

Deciphering Real Estate Regulations

Karnataka State Chartered Accountants Association - August 11, 2017

Presented By: **Sandeep Jhunjunwala, FCA**



Contents

Summary

Content

Presentation Overview

- Need and Objective
- The Build up to the Act
- Preamble and Structure
- Whom does it apply to?
- Real Estate Regulatory Authority
- Impact on Developers
- Real Estate Agents/ Channel Partners
- Allottees – Rights and Obligations
- Judicial Mechanism
- Punitive Provisions
- Teething Issues/ Prevailing Concerns
- Pertinent points relating to some definitions
- Impact on Pricing
- A look at Karnataka Rules
- The Finale - Hits and Misses
- Overall Analysis



RERA RERA everywhere!



RERA will bring a paradigm shift in the real estate sector

It will provide a lasting solution to a number of ambiguities plaguing the sector and protect the interests of homebuyers and developers, says Rajeev Talwar, chairman of Naredco and also CEO of DLF Limited



CEOSPEAR
PRABHAKAR NENA
@prabha09

CEOSPEAR
PROJECTS QUICKE APPROVE

CEOSPEAR
RERA Regulatory Authority (RERA) for May 15, 2017

‘A key area for RERA to address is the time taken by the authorities in granting approvals’

RERA must make a concerted effort to ensure that this process is not time consuming, says Rajeev Talwar, chairman of Naredco and also CEO of DLF Limited, in a conversation with Prabhakar Sinha



CEOSPEAR

EXCERPTS FROM THE INTERVIEW:

THE REAL ESTATE SECTOR IS ALL SET FOR A NEW PHASE UNDER THE REAL ESTATE REGULATION AND DEVELOPMENT ACT FROM MAY 1, 2017

HOW WILL IT AFFECT THE SECTOR?

WILL THERE BE A RISE IN PRICES?

WILL THERE BE A RISE IN PRICES?

RERA era from May Day

Continued from page 1

Homebuyers will pay only for the project area of an apartment which does not include the common area of a construction, on per sq ft basis. This will force developers to quote higher rates per square feet in the carpet area in order to get the same project. RERA will also ensure that the project is completed within the stipulated time. RERA will also ensure that the project is completed within the stipulated time. RERA will also ensure that the project is completed within the stipulated time.

A TRANSFORMATIONAL ACT FOR THE INDUSTRY

FOR THE INDUSTRY

FOR THE INDUSTRY

RERA registration: deadline worries builders

How it works

How it works

How it works

Govt set to notify 'diluted' RERA

Rao Inderjit Singh had asked CM to re-examine rules

Country Planning Department confirmed that RERA is likely to be notified by June 30, but refused to divulge details. The state government is all set to bring in the Haryana's

YOU READ IT FIRST IN TOI

Haryana cabinet to take up Rera today

Focus On 'Ongoing' Project Definition, Parking, Differential Pricing And Pending Litigations

WHAT'S ON CABINET TABLE

SEPARING MOMENT!

July 24 2017

Business & Investment

How will RERA and GST impact the realty sector?

How will RERA and GST impact the realty sector?

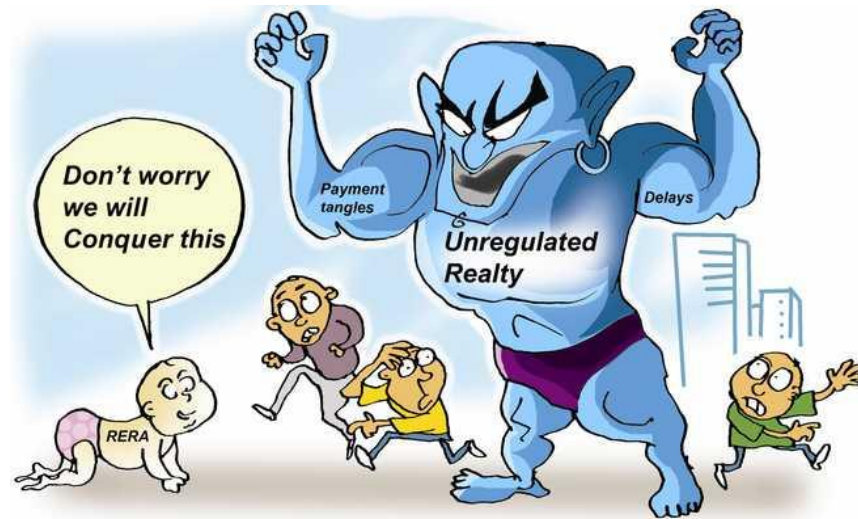
How will RERA and GST impact the realty sector?

