estate project and if the promoter fails to deliver the same then the Authority may revoke his registration along with usurping the project.*
- (ii) However, as per Sec 6, extension may be granted, in force majeure conditions or whenever there are reasonable circumstances.*
- (iii) Whenever the extensions are at the discretion of authority which in any case shall not exceed 1 month except in force majeure conditions.*
- (iv) An application shall not be rejected unless OOBH is provided to the applicant.*

18. Revocation of Registration

The Authority may Suo Moto or on a complaint may revoke the registration if it is satisfied that:

- (a) The promoter has made any default under the act.*
- (b) The promoter has defaulted in complying with any of the terms and conditions of the approval.*
- (c) If the promoter has indulged into any unfair practice.*

19. Unfair practice here means

Making any statement which

- (a) Falsely represents that the services are of a particular standard.*
- (b) That the promoter has any affiliation which he actually does not have.*
- (c) Makes any misleading representation.*

(d) The promoter indulges into any fraudulent practice.

Note: *The registration shall not be revoked unless a notice of not less than 30 days in writing has been given stating the grounds of revocation.*

20. *Apart from revocation, the authority may take any of the following actions:*

(a) Debar the promoter from accessing the website for that project.

(b) Display his details along with his photograph in the list of defaulters.

(c) Direct the bank account holding the project funds to freeze the account and whenever appropriate order for defreezing.

(d) Facilitate the remaining development & to protect the interest of allottee.

21. Obligation of Authority Upon Revocation

It shall facilitate the remaining development work, in this the first opportunity is given to the allottees and if the allottees refuse then to get the project completed in any manner which may be suitable.

22. Registration of Real Estate Agents

(i) Now all the real estate agents are mandatorily required to get themselves registered before they can act as an agent in any real estate transaction.

(ii) The Authority shall grant a single registration to the real estate agent which shall be valid for entire State or UT and in event of rejection the Authority shall give an opportunity of being heard.

(iii) If no communication is received, the application is deemed to be accepted.

(iv) If the registration is obtained through fraud, the Authority may suspend or revoke the registration.

23. Functions of Real Estate Agents

- (i) Every real estate agent shall facilitate any sale/purchase in a real estate project only after securing registration.*
- (ii) He should not involve in any unfair practice.*
Unfair trade practice here means: Making any statement which:
 - (a) Falsely represents that the goods/services are of a particular standard/quality.*
 - (b) Falsely representing that the seller has approval or affiliation which he actually does not have.*

24. Functions and Duties of Promoter

- 1. The promoter shall create his webpage and enter details for public viewing, which includes:*
 - (a) Quarterly up-to-date list of number of apartments booked.*
 - (b) Quarterly up-to-date List of number of garages booked.*
 - (c) Quarterly up-to-date list of approvals which are taken and which are pending*
 - (d) Quarterly up-to-date status of the project*
 - (e) Details of registration granted by the Authority.*
- 2. The promoter shall be responsible to make available to the allottee the following info:*
 - (a) Sanctioned plans.*
 - (b) Layout plans.*
 - (c) Stage-wise completion of the project.*
- 3. The promoter shall*
 - (a) He shall be responsible for all obligations under Act for transfer of apartment to allottees.*
 - (b) He shall be responsible to obtain the Completion and Occupancy Certificate.*
 - (c) If the land is on lease, then he shall obtain lease certificate.*
 - (d) Maintain the society on reasonable charges until the formation of association of allottees.*
 - (e) The association of allottees shall be formed within a period of 3 months, from where the majority of the allottees have booked their apartments.*

- (f) A promoter shall not give any false advertisement and if he does so then it shall be his responsibility to return the amount along with interest and compensation.
- (g) A promoter shall not accept a sum of more than 10% of the cost of apartment unless a written and registered agreement for sale is done.

25. Adherence to sanctioned Plans:

- (a) The proposed project shall be completed by promoter as per sanctioned plans, layout plans and specifications as approved by the authorities and he should not make any alteration in the sanctioned or layout plan without the previous consent of that person (Provided minor additions or alterations on request of allottee can be done).
- (b) The promoter may make any minor additions or alterations as may be necessary due to architectural and structural reasons duly verified by an architect or an engineer.
- (c) Any other alterations or additions to the sanctioned plan, layout plan requires the previous approval of 2/3rd of allottees other than the promoter (1 person should have 1 vote irrespective of the no. of units he has with him).

