

ICSI - WIRC

Annual PCS Regional Conference

REAL ESTATE

(REGULATION & DEVELOPMENT)

ACT 2016

By CA RAJESH SANGHVI - 98210 12159

3 Segments in the Indian Construction industry namely :

(a). Residential & Commercial construction

(b). Infrastructure building which includes roads, railways, power etc &

(c). Industrial construction that consists of oil and gas refineries, pipelines, textiles etc.

Contributes to more than 11% of the nation's GDP.

Estimated that about USD 650 Billion (about Rs. 43 Lac crs) of investments will be needed in urban infrastructure over the next 20 years.

2nd largest employer & contributor to economic activity, after agriculture sector.

2nd highest inflow of FDI after the services sector

Employs more than 3.5 crs people.

Between 2005-08, the real estate sector grew by about 30%.

It grew by about 8% between 2009-11 and 6.5% in 2012-13.

India will become the world's 3rd largest construction market by 2025, adding 11.5 million homes a year to become a \$1 trillion a year market.

Estimates by CLSA

About 1,300 Billion US\$ (Rs. 85,000 crs)
to be invested in next 7 years

About 6 crs new houses to be constructed
from 2018 to 24

About 20 lac jobs to be created annually
GDP may go up by 0.75%

Boost due to Sec 80-IBA (Houses of 30 or
60 sq mtr)

The India story from 2003 to 2012

GOLD PRICES from Rs. 5,600/- in 2003 to Rs. 31,000/- in 2012

STOCK MARKETS from 3,000 in 2003 to 21,000 in Jan 2008 to about 18,000 in 2012

India – Rank 4

Cumulative illicit outflows from India during 2003 till 2012 is 439,587 Million \$ = Rs. 29 lac crores

Source : Raymond W. Baker - Global Financial Integrity

December 15, 2014

Report of Credit Suisse

India	2010	2016
Top 1% wealthy hold	40%	58%
Top 10% wealthy hold	68%	80%
USA		
Top 1% wealthy hold		42%
RUSSIA		
Top 1% wealthy hold		74%
CHINA	Top 1% hold	44 %

Constitution - 7th schedule

Concurrent List - Entry 6 Transfer of

Property other than Agricultural land

Entry 7 Contracts

State List – Entry 18 – Rights in/over

Land, Land improvement,

colonization

Some Laws on Property etc

Indian Contract Act 1872

Transfer of Property Act 1882

Indian Easement Act 1882

Indian Registration Act 1908

All States have their own land & construction laws, Regulation mechanisms e.g

The Gujarat Town Planning and Urban Development Act, 1976

The Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act

The Gujarat Housing Board Act, 1961

The Gujarat Infrastructure Development Act,
1999

Insurance – IRDA

Central Electricity Regulatory Authority

SEBI

FSSAI – FDA

Pension Fund Regulatory & Development

UGC / AICTE (*now HEERA*)

KVIC

The Agricultural & Processed Food Products

Export Development Authority

TRAI

Central Pollution Control Authority

**BUT NO REGULATOR
AT STATE OR CENTRAL
LEVEL FOR HOUSING
INDUSTRY**

Urban and Regional Development Plans Formulation and
Implementation Guidelines (URDPFI) 2014 by C.Govt
Two Volumes

Volume-I contains planning process, contents of the plans suggested in the planning system etc

Volume-II A - on **legal aspects** covers the implications of 74th CAA, 1992; Land Acquisition, Resettlement & Rehabilitation Act, 2013; Review of the Model Town & Country Planning and Development Law, Model Municipal Law, Legal requirements for industrial development, State level planning framework & other National level requirements for heritage and environment conservation

IN THIS BACKDROP

COMES

R E R A

REAL ESTATE

REGULATION ACT

Passed by Rajya Sabha	10th March 2016
Passed by Lok Sabha	15th March 2016
Assent of President	25th March 2016
Publishing in Gazette	26th March 2016
Certain sections notified	1st May 2016