Contents

Summary

Content

Need and Objective



Contents

Summary

Content

A step closer to happy home-buying

"Real estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world" - Franklin D. Roosevelt, US president

"The best investment on Earth is Earth" - Louis Glickman, Real Estate investor

"Don't wait to buy real estate. Buy real estate and wait"- Will Rogers, Actor

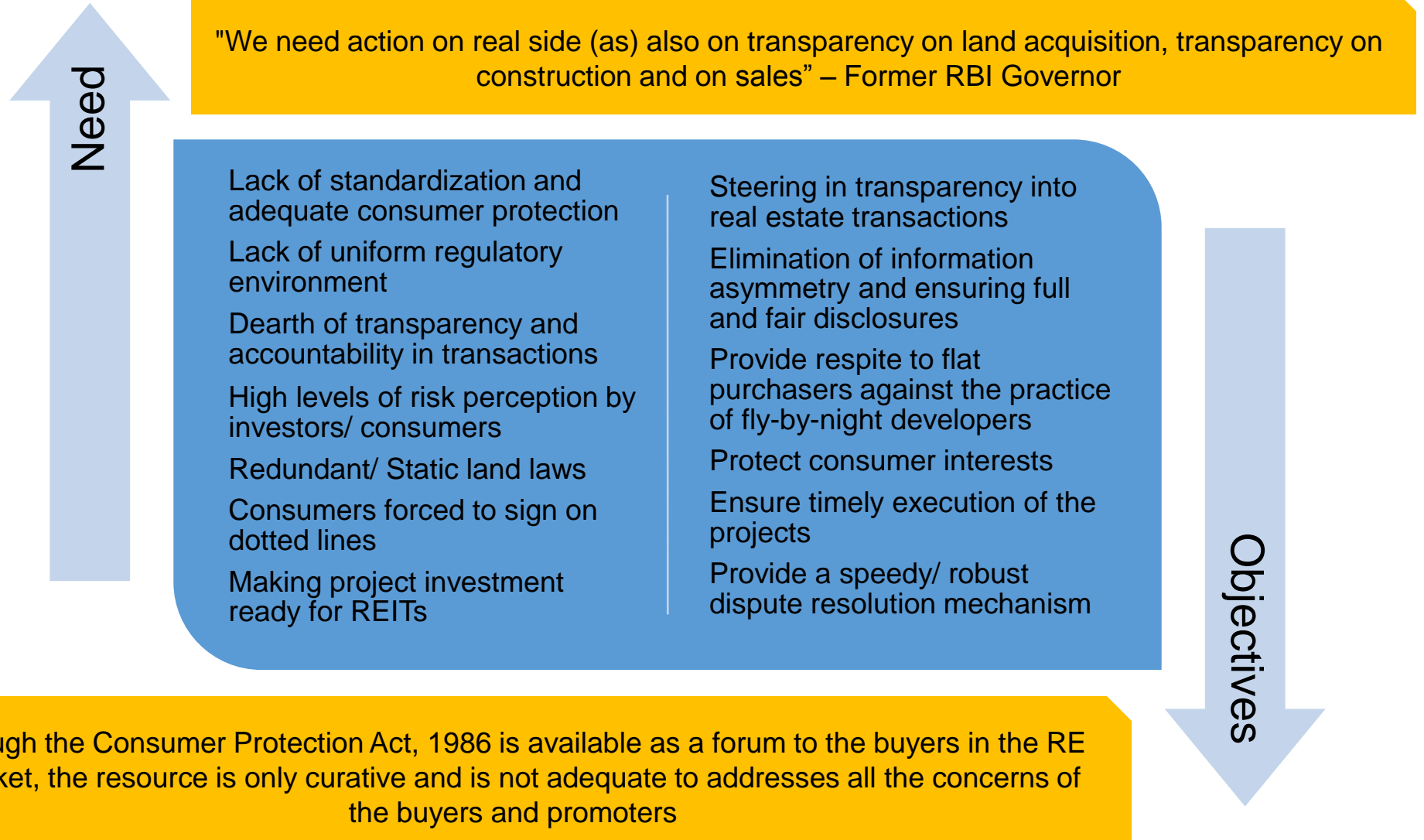
In India – Homebuyer activism, Trust-deficit, deliberate delays, defective land titles, fly-by-night operators, unregulated/ unorganized/ fragmented markets, no provision of compensation from the Government side, fraudulent advertisements, opaque records, pseudo-agents, long drawn litigation, curative (and not preventive laws).....

