
REAL ESTATE REGULATION AND DEVELOPMENT ACT, 2016 - IN THE DIGITAL ERA

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Housing is an essential need of citizens and the provision of housing has been set as an important objective by successive governments in India. The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, thus, absence of professionalism and standardization and lack of adequate consumer protection. Real Estate Regulation Act, 2016 (RERA) is an important effort to regulate the housing and infrastructure.

Objectives

The main object of the RERA is to bring transparency in the Real Estate transactions. RERA aims to protect the rights of the buyers by establishing the Real Estate Regulatory Authority (RERA). It also aims to increase the credibility of the Promoters, Real Estate agents which would aid in preventing the unnecessary delay in the completion and delivery of the project. The RERA Act provides for establishment of Appellant System for Grievance Redressal and to prescribe the penalties and charges for the defaulter

Applicability

This Act is applicable to all the real estate projects where the area of the land proposed to be developed exceeds 500 sq. meters or where the number of apartments proposed to be developed exceeds 8, inclusive all the phases*.

Regulatory bodies

Under the Act three agencies established.

They are:

- Real Estate Regulatory Authority (RERA)
- Real Estate Appellant Tribunal (REAT)
- Central Advisory Council (CAC)

Real Estate Regulatory Authority: The Appropriate Government has to establish or more RERA in each State or Union territory or one or more RERA for one State or Union Territory within one year[†]. It shall consist of a Chairperson and at least two whole-time members.

RERA will act as a nodal agency for enforcing the provisions of the Act, regulating and promoting the real estate sector, protecting the interest of consumers in the real estate

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*Section 3 (2) (a) RERA

†Section 20 (1) RERA

sector and advising the Appropriate Government for the enhancement of this sector. The Act also provides for a comprehensive list of the function of RERA[‡].

For the purpose of adjudging:

- a.) complaints of violation of the provisions of the Act;
- b.) compensation and;
- c.) holding an inquiry under the Act,

The Authority shall appoint one or more judicial officer, who is or has been a District Judge Section[§]. The aggrieved person may either approach the Authority or the adjudicating officer in grievance as the case may be.

Real Estate Appellate Tribunal**

The Benches of the Real Estate Appellate Tribunal have to be established like RERA with the similar composition. The bench shall have at least one judicial and one administrative member. Both the Tribunal as well as the Authority shall have all the powers of a civil court mentioned in the code of Civil Procedure, 1908. REAT shall hear appeals from the decisions, directions or orders of the Authority. No appeal shall lie after the expiry of 60 days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received. Also, when an appeal is filed by a promoter, he has to first deposit an amount to the REAT which is to be decided by the tribunal itself.

Central Advisory Council††

This Act provides a discretionary power to Central Government to establish a council. The major work of this council would revolve around advising and recommending the Central Government on the growth and development of this sector and implementation of the provisions of the Act. Home Minister would be the ex -officio chairperson of this Council.

Registration

To bring uniformity, professionalism, and standardization in the real estate sector, the Act has made the registration of the following mandatory with the RERA –

Real estate project

All the promoters before advertising, marketing, booking, selling or offering for sale whole or any part of their real estate project have to get it registered with the Authority^{††}. This registration is mandatory when the project exceeds the limit. These provisions will curb the practice of pre-launch sale.

Public disclosure of project details

The registration of all the real estate projects whose size exceeds the limit has been made compulsory with the Authority. The promoters after making an application to the Authority receives a registration number within thirty days of applying. Further, the applicant is provided a Login Id and password to access the website of the Authority and to create his web page and to fill the details of the proposed project^{§§}. These details include details of the promoters, layout plan, plan of development work, land status, the status of statutory

[‡] Section 34 of RERA

[§] SEC 71 RERA

^{**} Section 43 RERA

^{††} Section 41 RERA

^{‡‡} Section 3 RERA ,2016

^{§§} Section 5 (1) (a) RERA ,2016

approvals, the disclosure of proforma agreement and details of real estate agent, architect, structural, engineer, etc. Therefore, all the details of a proposed real estate project which is approved by the Authority are made available for on public portal for public access.

Real estate agent

All the real estate agents have to get themselves registered with the Authority before facilitating or acting on behalf of any person to facilitate the sale or purchase of any real estate^{***}. This registration is not permanent and requires a periodical renewal^{†††}. A registration number shall be granted to the agent at the time of registration which has to be quoted by him in every sale he facilitates as per the provisions of the Act^{†††}.