All India Act - 92 Sections

Rules by Central Govt or State Govt

Each State will have a RERA authority

Regulations made by such Authority

Appellate Tribunal to be established



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 1075] नई दिल्ली, बुधवार, अप्रैल 19, 2017/चैत्र 29, 1939
No. 1075] NEW DELHI, WEDNESDAY, APRIL 19, 2017/CHAITRA 29, 1939

आवास और शहरी गरीबी उपशमन मंत्रालय
अधिसूचना

नई दिल्ली, 19 अप्रैल, 2017

का.अ. 1216(अ).—केन्द्रीय सरकार, भूमिपदा (विनियमन और विकास) अधिनियम, 2016 (2016 का 16) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 मई, 2017 को उस तारीख के रूप में नियत करती है जिसको उस अधिनियम के निम्नलिखित उपबंध प्रवृत्त होंगे, अर्थात्:—

क्रम सं. धारा

1. धारा 3 से धारा 19
2. धारा 40
3. धारा 59 से धारा 70
4. धारा 79 से धारा 80

[फ. सं. ओ-17034/275/2017-एच]
राजीव रंजन मिश्रा, संयुक्त सचिव

MINISTRY OF HOUSING AND URBAN POVERTY ALLEVIATION
NOTIFICATION

New Delhi, the 19th April, 2017

S.O. 1216(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016), the Central Government hereby appoints the 1st day of May, 2017 as the date on which the following provisions of the said Act shall come into force, namely:—

Sl. No.	Section
1.	Section 3 to 19
2.	Section 40
3.	Section 59 to 70
4.	Section 79 to 80

[F. No. O-17034/275/2017-II]
RAJIV RANJAN MISHRA, Jr. Secy.

2616 GI/2017

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SARVESH KUMAR
SRIVASTAVA

Digitally signed by SARVESH
KUMAR SRIVASTAVA
Date: 2017.04.19 18:43:28 +05'30'

As per Govt of India
notification dt : 04-5-2017, all
other sections have been
notified & the Act will be
applicable full fledged all over
India w.e.f 1-5-2017

GUJARAT RERA RULES

TRIBUNAL RULES {GH/V/197} &

GENERAL MATTERS {GH/V/196}

NOTIFIED ON 29-10-2016

REGISTRATION , ETC MATTERS

{GH/V/82} NOTIFIED ON 04-05-17

Definitions : Section 2

Registration of all Projects & Agents

Duties of Promoters

RERA Authority - Regulations

RERA Tribunal (CS allowed)

Offences, Penalties

Miscellaneous

Definitions : Section 2

Allottee - Person who has been allotted/sold or otherwise trfd (freehold or leasehold > 5 yrs) & subsequent purchaser (but not on rent basis)

Apartment - Residential, commercial unit, flat, office - separate self contained part

Carpet Area - Internal usable floor area

No private balcony/ terrace/ Verandah

Includes internal walls - Excludes External walls

Definitions : Section 2

Garage – 3 sides wall enclosed space roof for parking - No open parking or Stilt space

Immovable Property

Includes Land, building, right of way, any other benefit arising out of land

Interest

Rule # 16 – Contractual Rate or MCLR + 2% : 9%

+ 2% = 11%

Common Areas

Land of the entire project or of any phase
Stair case, lifts, lobby, common entrances,
exits, basements, common terraces, play
areas, open parking areas, common storage,
water tanks, ducts, community & commercial
facilities, premises for watch/ward staff,
Common AC-Gas, sanitation etc

Promoter

Person who constructs or causes

constructions - Includes his assignees

Develops land into a project like plotting

with or without structures

Development authority or any public body in

respect of allottees - on land owned by them

or provided by Govt

Promotercontd

Primary Co-op Housing Society

Any person who acts as colonizer , builder,
contractor, or by any other name

POA from owner of Land

Expln – Person who sells the Apts

Real Estate Agent

Any Person who negotiates or acts on behalf of one person to sell/Trf his Apts/plot in a Real estate project to another or help to buy – for remuneration/fees & includes a person who introduces through any medium, buyers & sellers ...