Contents

Summary

Content

A step closer to happy home-buying



Contents

Summary

Content

The Build up to the Act

Date	Event
January 20, 2009	National conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs proposing a law for RE sector
July, 2011	Ministry of Law & Justice suggested central legislation for RE sector under specified entries of concurrent list of the Constitution for regulation of contracts and transfer of property
June 4, 2013	Union Cabinet approved the Real Estate Bill, 2013
August 14, 2013	Real Estate Bill, 2013 introduced in Rajya Sabha
September 23, 2013	Bill was referred to the Department related Standing Committee
February 2014	Report of the Standing Committee tabled in Rajya Sabha on February 13, 2014 and in Lok Sabha on February 17, 2014
February 9, 2015	Attorney General upheld the validity of central legislation for RE sector and the competence of the Parliament
April 7, 2015	Union Cabinet approved official amendments based on Standing Committee Report
March 6, 2015	Real Estate Bill, 2013 and official amendments referred to the Select Committee of Rajya Sabha
July 30, 2015	Select Committee of Rajya Sabha tabled its Report along with Real Estate Bill, 2015
December 9, 2015	Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of Rajya Sabha for further consideration of the Parliament
March 10, 2016	Real Estate Bill, 2015 passed by Rajya Sabha
March 15, 2016	Lok Sabha passed the Real Estate Bill, 2015
March 25, 2016	The President of India accorded his assent to the Real Estate Bill, 2015
March 26, 2016	Real Estate (Regulation and Development) Act, 2016 published in the Gazette for public information
April 27, 2016	69 Sections (Sections 2, 20-39, 41-58, 71-78, 81-92) of the Act notified by the Ministry of Housing & Urban Poverty Alleviation bringing the Act into force with effect from May 1, 2016 - Remaining to come into force on May 1, 2017

Contents

Summary

Content

The Build up to the Act and thereafter

Date	Event
October 28, 2016	Issues Real Estate (Regulation and Development) Removal of Difficulties Order, 2016
October 31, 2016	Real Estate General Rules, 2016 and Agreement for Sale Rules, 2016 notified for UT of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep
July 10, 2017	The State Government of Karnataka notifies the Karnataka Real Estate (Regulation and Development) Rules 2017

Contents

Summary

Content

Preamble and Structure

Long Title

An Act to:

- **establish Real Estate Regulatory Authority** for regulation/ promotion of RE sector
- ensure sale of **plot, apartment, building, RE project** in an efficient/ transparent manner
- protect **the interest of consumers** in the RE sector
- establish an **adjudicating mechanism for speedy dispute redressal**
- **establish the Appellate Tribunal** to hear appeals from decisions, directions or orders of the Real Estate Regulatory Authority
- for **matters connected therewith or incidental thereto**

Structure

Act has 92 sections divided into 10 chapters as below:

Chapter I
Preliminary
Section 1 – 2

Chapter II
Reg of RE Projects
and RE Agents
Section 3 – 10

Chapter III
Functions and
Duties of Promoter
Section 11 – 18

Chapter IV
Rights and Duties of
Allottees
Section 19

Chapter V
The Real Estate
Regulatory Authority
Section 20 – 40

Chapter VI
Central Advisory
Council
Section 41 - 42

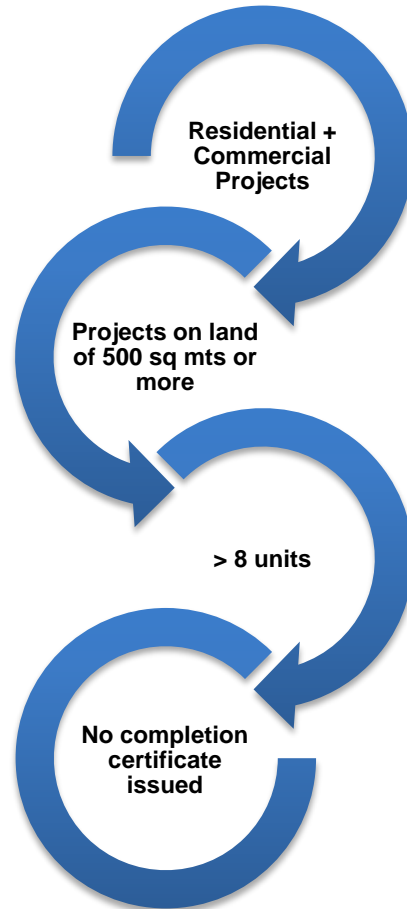
Chapter VII
The Real Estate
Appellate Tribunal
Section 43 – 58

Chapter VIII
Offences, Penalties
and Adjudication
Section 59 – 72

Chapter IX
Finance, Accounts,
Audit and Reports
Section 73 – 78

Chapter X
Miscellaneous
Section 79 – 92

Whom does it apply to...



- States given the right to "lower" the ceiling of 500 sq mts and 8 units;
- RE Act seems to exclude industrial RE such as factories, mines and farms

➤ Act applies to:

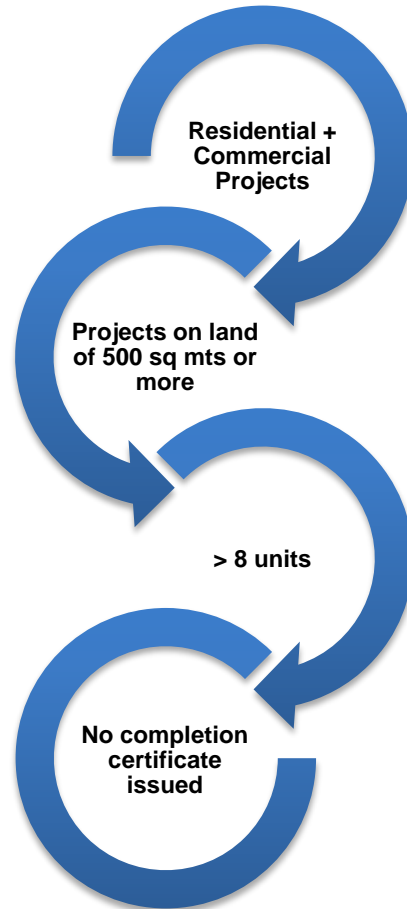
- Commercial RE projects including shops, offices, showrooms, godowns
- Residential Apartments
- Plotted Developments
- Ongoing projects in respect of which completion certificates have not been issued - Retrospectivity?
- Challenge of "impossibility of performance" in absence of a regulatory body in many states – No sales from May 1?

➤ RE projects developed in **Phases** would require registration for each phase separately

➤ Exemptions:

- Projects being developed on land less than 500 sq mts (0.05 hectare or 0.12 acre)
- Number of units does not exceed 8 (all phases)
- Obtained completion certificate for the project before the commencement of the Act
- Redevelopment RE projects where no new allotments are to be made
- Renovation/ Repair - Not involving marketing, advertisement, selling or allotment of any apartment, plot or building
- Sale of ready to occupy property in the resale market

Whom does it apply to...



➤ Outside the purview

- Projects developed to be leased (ie not for sale)
- Unsold projects in respect of which CC has been received
- Projects outside the "Planning Area" may not need registration

➤ Promoter - In case of Joint Development Agreement (JDA), both land owner and builder should be jointly responsible under the Act; may need separate registrations and liable to discharge functions and responsibilities independently – **Confirmed by Maharashtra RERA Authority**

➤ The Ministry of Housing & Urban Poverty Alleviation had set October 31, 2016 for States to frame Rules under this Act and April 30, 2017 as the deadline to establish Real Estate Regulatory Authority/ Appellate Tribunal – *Almost all states are non-compliant*

➤ State Governments have started framing rules appurtenant to the law – *most have notified, rest at draft/ planning stage*

- States given the right to "**lower**" the ceiling of 500 sq mts and 8 units;
- RE Act seems to exclude industrial RE such as factories, mines and farms

