

THE REAL ESTATE
(REGULATION AND DEVELOPMENT) ACT, 2016

-CA SHALABH DAGA



Real Estate-Current Scenario



Is the largest employers after agriculture

Accounted for 9% of GDP and supports 250 ancillaries.

Market of 10 L people to buy houses every year with an investment of 13.5 L Crore

Total of 18000 projects were launched in last 4 years in 24 major cities.

Total of 76000 companies involved in Real estate sector



New launches down
by 25% in last year.

Total of 2.6 L units
sold in 2015.

7L Units are unsold
currently.

Will take 3 years to
absord at current
rate.

3 L Cases pending
in consumer courts,
majority against
builders.



Aim & Object of the Act



Establish the Real Estate Regulatory Authority

- Only large sector left for regulation.
- Region specific

Ensuring efficiency and transparency

- Prior registration, details submission & declaration.
- Predefined terminology & defined regulations.

Protection of Consumer interest

- Timely delivery .
- Quality.

Speedy dispute redressal

- Disposing the cases in 60 days
- Availability of information



Impact



Greater accountability

- No transactions without registration

Symmetry of information

- Uniformity in information.
- Transparency in transaction.

Fastrack dispute resolution

- Safeguard of Hard earned customer money
- Timely resolution of disputes.

Professionalism & standardization

- Elimination of unorganized builders and brokers
- Quality & Timely delivery.

Accelerated growth and investment

- Positive impact on investment and financing. Will boost FDI.
- Control over black money
- Predicted manufacturing cycle.



Timelines



Passed in parliament on 15th March'16

President's assent on 25th March'16

Commencement date 1st May'16

69 of 92 sections are notified

Appropriate government to make Rules with in 6 months(Sec 84)



Appropriate government to establish Real Estate regulatory authority with in 1 year(Sec 20)

Authority to formulate regulations regarding working with in 3 months from authority formation(Sec 85)

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Applicability



- Applies To:
- Real Estate Project.(Sec 2 (zn))
 - Promoters (Builders).(Sec 2(zk))
 - Allottee (Buyer).(Sec 2(d))
 - Real Estate Agent (Broker).(Sec 2(zn))

To whole of India except J&K(Sec 1)

The Maharashtra Housing(Regulation and development) Act
2012 (Sec 92)



Terminologies



Real Estate Project.(Sec 2 (zn)):

- Development of building (Consisting of apartments)
- Converting an existing building or part into apartments.
- Development of land into plots or apartments.
- Includes Common areas, development works etc
-For the purpose of selling all or some.....

Promoters (Builders).(Sec 2(zk))

- Who constructs building (Consisting of apartments).
- Converting an existing building or part into apartments.
- Develops land into plots or apartments.
- Any development authority.
- Cooperative housing society.
- Any person who acts, as mentioned above
- Any person who constructs
- Constructor and Marketer both are covered
-For the purpose of selling all or some.....



Allottee (Buyer).(Sec 2(d))

- To whom a plot, apartment or building has been allotted, sold.
- Or, otherwise transferred
- Includes the person who subsequently acquires
- No rented property is covered.

Real Estate Agent (Broker).(Sec 2(zn))

- Includes property dealer, broker, middleman (by whatever name called)
- Receives remuneration
- Negotiates, introduces through any medium



Apartment .(Sec 2(e))

- Separate & self contained part of any immovable property
- Includes rooms or enclosed spaces located in building or land
- Used or intended to be used for residential or commercial purpose
- Whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenament, unit or any other name.

Carpet area .(Sec 2(k))

- The net usable floor area of an apartment
- Includes the area covered by internal partition walls
- But excludes,
 - Area covered by external walls
 - Areas under service shafts
 - Exclusive balcony
 - Exclusive verandah
 - Exclusive open terrace area



Functions & Duties of Promoter



Prior registration of Real estate project with RERA (Sec 3)

- All the new projects after commencement of the act, before advertising & selling of any plot, apartment or building.(Time limit to be specified)
- Ongoing projects for which completion certificate is not obtained.
(Within three months of commencement)
- Projects developed beyond planning area before commencement.
(By order of authority)
- Exemptions (No registration required)-Threshold can be reduced by respective government
 - Where developed land is lesser than 500 Sq mtr
 - Or, Less than 8 apartments
 - Renovation or repair or redevelopment, which doesn't involve new allotment.
- All the phases will be treated as separate project while exemption is including all phases



Application for registration of real estate project (Sec 4)

- Brief details of Promoter including name, address, type, name, photographs etc.
- Running or completed project details of last 5 years including current status, delays, cases pending, type of land & payments pending.
- Approvals & commencement certificate from competent authority(If phases than details of all the phases)-Local authority
- Sanctioned plan ,layout plan & specification of the project.
- The plan of development works & proposed facility.
- Location of the project
- Performa of allotment letter, agreement and conveyance deed.
- Number, type & carpet area of apartments & garage.
- Name & address of real estate agent(If any)
- Details of Contractor, architect, structural engineers and any other person
- Declaration Confirming title, time to complete the project, depositio
% amount collected & its utilization, confirmation on pending approvals
any other information asked for submitted