Real Estate Project - Development

of Bldg/s, converting existing bldg into Apts, development of land into plots/apartments for sale of all/some (Lease > 5 yrs) includes common areas , external & internal development works, easement, rights.

**Development means carrying out
the Development of immovable
property , engineering etc IN, ON,
OVER or UNDER the land or making
material change in property &
includes redevelopment**

Advertisement” means any document
(*prospectus*) described or issued as
advertisement through **any medium**

Includes notice, circular or other
documents or publicity in any form,
informing persons about a real estate
project, or offering for sale of a plot,
building or apartment. **Inviting**
persons to purchase in any manner

Sanctioned Plan

All Plans & permissions sanctioned by
Competent Authority prior to start of
Project

Includes Site plan, building plan, service plan, parking & circulation plan, landscape plan, layout plan, zoning plan & such other plan & includes structural designs, if applicable. Environment permission etc, which are approved by the competent authority **prior to start.**

Planning Area

A Planning area or Development area or a Regional development plan, or any area specified by the State Govt or any competent authority - Any designated area to be planning area for future planned development by T & C Planning & as revised

Registration with RERA – Sec. 3

RERA to be established by State Govt in 1
year from 1-5-16

**NO PROMOTER can Advertise,
market, book, sell or offer in any Real
Estate Project (new projects &
ongoing) in any Planning Area without
registering the project with RERA**

No Registration requirement

If Land is below 500 sq mtrs

or

Total number of Apartments does not
exceed 8

or

No Sales/Mktg

Phase Wise Registration

If Real estate project is developed in Phases then each Phase to be treated as a separate stand alone project & has to be separately registered – As per Raj Rules even a Bldg, Wing can be a phase In Mah
...even Floors- **Plan well**

Sec. 4 : Procedure Regn with RERA

As per RERA Rules

Entity details, full details of projects in last 5 years-completed & ongoing , current status, any delays, cases pending, details of type of land & payments pending, copy of Approvals/ CC/ Permissions/ Sanctioned Plans, Demarcation of land..

Procedure for Regn with RERA

Latitude/ Longitude, development works, proposed facilities (water, emergency evacuation , fire etc), Boundaries, Proforma of Allotment letter/Agreement for Sale &/or Conveyance, Details of apartments in carpet area, balcony/verandah, garages, Agents, contractors , architects, engineers etc.

Declaration supported by Affidavit

Order 19 rule 3 – CPC 1908 - Affidavits

Mention facts which are true to the knowledge of the deponent

Mention paras which are true to the belief of the deponent & state grounds for such belief & Source of information

Don't mention hearsay or argumentative matters

Verification is a must

Contents of Declaration - Affidavit

(A). Legal title to the land along with legally valid documents with authentication.

(B). Land is either free from encumbrances or state nature of encumbrances incl name, right, title or interest of any other person in/over land & details

(C). **Time period required for completion of project or phase**

Contents of Declaration - Affidavit

(D). 70% of Amt realized from allottees to be kept in separate Scheduled bank for construction/Land cost of the Regd project

Amount to be withdrawn to cover the cost of project, in proportion to the percentage of completion of the project

Withdrawals to be allowed only if certified by Engineer & Architect & CA.

A/c's audited by CA within 6 months of 31-3

Funds to be restricted to same project

Contents of Declaration - Affidavit

(E). All pending approvals shall be taken on time

(F). Promoter has furnished such other documents as prescribed by the Rules or regulations

Non discrimination against any allottee

Web based system for online submission of applications

Gujarat Rules (Regn) Notified on 04-05-17

Rule 3 – New Projects after 1-5-17

Form No. “A” & Affidavit in Form No. “B”

Submit docs in triplicate

**Cost of Project - bifurcating into - Market value of
land/lease, cost of construction, other costs , interest,
development & other charges , cess etc**