Contents

Summary

Content

Real Estate Regulatory Authority

Page 12

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Real Estate Regulatory Authority ('RERA')

- RE Act provides for establishment of the RERA in all states to regulate projects being developed in that state, which shall have the powers of the Civil Court while trying any suit
- To be set up by the State Government(s) within a period of 1 year from the date of this Act coming into force
- Until the establishment of RERA, the State Government shall designate any Regulatory Authority (or Secretary of the Housing Department) to perform the functions of RERA
- RERA to act as the nodal agency to co-ordinate efforts regarding development of the RE sector and render necessary advice to the State Government to ensure the growth and promotion of a transparent, efficient and competitive RE sector
- To recommend to the local authorities and State Government, the creation of a single window system for project approvals

The RE Act does not contain concrete steps to address the long standing demand of the developers for a single window system. Structurally, therefore, the RERA results in a fundamental imbalance, where the Developer is put under onerous obligations on various aspects related to the development of the project but there is a lack of an appropriate mechanism that ensures timely approvals towards the same

RERA is intended to perform the same role for property/ RE transactions as the SEBI does for security transactions in the capital markets

RERA - Functions and Powers



FUNCTIONS

SECTION 34



- Registration and regulation of RE projects
- Maintenance of a database on its website for public viewing of all registered RE project, details of developers and RE agents
- Fixation of standard fees to be levied on the allottees, promoters or RE agents
- Ensure compliance of its regulations and other obligations cast upon the promoters, allottees and RE agents



POWERS

SECTION 35 - 38



- May *suo moto* or on receipt of complaint, call for information and conduct investigation
- May issue interim orders during the pendency of proceedings
- Has the power to impose penalty or interest in regard to the contravention of the of the obligations cast upon:
 - Developers
 - Allottees or
 - RE agent

Contents

Summary

Content

Impact on Promoters/ Developers

Page 15

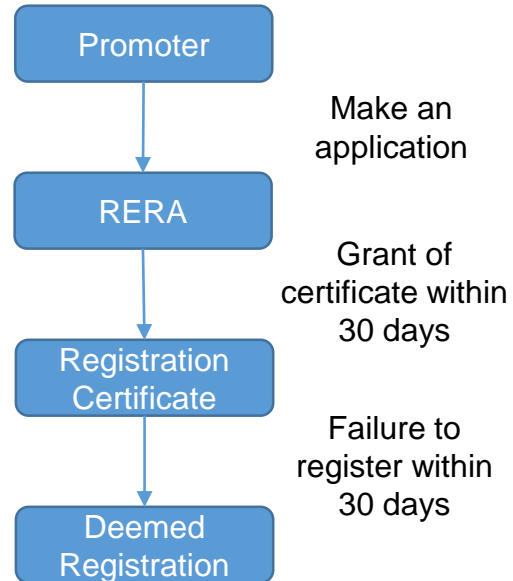
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Contents

Summary Content

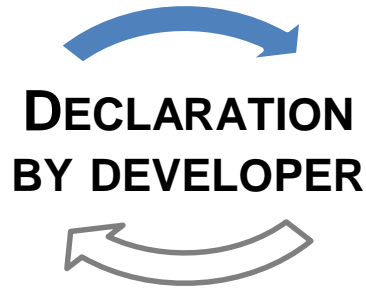
Registration



- Registration to be granted for a **specified period** (time period within which the developer expects to complete the project).
- **Extension possible upon application in reasonable circumstances without promoter's faults (including "Force Majeure" conditions). Period of extension in aggregate not to exceed 1 year.**

- Project promotions/ advertisements/ marketing/ selling/ booking not permitted before registration with RERA – *FAQ: Not even SMS/ emails*
- Application for registration to disclose:
 - Brief details of enterprise ie name, registered address, type of enterprise
 - Details of projects launched in the past 5 years, litigations, status of other projects and delays
 - **Copy of commencement certificate**, sanction plan, layout plan, development plan to be executed etc
 - Location details of project, clear demarcation of the land proposed to be developed
 - **Proforma of allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees**
 - Number, type and carpet area of apartment and area of **garages/ parking area**
 - Details of **RE agents, contractors, architect, structural engineer etc**
 - **Declaration** supported by an affidavit, signed by the promoter (details on next slide)