70% of the amount realized to be kept in separate account

- 70% amount realized from real estate project to be kept and used for cost of construction and land.
- To be withdrawn in proportion of completion.
- Withdrawal after certification from engineer, architect and Chartered Accountant.
- Accounts to be audited within 6 months of every FY.
- Statement of account to be produced before the authority.
- Utilization to be verified

To create webpage on website of RERA

- To create a webpage containing all the details for public viewing.
- Quarterly number of apartments and garages booked.
- Quarterly list of approvals taken and upto date status of project etc.



Insurance of real estate project. (Sec 16)

- All the insurance to be obtained including title of land & building and construction.
- To pay premium before transferring the insurance to association of allottees.
- Insurance stand transferred to allottee at the time of entering in sale agreement.

Return amount and compensation.(Sec 17 & 18)

- Transfer of title and execution of registered deed in favour of allottee, with in three months of occupancy certificate.
- Handover the necessary documents to allottee or association.
- Failure to complete on time or unable to give possession as per the agreement or due to discontinuance of business on suspension or revocation is liable to refund with interest and compensation, in case allottee wish to withdraw.
- Interest for every month in case allottee doesn't wish to withdraw



Adherence to sanctioned plans (Sec 14)

- Project to be completed in accordance of sanctioned plan.

No alteration in sanctioned plans without consent of allottees

- No addition or alterations to the sanctioned plan.
- Minor alteration and additions required by allottee is permissible.
- Minor alterations necessary due to architecture and structure.(Declaration and intimation to allottee is required.)
- Minor addition or alteration excludes structural changes.
- Any other alteration after written consent of 2/3rd of allottees other than promoter.
- Apartments booked in name, family members, associated entities will be treated as one allottee.



To rectify structural defect with in 30 days (Sec 14(3))

- Structural defects, other defects of workmanship, quality or provision of service for the period of 5 years after possession to be rectified with in 30 days of notice.

- Aggrieved allottee is entitled for compensation incase the defects are not rectified.

No transfer of real estate project without prior consent of allottees. (Sec 15)

- Consent of 2/3rd of allottees is required.
- Transfer will not affect the sale or allotment by erstwhile promoter.
- The intending promoter is liable for all the liabilities.

Not to accept more than 10% of cost until agreement (Sec 13)

- No advance or deposit in excess of 10% without written registered agreement for Sale.



Mention the website on advertorial material with registration number

Responsible for all obligations

- Responsibility as per the agreement of sale.
- Responsibility for structural defects to continue after Deeds also.
- To obtain approvals from competent authority.

To provide relevant documents to allottee

- Sanctioned plans, layout, approvals.
- Stagewise completion schedule including other facilities

To compensate regarding veracity of advertisement. (Sec 12)



Provide essential services at reasonable charges till handing over

Enabling formation of society

- Association of allottees to be formed after majority of flats are booked.

Execution of registered deeds

- In favour of allottees.
- Undivided proportionate title in favour of association of allottees.

Pay all the outgoings till possession

- All the cost related to project including land cost, municipal or other taxes etc.
- If fails to pay, than continue to be liable for payment, penal charges and legal proceedings.



Not to mortgage or create a charge

- No mortgage after agreement of sale.
- If created, it will not affect the rights of the allottee.

Cancellation in accordance with agreement

- Only as per the terms of agreement of sale.
- Allottee can approach authority, if he is aggrieved.

Standard agreement for Sale

- Agreement to specify all the particulars of the project.
- To include, construction, internal development works, external development works, the manner of payment by allottee, date of possession, rate of interest payable by both the parties and other particulars



Grant, Extend & Revocation of registration



- Grant registration within 30 days of application.
- Provide login Id & PW to the applicant for website.
- Reject application of registration after hearing with reasons.
- If fails to grant in time limit than project is deemed to be registered.
- Registration will be valid till completion as declared by promoter.

- Extension of registration upto 1 year due to force majeure or reasonable circumstances, on application by promoter.

- On complaint or suo moto or recommendation from competent authority on default, contravention, unfair & fraudulent practice.
- Revocation after notice and opportunity of being heard (30 days notice).
- Instead of revocation, authority can impose conditions.
- Debar from website, defaulter name to be published on website, inform other authorities, freeze bank account, facilitate remaining work..
- Association of allottees to have first right of refusal for remaining work. (Sec 8)



Functions & Duties of Real Estate agent



Prior registration of real estate agent (Sec 9)

- Not to facilitate any sale or purchase without prior registration.
- To apply for registration in time limit with requisite fees.
- Single registration may be granted for state.
- Application may be rejected after opportunity of being heard.
- If not rejected in time limit than deemed to be registered.
- Registration number with validity will be granted which will be quoted on all the deals.
- Authority can revoke the registration for contravention after opportunity of being heard.