**2 stages- Before registration costs incurred &
estimated cost after Regn**

Means of financing, certified by CA

Development agreements, Collaboration Agreements

Gujarat Rules (Regn) Notified on 04-05-17

Rule 3 – Fees for Registration

Type of Project	Area	Fees
Group Housing Projects	Less than 1,000 square meters	Rs. 5 per square meter
Group Housing Projects	More than 1,000 square meters	Rs. 10 per square meter but not exceeds Rs.5,00,000/-
Mixed Development(Residential and Commercial)	Less than 1,000 square meters	Rs. 10 per square meter
Mixed Development (Residential and Commercial)	More than 1,000 square meters	Rs. 15 per square meter but not exceeds Rs. 7,00,000/-
Commercial Project	Less than 1,000 square meters	Rs. 20 per square meter
Commercial Project	More than 1,000 square meters	Rs. 25 per square meter but not exceeds Rs. 10,00,000/-
Plotted Development	_____	Rs. 5 per square meter but not exceeds Rs. 2,00,000/-

Gujarat Rules (Regn)

Rule 3(5) - Withdrawal of Application

If Application withdrawn in 30 days – 10 % of registration fees or Rs. 50,000/- whichever is **more** to be retained as processing fee.

Remaining Amount to be refunded to the promoter within 30 days from the date of withdrawn.

Gujarat Rules (Regn)

Rule 4 – Ongoing Projects as on 1-5-17

No CC received as on 1-5-17

Form No. “A” & Affidavit in Form No. “B”

Sanction Plan, Layout Plan, Modification

Money collected and balance money

Disclosure of Status of Project & Completion –

certified by CA, Engineer & Architect

Size of Apartment on Carpet Area , sold previously on

super area, super built up etc

As per Ministry of Housing &
Urban Poverty Alleviation ,
Central Govt, Circular dt: 12-6-17,
all Ongoing Project without RERA
Registration are prohibited from
making Ads from 1-5-17

RULE # 5

USAGE OF THE MONEY PARKED
IN THE DESIGNATED BANK A/C

– 70%



Advisable – 4 A/c's.

Master – 30% - 70% - GST

RULE # 5 - 70% Designated a/c

- * Withdrawal of Cost already incurred before registration – CA certified
- * Cost of Land incurred after registration but duly certified by CA
- * Balance in proportion of % completion of work—On CC full withdrawal permitted

Amount to be withdrawn to cover the cost of project, in proportion to the % of completion of the project

How to determine % of completion of project ??

Rules or Regulation may help or ICAI Guidelines or Engineering or such Technical methods

Or it can be total cost of project incurred (though not paid) to total cost of project.

Eg. say estimated total cost of the regd project or any regd phase is say **Rs. 100 cr**

Assume as on a particular date the costs incurred (though not paid) incl land is **Rs.26 cr**

Hence % completion of project is **26 %**

Assume amt recd in bank a/c (70%) is Rs. 35 crs

So use only upto Rs. 26 crs

Continuing the eg.

We retain the estimated total cost **Rs. 100 cr**

Further say as on a particular date the cumulative costs incurred (though not paid) incl land is **Rs. 58 cr**

Hence % completion of project is **58 %**

Assume cumulative amt recd in bank a/c (70%) is Rs. 90 crs.

So use only upto Rs. 58 crs

Audit of every Registered project within 6 months of year ending

General - Statutory auditor & Certifying CA need to be different.

Mah RERA - If Auditor finds any certificate false or incorrect info is given or misuse of funds, then RERA may file complaint with ICAI or such Institutes

ICAI Guidance Note on Accounting for Real Estate Transaction 2012

Percentage Completion Method

Applicable after 1-4-12

Project Costs : Cost of land, Development rights, Borrowing costs directly for project, costs relatable directly to project. Depr of site equipment, designs, guarantee work, expected warranty costs, claims from 3rd parties.