Registration



- **Legal title** to the land proposed to be developed and details thereof
- Land is **free from encumbrances** or details thereof, as the case may be
- Time period within which the project is proposed to be completed
- **70 percent of the amounts** realized from the project shall be deposited in a **separate account** (*not an escrow account - confirmed by FAQs*) in a **scheduled bank** and that it would be **utilized only for cost of construction and land cost**
- Undertake to obtain pending approvals in a timely manner



- Developer mandated to deposit the funds collected from the allottees in a **separate bank account** and any withdrawal from the separate bank account would have to be certified by **an Engineer, Architect and a Chartered Accountant*** that the withdrawal is in proportion to the percentage of completion (PoC) of the project
- Further, **mandatory audit** of accounts within 6 months from the end of FY - Auditor to verify and specifically certify usage of funds as per PoC method

The Pre-withdrawal certificate needs to be signed by 3 professionals. The CA will have to rely on the Architect and Engineer for PoC. The Architect and Engineer in turn would have to rely on the CA to certify withdrawal numbers. **What if there is no overall collective consensus?**



Certain local statutes such as the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management & Transfer) Act, 1963 had a similar provision that required the promoter to maintain a separate bank account for the receivables from the project, which was not implemented in practice by the promoters, who considered funds received from allottees of various projects as fungible.

Contents

Summary Content

70 percent condition – An illustration

Cost Assumptions

Land cost	20
Construction cost	20
Overheads, Interest, Others	30
Project Cost	70

Sale Assumptions

Land	50
Construction	50
Sale value	100

Payment and Construction Schedule

	Instalment	% Completion
Booking	10%	0
1 st Milestone	25%	20%
2 nd Milestone	25%	40%
3 rd Milestone	25%	70%
4 th Milestone	10%	85%
Possession	5%	100%

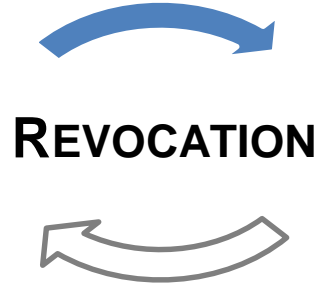
Particulars	Cumulative cash flow	Amount that needs to be deposited (70%)	% completion X Project cost (cumulative)	Retentions (Restricted Cash)
Booking	10.00	7.00	0	7.0
Instalment 1	35.00	24.50	14.0	10.5
Instalment 2	60.00	42.00	28.0	14.0
Instalment 3	85.00	59.50	49.0	10.5
Instalment 4	95.00	66.50	59.5	7.0
Possession	100.00	70.00	70.0	0

Float - Collateral for other projects?

How will this work in JD arrangements (Revenue as well as Area sharing)?

*Few states including Maharashtra have clarified that marketing related costs could not be considered for withdrawal from the 70 percent account. The rules in Karnataka are silent on this aspect. However, as marketing costs are not related to "development" of real estate project but for its "sale", a position is possible that marketing costs would not form a part of cost of construction.

Registration



- Promoter is in **default of the requirements** of the Act/ Rules/ Regulations
- **Violates terms and conditions** of the approval given by the competent authorities (local authorities - BDA, BBMP etc)
- Involved in "**unfair practice or irregularities**" – Explanation to Section 7
- Opportunity of being heard with 30 days' speaking notice, in writing

- **Debar** the promoter from accessing its website
- Listing of developer as **defaulters**
- **Freezing** Bank accounts
- Inform RERA in other States/ UTs about such revocation
- **Handover of the development** to Association of allottees/ Competent Authorities upon consultation with State Govt
- **Right of first refusal** for completing the construction lies with the Association of allottees



Functions and Duties of Promoter

Webpage on RERA website

- Details of registration granted by RERA and quarterly updates on – Number/ types of apartments or plots booked, approvals granted, status of the project etc

Information to the allottees

- Sanctioned plan, layout plan, stage wise schedule of completion of the project including the provisions for civic infrastructure like water, sanitation and electricity

General

- Responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations
- Responsible for obtaining leasehold certificate, completion/ occupancy certificate
- Providing and maintaining essential services until take over of the maintenance by the Association of allottees
- Execute a registered conveyance deed of the apartment, plot or building within 3 months from the date of issue of occupancy certificate
- **After executing agreement for sale, not to mortgage or create a charge on the apartment, plot or building**
- **Cancellation of allotment only in terms of the agreement for sale**