Maintain books of accounts & records and other duties (Sec 10)

- Not to facilitate sale or purchase in any unregistered project.
- Maintain books of accounts and records.
- Not to involve in unfair practices, whether orally, in writing or visual representation.
- Have to facilitate the possession of the information to allottee.



Rights of Allottees



- Entitled to all the information provided in the act.
- Entitled to know stage wise completion, details of external works, facilities etc.

Right to information

Right to completion & Occupancy certificate

Right against wrongful cancellation

Right against breach of agreement of sale

Right to withdraw if delayed possession

Right to claim for defective title



- Can claim possession of property including that of common areas.

Right to possession

Right against alteration

Right against transfer of project to third party

Right for same interest rates

Right in case registration is lapsed



Responsibility of Allottees



To make necessary payment

- As per the agreement of sale.
- Purchase amount and other charges to be paid.

To pay interest on delayed payment

- To be paid on the agreed rates.
- Liability may be reduced by mutual agreement.

To participate in formation of society and execution of deed.

To take possession in two months

- 2 months from occupancy certificate



Offences, Penalties and adjudication-Promoter



Non registration (Sec 59)

- Penalty upto 10% of the estimated cost of the project.
- If failure to comply with above order, imprisonment upto 3 years or fine

False information (Sec 60)

- Penalty upto 5% of the estimated cost of the project.

Contravention of other provision of the act (Sec 61)

- Penalty upto 10% of the estimated cost of the project.

Failure to comply with orders (Sec 63)

- Order of authority: Every day penalty till the defaults continue, which may cumulate upto 5% of the estimated cost of the project.
- Order of Tribunal: Every day fine till the defaults continue, which may cumulate upto 10% of the estimated cost of the project or imprisonment upto 3 years or both.



Offences, Penalties and adjudication-Agent



Non registration & contravention (Sec 62)

- Every day penalty of Rs 10000/- till the default continues which may cumulate upto 5% of the cost of apartment, plot etc.

Failure to comply with orders (Sec 65)

- Order of Authority: Every day penalty till the default continues which may cumulate upto 5% of the cost of apartment, plot etc.
- Order of Tribunal: Every day fine till the defaults continue, which may cumulate upto 10% of the cost of apartment, plot etc or imprisonment upto 1 year or both.



Offences, Penalties and adjudication-Allottee



Failure to comply with orders (Sec 67)

- Order of authority: Penalty till the defaults continue, which may cumulate upto 5% of the estimated cost of the plot, apartment etc.
- Order of Tribunal: Every day fine till the defaults continue, which may cumulate upto 10% of the cost of apartment, plot etc or imprisonment upto 1 year or both.



Other provision



The Real estate regulatory authority

- Appropriate government to make authority in 1 year from notification.
- Authority of more than 1 state can be formed.
- More than 1 authority in state is permissible.
- Interim authority till formation.
- Authority to consist of a chairperson.
- Authority to record reason for not disposing application in 60 days.
- Aggrieved person or voluntary consumer association can file complaint.
- Authority to suggest for promotion of real estate sector.
- To regulate real estate.
- To publish and maintain website.
- To fix standard fees.
- To ensure compliance.
- Power to call for information & conduct investigation.
- Power to issue interim order & direction.
- Power to impose penalty & interest.
- Power to adjudicate.
- To operationalize online system with in 1 year of establishment.(Sec 4(3))



The Real estate appellate tribunal

- Appropriate government to make tribunal in 1 year from notification.
- Tribunal of more than 1 state can be formed.
- More than 1 tribunal in state is permissible.
- Interim tribunal till formation.
- Authority to consist of a chairperson.
- Aggrieved person or voluntary consumer association can file complaint only after depositing 30% of penalty & sum payable or both.
- Authority to record reason for not disposing application in 60 days.
- Aggrieved person or voluntary consumer association can file complaint.
- Tribunal not bound by Code of civil procedure & Indian evidence act.
- All the proceedings shall be deemed to be judicial proceedings.
- CA, CS, CWA and lawyers are recognized for representation.
- Power of civil courts.
- Appeal to high court.



Finance , Accounts & Audit

- Grant & Loans by Central & State government.
- Constitution of Funds & its administration.
- Penalties to be credited to consolidated funds.
- Budget Accounts & Audit
- Annual Report

Miscellaneous

- Bar of Jurisdiction.
- Power of appropriate government to issue direction to authority.
- Appropriate government to make rule with in 6 months
- Authority to make regulations with in three month of notification.
- Laying of rules by Central & state government.
- Act to have overriding effect.



Thank You