ICAI Guidance Note on Accounting for Real Estate
Transaction 2012

Not a part of Construction costs if they are
material :

-- General Admin costs

- Selling costs
- **Cost of unconsumed material at site**
- **Advance payment to sub-contractors**

Costs that can be attributed to any project

Insurance – specific

Construction / development

overheads

Non specific design costs

Use some rational costing method

ICDS – 3 (For Contractors)

Clause 16 & 17 - Recognition of revenue & costs based on **Stage of Completion of**

Contract on reporting date

Proportion of work completed

No recognition till 25% of completion

ICDS - 3

Clause 18 - % of completion of work -

How to be determined ?

% of contract costs incurred to
estimated total contract costs

Or survey of work performed

Or physical proportion of contract work

ICDS - 3

Clause 19 – in determination of Contracts costs , costs of future activity & advance payment to subcontractors is NOT

included.

ICDS - 4

Revenue Recognition – Para # 6

Companies [Cost Records and
Audit] Rules, 2014

as amended upto 15th July 2016

THE INSTITUTE OF COST
ACCOUNTANTS OF INDIA

Whether Companies (Cost Records and Audit) Rules 2014 would be applicable to Construction companies ?

All Construction companies who meet with the **threshold limits** laid down in the Companies (Cost Records and Audit) Rules, 2014 & undertake jobs with the use of own materials [whether self-manufactured/produced or procured from outside] shall be required to maintain cost records & get cost audit conducted

Construction is a Non regulated sector

Threshold limits for Records : Turnover of **35 crs**
has been prescribed

Micro enterprise or small enterprise as per MSMED
Act, 2006 have been taken out

Threshold limits for Cost audit : Turnover of **100 crs** for
all product and services and **35 crs** for for individual
product or services

**GUIDANCE NOTE ON MAINTENANCE OF
COST ACCOUNTING RECORDS FOR
CONSTRUCTION INDUSTRY INCLUDING
REAL ESTATE & PROPERTY
DEVELOPMENT ACTIVITY**

By

**THE INSTITUTE OF COST ACCOUNTANTS
OF INDIA - 2012**

IMPORTANT

Need sensitive & intricate planning to determine cost of project, credit period from suppliers/vendors, purchase policies, time plan of collections from allottees, bank funds if needed, policy for allocation of overheads, etc

No Registration u/s 3
unless plans are approved
by Local authorities &
permissions / sanctions are
in place

Sec. 5 : Grant of Registration

Registration to be granted in 30 days else **deemed to be granted in 7 days**

Registration number, Login Id & Password

Registration valid for period of project or phase -

Sec. 5(3)

Application may be rejected after hearing & with reason

Rule 6- Regn Certificate by RERA is Form No. C

Sec. 6 : Extension of Registration

Extension may be granted on Application by the Promoter only if Force majeure i.e only war or flood, drought, fire, cyclone, earthquake or natural calamity natural.

Reasonable Circumstances without any default on the part of the Promoter, extension may be granted for the period of **1 year max**

Gujarat Rules

The period of registration excludes work could not be carried due to any specific stay of injunction from any court of law, Tribunal, competent Authority or **mitigating circumstances** as **decided by RERA**

Rule 7 - Extension of Regn – Form # E

Fees equivalent to half of the registration fee & explanatory note for reasons for delay.

No fees for extension due to *force majeure*.

The extension shall not be beyond the period provided as per local laws for completion of project or phase.

Opportunity of being heard

Extension by RERA is Form No. “F” & Rejection of the application Form No. “D”

Sec 7 : Revocation of Registration

On receipt of complaint or suo motu or recommendation of the competent authority

If the Promoter :

makes default in doing anything required or

Violates any of the terms or condition of the approval by competent authority

Does any unfair practice/irregularities – includes false or misleading representation of service of particular standard or false representation of approval or affiliation which is not held by him

Sec 7 : Revocation of Registration

Makes publication of advtg or prospectus of services which are not intended to be offered

Promoter given 30 days of notice & heard
RERA may not cancel but continue Regn
subject to such terms and conditions it
may think fit in interest of allottees

Sec 7 : Cancellation of Registration

If cancelled - Promoter name, Photo, inform all other RERA's , details will come on all RERA website.