Carpet Area

In simple words carpet area is the net usable space in an apartment. This area excludes the area covered by the external walls and services shafts. The area covered by the internal partition walls of the apartment is included but the balcony or verandha area along with the open terrace area is excluded.^{§§§} While applying for registration of the project, the carpet area has to be also disclosed to the RERA.^{****} To end the manipulation of the area available for use and area sold in a real estate project, the Act imposed a peculiar limitation on the promoters.

Advance

When the parties have entered into a written agreement for sale and have registered such agreement, the promoter is allowed to accept the deposit but the sum shall not exceed ten percent of the cost.

Deposit of amount

The promoter has to deposit around seventy percent of the money realized for the project from the purchasers in a separate account of a scheduled bank. This money could only be used for the cost of construction or cost of land. Such withdrawal from the separate account has to be in proportion to the percentage of completion of the project. Prior certification by an engineer, an architect, and a chartered accountant is required, stating that the withdrawal is in proportion to the percentage of completion of the project. These accounts have to be audited every financial year by a practicing chartered accountant. Lastly, the promoter is bound to produce accounts duly certified and signed, during the audit to verify that the amount realized from the allottees has been proportionately used for the completion that particular project

Refund

When the promoter fails to complete or to give possession of the real estate, as per the terms of the agreement for sale or on the promised date; or due to revocation of the registration of the project or for any other reason. Then if the allottee wishes to withdraw his money from the project, the promoter is liable to return the principle amount received by him in respect of that project, along with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act Section 18 (1) of the Act .If the allottee does not intend to withdraw from the project, the promoter shall

*** Section 9 (1) RERA ,2016

††† Section 9 (6) RERA ,2016

††† Section 9 (5) RERA ,2016

§§§ Section 2 (k) RERA ,2016

**** Section 4 (2) (h) RERA ,2016

pay him, interest for every month of delay, until the possession is handed over^{††††}. The promoter is also liable to compensate the allottees when any loss is caused to the allottee due to the defective title of the land, on which the project is being developed or has been developed^{‡‡‡‡}

Adherence to the Sanctioned Plans^{§§§§}

The promoter shall develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. Any additions or alterations in the sanctioned plans and the project specifications (after they are disclosed and furnished to the allottee) are allowed only with the previous written consent of at least two-third allottees is required.

Transfer of Project

No rights and liabilities in respect of a real estate project shall be transferred or assigned to a third party by the promoter without obtaining prior and written consent from two-third allottees excluding the promoter. There are two obligations imposed upon the transferee or assignee. Firstly, he has to independently comply with all the pending obligations under the provisions and the rules and regulations of the Act, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees. Secondly, no extra time period will be given to complete the project to the transferee or assignee. Liability in case of defects

Structural Defect

To enhance the quality of service and the provisions provided by the promoter, the Act creates another obligation. As per Section 14 (3) of the Act, the promoter has to rectify any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development occurring within five years from the date of handing over possession to the allottee. Such rectification has to be made within thirty days without any further charge else the aggrieved allottees shall be entitled to receive an appropriate compensation as per the Act.

Penal provisions

Under Chapter VIII of the Act, anyone who contravenes the provisions of the Act will be punished. Such punishment is compoundable by the court^{*****}. Section 59 to 66 of the Act provided punishment for both the promoter as well as the real estate agent for either contravention/violation of different provisions of the Act or for noncompliance with the orders and directions of the Authority and the Tribunal. This punishment also extends to the individual allottees when they contravene the orders and directions of the Authority and the Tribunal. .

Jurisdiction

The Authority and the REAT shall have the sole jurisdiction to entertain any suit or proceeding in respect of any matter which they are empowered by or under the provisions of the Act. Also, no civil court shall grant any injunction in respect of any action taken or

^{††††}Section 18 (1) RERA ,2016

^{‡‡‡‡}Section 18 (2) RERA ,2016.

^{§§§§}Section 14 RERA ,2016

^{*****}Section 70 RERA ,2016

to be taken by Authority or the REAT in pursuance of any power conferred by or under this Act.^{††††}

Conclusion

To bring transparency RERA makes it compulsory all the details of project to be uploaded in the website of Regulatory Authority. When the consumer getting all the details in official web site itself, he can directly deal with the Promoters. In future the role of agent/brokers may be reduced. In the digital era if RERA is fully implemented that is by using Technology updating the information in the relevant website as envisaged in the Act consumers will be benefited more. Further Transparency and Accountability will become patent.

References

1. Real estate Regulation Act, 2016
2. *Real Estate (Regulation & Development) Act, 2016 - LAW, CONCEPT & PROCEDURE* - Shambhu Kumar Thakur –Amazon
3. Recent Trends Under The Real Estate (Development And Regulation) Act, 2016 by Anmol kumar and Parth Rawal Singh & Associates

^{††††}Section 79 RERA ,2016