26. Structural Defect –

The promoter should rectify any structural defect brought to their notice in initial 5 years within a period of 30 days, failing which he has to compensate.

27. The promoter should not transfer his majority rights in a real estate project to a 3rd party without the approval of authority and 2/3rd allottees excluding the promoter.
28. If such a transfer is made then no previous agreements entered shall be affected by such transfer, and also there would be no extension of time to the new incoming promoter.
29. The promoter shall obtain an insurance for the title of land and building and construction of real estate project and he shall require to pay premium until transferring the project to the association of Allottees.

30. Transfer of Title

- (a) The promoter should execute a transfer deed in favour of allottees along with undivided proportionate interest in the common area and also handover the physical possession to allottees. (A registered transfer deed in favour of allottees shall be carried out by promoter within 3 months of obtaining Occupancy Certificate).*
- (b) After the above is done, the promoter is also requested to handover necessary docs and plans to the association of allottees within a period of 30 days after obtaining Occupancy Certificate.*

31. Return of Amount and Compensation

- (a) If the promoter fails to complete the project in stipulated time or discontinues his business because of suspension or revocation of registration then he shall be liable to return the amount received by him to the allottee if he demands.*
- (b) Along with the principal amount he has to pay interest at the prescribed rate plus compensation.*
- (c) If the allottee does not intend to withdraw from project then he shall be paid with interest and compensation which may be determined by Authority.*
- (d) In event of defective title of the land, the promoter shall compensate all the allottees and Limitation Act will not apply in this matter.*

32. Rights and Duties of Allottees

(a) Rights

- (i) The allottee has a right to obtain all necessary information including sanctioned plan, layout plan.*
- (ii) He shall be allowed to know stage wise time schedule for the completion of project.*
- (iii) He shall be entitled to claim possession of apartment and association of allottees shall be entitled to claim possession of common area.*
- (iv) They shall have right to claim refund as well as compensation if the project is not completed within stipulated time frame.*

(b) Duties: -

- (i) *The allottee should make timely payment.*
- (ii) *In event of delay in payment he shall be requested to pay interest.*
- (iii) *The obligation of allottee and liability toward interest can be mutually reduced.*

33. RERA

- (a) *One state can have more than one RERA and 2 states can have 1 RERA, which shall be formed in form of body corporation consisting of 1 chairperson and 2 members.*
- (b) *The qualification for chairperson and members should be determined by selection committee and which requires a minimum of 20 years' experience for chairperson and 15 yrs for members.*
- (c) *The selection committee consists of Chief Justice of High Court, the Secretary of department dealing with Housing and Law Secretary.*
- (d) *The tenure of chairperson and members shall not exceed 5 yrs or age of 65 yrs whichever is earlier.*

34. Functions of RERA for promotion of Real Estate Sector

- (a) *Protection of interest of the allottees, promoters and real estate agent.*
- (b) *Creation of a single window system for ensuring time bound project approvals and clearances.*
- (c) *Creation of a transparent and robust grievance redressal mechanism.*
- (d) *Measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing.*

35. Real Estate Advocacy

The appropriate Government while formulating any policy on the real estate sector can make a reference to RERA for its opinion on possible effects of such policy in Real Estate sector and the authority shall submit a report containing its opinions within 60 days.

RERA acts as an advisory body and the Govt is not bound to follow their advice.

36. Functions of Authority

1. *To register and regulate real estate projects and real estate agents.*
2. *To publish and maintain a website for public viewing of all real estate projects for which registration has been given.*
3. *To maintain a database on its website for public viewing and enter the names and photographs of promoters or defaulters including the project details registration for which has been revoked.*
4. *To maintain a database on its website for public viewing and enter the names and photographs.*

37. RERA has the same powers of a civil court.

(Reasons of same Civil court are same in every Chapter).

38. The Authority may within 2 yrs rectify any mistake brought to its notice by the parties unless an appeal has already been preferred.

39. Central Advisory Council (CAC):

(a) The CG may establish by a notification in the official gazette a council to be known as CAC. (The minister dealing with housing under CG shall be the ex officio chairperson.)

(b) The CAC shall additionally consist of Ministry of Finance / Industry and Commerce / Urban Development / Consumer Affairs / Law and Justice, 5 representatives of the SG which are to be selected by rotation and 5 representatives of RERA from each state and other CG departments, not more than 10 members to represent the interest of agents/consumers/labourers.