RERA shall facilitate remaining development works,

Bank a/c freezed , Protect allottees , such directions

as may be necessary. Consult State Govt – take action

to complete work – 1st Pref by Allottees . Or to

Competent authority

Sec. 11 : Functions of Promoter

Create/update his web page on RERA website

Put all details as given in Regn application on webpage. Quarterly update on number/types of Apts/garages booked, status of project, update list of approvals taken & pending

At time of booking issue allotment letter

Repair structural/other defect free if intimated in 5 years from date of possession.

Sec. 11 : Functions of Promoter

Get OC/CC, Lease deed.

Execute a Regd Conveyance Deed of Apts or

Conveyance of common areas to association

Promoter can cancel Allotment only in terms of

Agreement for sale.

Promoter shall prepare & maintain all such

other details as may be specified by the

Authority

Sec 9 : Registration of Real Estate Agents

Compulsory Registration if they want to deal/facilitate - sale
any apartment in a Real estate project

Rule 10 to 15

The Authority shall grant a single registration for the entire
State

Concept of deemed registration – 30 days

Renewable on same fees

Agent commits breach of any condition or
misrepresentation or fraud – regn can be cancelled –
Hearing

Sec 9 : Registration of Real Estate Agents

Rule 11 – Form G

Brief details of entity , particulars of registration, PAN, Aadhar, Photos , Address proof of business

Fees- Rs. 10,000/- for individual

Rs. 50,000/- for other than individual

Registration valid for period of 5 years

Regn Certificate by RERA is Form-H

Rejection of the application Form-I

Rule 12 –Renewal of Registration

Renewal Application - Form No. J

3 months before expiry of registration granted

Fees- Rs. 5,000/- for individual

Rs. 25,000/- other than individual

Renewal Grant- Form K

Renewal Rejection- Form I

Opportunity of being heard

Renewal shall be valid for 5 years

Sec. 10 : Functions of Estate Agent

No to deal with/in unregistered project

Maintain books of accounts/records – IT Act

No unfair trade practice – False statements (oral or written), show/speak false approvals,

No False claims of services

Help allottee get all papers/documents

Other functions as may be prescribed

GJ – Website – Details of Promoter

Rule # 10

Developer/Group Profile -Type of Entity, Background of promoter, educational qualification, name, address, photo, Track Record-Number of years of experience in construction in the State & other States or Union, Detail and profile of ongoing & completed project for last 5 years and area constructed till date and proposed area to be constructed

G J- Website – Details of Promoter

Rule 10

Litigation - Details in relation to Real Estate

Projects developed or being developed

Details of consultants, contractors, Architects
etc, latitude longitude

GJ – Website – Details of Real Estate Project

Rule # 10

Authenticated copy of Approvals & CC from the Competent Authority, sanctioned plan, layout plan & specification of the whole project or phase sanctioned

Apartment & Garage- number, type, carpet area of Apartment, number, areas , number of open parking areas, Development works, Gantt charts, milestone charts, Financial accounts of Promoter of 3 yrs

Number of parking

Sec 12 : Obligations of promoter reg Advtg & Prospectus

If any Allottee makes Deposit/Advance on the basis of the information contained in the Advtg or notice or any model apts and if he sustains loss due to falsity or incorrectness of such Advtg or model etc, the allottee can claim compensation from Promoter

However if this person wants to withdraw from the project he will be returned his entire investment + interest + compensation

Sec. 13 : Deposit / Advance by promoter

No advance/application fee of more than 10% of cost of Apt is allowed unless Agreement for Sale is made & registered

Format of Agreement - Prescribed and shall specify the particulars of development which includes specification of internal and external development work, the manner and date in which payment is towards cost of Apartment, date of possession, interest payable in case of default by the promoter etc

Agreement for Sale

Supreme Court of India

Sunil Kumar Jain

VS

Kishan & Ors

27 April, 1995

Citations: 1995 AIR 1891 , 1995 SCC (4) 147

“ It is settled law that the agreement of sale does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property ”