Veracity of Advertisement

- Responsible for compensation for loss or damage caused due to incorrect/ false statement made in prospectus or notice of advertisement or in relation to the model apartment, plot or building

- **Under this Act, Developers can sell units only on carpet area, which means the net usable floor area of an apartment. This excludes the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.**
- **'Carpet area' would be the basis for RE purchases. Buyers would now be paying only for the carpet area and not the 'super built-up area'.**
- **Exclusive balcony and open terrace area should mean the area belonging and to be used by the specific allottee.**

Functions and Duties of Promoter

Advance Payment/ Application Fee

- Prohibited from taking more than **10 percent of cost of apartment, plot or building** as advance payment from allottees without first entering into a written agreement for sale* and registering the same

Alteration

- Any structural alteration/ addition to the sanctioned plan can now be made only with the previous written consent of **at least 2/3rd of the allottees** (other than the Developer)
- **Minor additions or alterations** permissible due to architectural and structural reasons

Transfer/ Assignment

- Transfer/ Assignment of majority rights and liabilities in respect of RE projects to third party would now require period written consent of 2/3rd allottees and RERA
- No extension of time to the intending promoter in order to comply with all the pending obligations of the erstwhile promoter

Interest

- Payment of interest to the allottees in cases of default (rate of interest for this purpose has been fixed at the same rate which the allottees would have to pay in the case of default)

Insurance

- Obtain insurance as may be notified by the appropriate Government, including in respect of the title of land and construction of RE projects

Handover

- Any failure on the part of Developer to hand over the possession of the property in accordance with the agreement for sale would empower the Allottees (at their will) to withdraw from the project and demand refund of the amount paid along with interest

* The Developer needs to accept payments from Allottees only by crossed account payee cheques or Demand Drafts or through internet banking such as RTGS/ NEFT/eCMS in view of **Section 269SS** of the Income tax Act, 1961. Similarly, refunds on cancellation of allotments, if any, should be made through the same channels to comply with **Section 269T** of the Income tax Act, 1961.

Functions and Duties of Promoter

No limitation

- Claim of compensation due to defective title of land etc not subject to the law of limitation provided under any other law (*Sword of Damocles hanging over for lifelong*)

Defect liability

- Fixing **structural defects** or **any other defect in workmanship, quality or provision of services** or **any other obligations of the promoter** as per the agreement for sale **for 5 years after handing over possession to the allottees** without any further charges
- Defect needs to be rectified **within 30 days** and failure to rectify such defects within 30 days entitles the allottees to compensation

5 years to be considered from:

- Date of possession of the respective unit or all units in the apartment or handing over of common area to the association of allottees?
- What if there are unsold units or units sold subsequently in later years. Whether liability for structural defect would be considered from the date of last unit sold?

Are 30 days enough for rectification? Identifying the contractor, deploying labour and completion of rectification within 30 days seems far fetched

Contents

Summary

Content

Real Estate Agent

Page 23

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Sandeep Jhunjunwala



Contents

Summary

Content

Real Estate Agent

Every RE agent is required to be registered with RERA for facilitating sale, purchase of any RE project

RE Agent shall not facilitate purchase or sale of RE project not registered with RERA