40. Real Estate Appellate Tribunal (REAT)

- (i) REAT is an appellate tribunal formed for faster resolution of disputes and any person aggrieved of RERA can prefer an appeal in front of REAT within 60 days and REAT should hear and dispose of the appeal within 60 days.
Any person aggrieved of the order of REAT can prefer an appeal in front of HC within 60 days of order.
- (ii) The REAT shall consist of at least 1 Judicial Member, and 1 technical member (2 or more states can have 1 REAT or 1 state can have more than 1 benches.)
- (iii) While preferring an appeal in front of the appellate tribunal at least 30% of penalty or any such higher percentage as may be determined by the appellate tribunal shall be first deposited with Appellate Tribunal (this rule only applies when a promoter files an appeal.)

41. Restriction on Chairman / Judicial Member / Technical Member/Administrative Member

- (a) The chairperson / Judicial Member / Technical Member/Administrative Member once they cease to hold office shall not accept any employment from any person or organisation which has been associated with any work under this Act. (Nothing in this applies to matters of employment with Govt bodies / statutory corporations)
- (b) Neither should he act on behalf of any person or organisation in any proceeding or a case to which the authority is a party and in respect of which he had prior to cessation of his office advised to the Authority.
- (c) Neither should he give any info which he obtained in capacity of chairperson / members.

Powers of Tribunal → same as civil court powers

- 42. The applicant may appear in front of Appellate Tribunal or authorize CA / CS / CMA / Adv to represent his interest.

43. Role of CS

- (i) A CS is a KMP mandatorily required by every listed company, every public comp having 10 cores or more and every private company having Paid up capital of 10 cores or more (in case Pvt Co they are only required to appoint a CS but in listed + public they are required to appoint full KMPs.)
- (ii) A CS provides the following services:
 - (a) Financial advisory services
 - (b) Various applicable provision particularly on real estate project
 - (c) Registration and extension procedure of real estate project with competent authority.
 - (d) Various obligations / functions and duties of promoter in a real estate project
 - (e) Penal provisions under the Act
 - (f) Funding options for real estate project
- (iii) CS can act as legal representative in front of RERA or any other Authority.

44. Offences and Penalties

- (a) It is mandatory for all the promoters to get project registered else the penalty shall be up to 10% of the cost of Real Estate project.
- (b) In case of consistent default, he shall be liable to additional fine of 10% of the estimated cost of the real estate project or imprisonment up to 3 yrs may also be announced or both.
- (c) If the promoter provides false Information, he shall be liable to a penalty which may extend up to 5% of the estimated cost of the project.
- (d) If a promoter contravenes any other provision, then penalty up to 5% of the estimated cost of the project.
- (e) Same punishment if the promoter fails to comply with the orders and directions of the authority that is 5% of the estimated cost of the project.
- (f) If an order is by the Appellate Tribunal, then the punishment increases to 10% of cost.
- (g) If a RE agent fails to comply with provision of the Act, then a penalty of Rs.10,000 per day which may extend up to 5% of cost of apartment.

- (h) If the Real Estate agent fails to comply with the order of the authority, then the penalty up to 5% of the cost of apartment.*
- (i) If the order is by the Appellate Tribunal, he shall be punishable with Imprisonment for a term which may extend up to one year or with fine which may increase up to 10% of the cost of the apartment.*
- (j) If the allottee fails to comply with the orders and decision of the authority he shall be liable to a penalty which may extend up to 5% of the estimated cost of the apartment.*
- (k) If the allottee fails to comply with the orders and decision of the Appellate Tribunal he shall be liable to imprisonment which may extend up to 1 year or with fine which may extend up to 10% of the estimated cost of the apartment or both.*

45. Power to Adjudicate

- (i) For the purpose of adjudicating compensation an authority shall be appointed to be known as Adjudicating Officer who shall be not below the rank of a District Judge.*
- (ii) The purpose of Adjudicating officer under the Act is to hold inquiry.*
- (iii) The application for adjudging compensation shall be disposed of within 60 days failing which reason for the same has to be given.*

46. Miscellaneous Provision

- (i) No civil court to entertain any suit under the Act.*
- (ii) The power to refund the amount is with the Authority (RERA) and so far, as compensation is concerned as well as the interest of compensation amount the same is with the Adjudicating Officer.*
- (iii) So delayed possession / refund / penalty is within the ambit of Registered Authority and compensation is within the ambit of RERA.*