Rule 9 - Agreement for Sale

Agreement for Sale – Format – Annexure-A

Application, letter or any other document signed prior to the execution & registration of agreement shall not be construed to limit the rights and interests of the allottee or the promoter under the Act, the rules or the regulation made

Sec. 14 : Adherence to Sanctioned plans

No alterations/addition – Not withstanding any other law or agreement - No additions, alterations , fittings, amenities or plans, specifications of Apartment without previous consent of allottee

Minor alteration due to architectural & structural reasons may be done on recommendation & verification by an Authorized Architect or Engineer after intimation to allottee

Sec. 14 : Adherence to sanctioned plans

No alterations or addition in sanctioned plans, layout plans or specifications of Bldgs or common areas in the project
without consent of 2/3rd Allottees

Same family treated as one allottee

Sec. 14(3) : Adherence to sanctioned plans

If Structural defect, worksmanship ,
quality, services or any obligations of
promoter - Intimated in 5 years of
Possession - Rectification free of cost
in 30 days - Else compensation

Sec 16 : Obligation of Insurance

Promoter must obtain insurance as may be notified by the appropriate Government, in respect of :

Title of the Land & building & Construction of the project.

Pay the premium

The insurance must be transferred to the benefit of allottee or the association of allottee while entering into agreement for sale.

On formation of the association of the allottees all documents relating to the Insurance must be Hand over to the association.

Sec. 17 : Transfer of Title

Execute Regd Conveyance in favour of Allottee alongwith undivided proportionate title to common areas to the Association of the allottees as the case may be & hand over physical possession to allottee or common association & all title documents in such specified time as per State laws. Else 3 months of OC. After OC & handing physical possession , promoter will hand over plans/documents in 30 days

Sec. 18 : Return of Amount & Compensation

Fails to complete or give possession or due to discontinuance of business or De-registration or any other reason

Allottee withdraws then : Return amount + interest + Compensation to allottee

Allottee remains then : Interest p.m till possession

Sec. 18 : Return of Amount & Compensation

If defective title – Any loss caused to

allottee – for such claim No

limitation of time Adjudication

officer

Fails to discharge other obligations

Compensation – Adj officer

Sec. 19 : Rights Duties of Allottee

Information, plans , sanctions details
etc of project – Right to claim refund,
interest & compensation – Possession
within 2 months of OC - Pay interest
for delay – Pay any other charges as
decided

Sec. 20 : RERA

Corporation, perpetual succession ,
seal

Chairperson & Min 2 members – 5 yrs

No financial / other interest – No
abuse

Just because of Vacancy or defect in
appointment RERA no invalid

Sec. 31 – Any **aggrieved** person incl
a Regd consumer assn can file
complaint against
promoter/agent/allottee.

Rule # 11: Complaint in Form “A” - Fees 1,000/-

AGGRIEVED PERSON

**Supreme Court case of Ravi
Yashwant Bhoir vs District
Collector (Civil Appeal No. 2085 of
2012 in Civil Appellate Jurisdiction - SC
) para # 44, a stranger who has no locus
standi cannot be made a party to any
proceedings**

Sec. 36 - Interim orders can be given during inquiry on satisfaction without notice to other side if deems necessary

Can refer matter to Competition

Commission if RERA feels that in any agreement, action, practice, the promoter is preventing or restricting competition or creating monopolistic situation

Sec. 37 & 38 - RERA can impose penalty or interest or give such directions – to promoter, agents or allottees – 60 days
RERA can rectify its orders in 2 years if
mistake apparent from record – However
no amendment if an appeal is pending –

Follow Natural Justice

Sec. 41 – Central Advisory Council by Central Govt to advise on
macro issues

Sec. 43 Real Estate Appellate Tribunal

State Govt to form in 1 year from 1-5-16

One Judicial/ One Technical member.

Sec.44(5)-Appeal against any order/ direction /
decision of RERA/Adj officer – 60 days

Rule # 3 - Form No. “A” - Triplicate -

Fees Rs. 1,000/-

Any State Govt, Competent authority or any person aggrieved by any order, decision or direction of RERA or Adj officer can appeal -
Even regd consumer association can file
_____ appeal _____

Sec. 43(5) - If Promoter files an appeal, at least 30% of penalty or total amount payable to allottee to be paid upfront

REAT

Interim orders can be given

Endeavour to decide in 60 days - else

record reasons in writing for not

disposing the appeal in that period

It can make such orders as it thinks

fit

Sec. 53 - Tribunal not bound by CPC

1908 or rules of evidence in Indian

Evidence Act 1872 – It will be guided by

principles of Natural justice. It can

review its decisions

Sec. 114 of CPC rws order 47 Receive

evidence on Affidavits

Sec. 56

CA/CS/CMA/advocates or in person
or officers – can appear before
RERA, Adjudicating officer or REAT

For Regn rejection , allottees can be called

Sec. 57 – Order of Tribunal executable as
decree of civil court – refer to other Civil
Court for execution

Sec. 58 - Appeal against Tribunal to HC

In 60 days – Where Project located

Only Question of law as per Sec. 100 of
CPC

RERA or REAT orders will enforceable like
court orders

Sec. 70 - Compounding of offences –

As per Rule # 16 – Compounding fees 5 % -

For Sec. 59, 64, 66 & 68 Only

OFFENCES - PENALTIES - ADJUDICATION

Sec. 59 - **Non registration** -

Promoter Penalty UPTO 10% of
Cost of Project as determined by
RERA or Imprisonment upto 3 yrs
or further 10% or both

Sec. 60 - Promoter – Gives False
information or violates Sec.4 -

Penalty upto 5%

Sec. 61 - Promoter – Violates any
provision, rules/regulations -

Penalty upto 5%

Sec. 62 - Real estate agent – Regn &
Functions – Violation - Penalty Rs. 10K
per day upto 5% of cost of
Apartment/Plot – done by him

Sec. 63 – Promoter - Failure to comply
with any order/ direction of RERA – per
day till 5% of cost

Sec. 64 – Promoter - Violation of Tribunal
order/ direction – Penalty per day upto
10% of cost of project or imprisonment
upto 3 years or both

Sec. 65/66 - Real estate agent – Violating
RERA or tribunal orders/directions – Per
day upto 5% or 10% of apartment cost
&/or imprisonment upto 1 year

Sec. 69 – Companies/Firm – Person
(Director/manager/Secretary or any
officer) responsible/In charge &
company will be held

Firms – Include all partners –

Connivance / attributable is imp

Compounding of offence permitted

Sec. 67/68 – By Allottee -
Violation of RERA order/
direction – Penalty upto 5% of
cost of Apartment or Plot -
Tribunal order – upto 10% or
imprisonment for 1 year or both

Sec. 71 – Adjudication – To decide
Compensation Sec. 12 (Advtg) ,14
(Repairs in 5 yrs) , 18 (Not
completing or defective title), 19
(Allottee rights)

Dist Judge level – Rule # 12 Form “B”

Fees 1,000/-

Sec. 71 – Adjudication officer

If complaint on similar issues , the Allottee can withdraw complaint before Consumer courts & approach Adjudicator – Dispose preferably in 60 days – else record reasons for not disposing.

Power to summon etc – Fix Amt

Sec. 72 – Adjudicator will take into

account facts like -

Disproportionate gains or unfair

advantage , if quantifiable

Amount of loss caused if any

Repetitive nature of default etc

Sec. 79 – No Civil Court will have jurisdiction to entertain any suit on any matter which the RERA authority or tribunal or Adjct officer is empowered under this Act. No injunction by any court

Sec. 82 – State Govt can supersede
RERA for 6 months

Sec. 84 – State Govt will make
Rules (GJ made on 04-5-17)

Sec. 85 – State RERA will make
Regulations in 3 months

Sec. 88 – RERA Act shall
be in addition to & not in
derogation of the
provisions of any other
law in force.

Sec. 89 – RERA Act shall
have effect
notwithstanding
anything inconsistent in
any other law in force

Thank You

ICSI

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