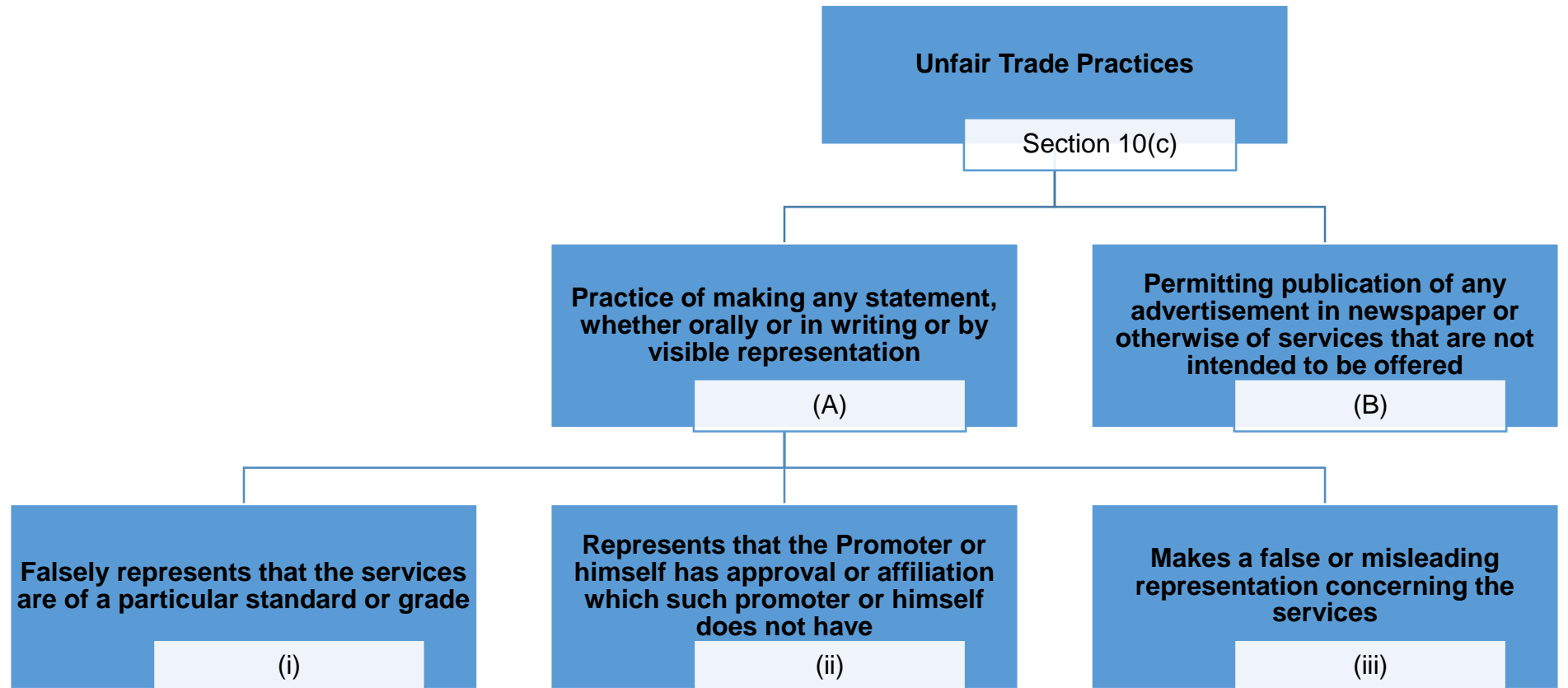
Maintain and preserve books of accounts, records and documents as may be prescribed

Not involve in any **unfair trade practices**

Facilitate the possession of all the information and documents to the allottee

Section 2(zm) - "Real Estate Agent" means **any person**, who **negotiates or acts on behalf of one person** in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, **by way of sale**, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services **whether as commission or otherwise** and includes a person who introduces, through **any medium**, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and **includes property dealers, brokers, middlemen by whatever name called**

Unfair Trade Practices



Pertinent points

- Can they piggy-back on the disclosures of the promoters?
 - No, they can't
- Definition of 'Real Estate Agent' includes any person who negotiates or acts on behalf of one person in a transaction of for sale of real estate with another person and receives remuneration for his services. It includes a person who merely introduces prospective buyers and sellers to each other for negotiation for sale of real estate.
 - Seems to be an impractical proposition given the tens of thousands of people, having regular jobs, who sometimes moonlight as middle men for a small commission
 - Online portals such as 99acres.com, Housing.com, Common Floor etc should get covered (*confirmed by FAQs*)
- Consolidation is bound to happen and many may leave the field
 - To remain in the mainstream, certain minimum scale needs to be achieved
- Fate of older state laws such as the Haryana Regulation of Property Dealer and Consultancy Act, 2008
 - Interestingly, this law is not listed in the list of repeals
 - Except for the requirement of registration (a process requiring fee) and the obligation of maintenance of a register, the instant law does not actually mainstream or bring professional standards into property brokerage
 - Law also silent on the qualifications of a broker/ RE agent (for instance certified trainings etc which is prevalent in European countries and the Middle East nations). State Governments focused to garner more registration fee rather (INR 500,000 as per draft rules in Karnataka!)

Contents

Summary

Content

Allottees – Rights and Obligations

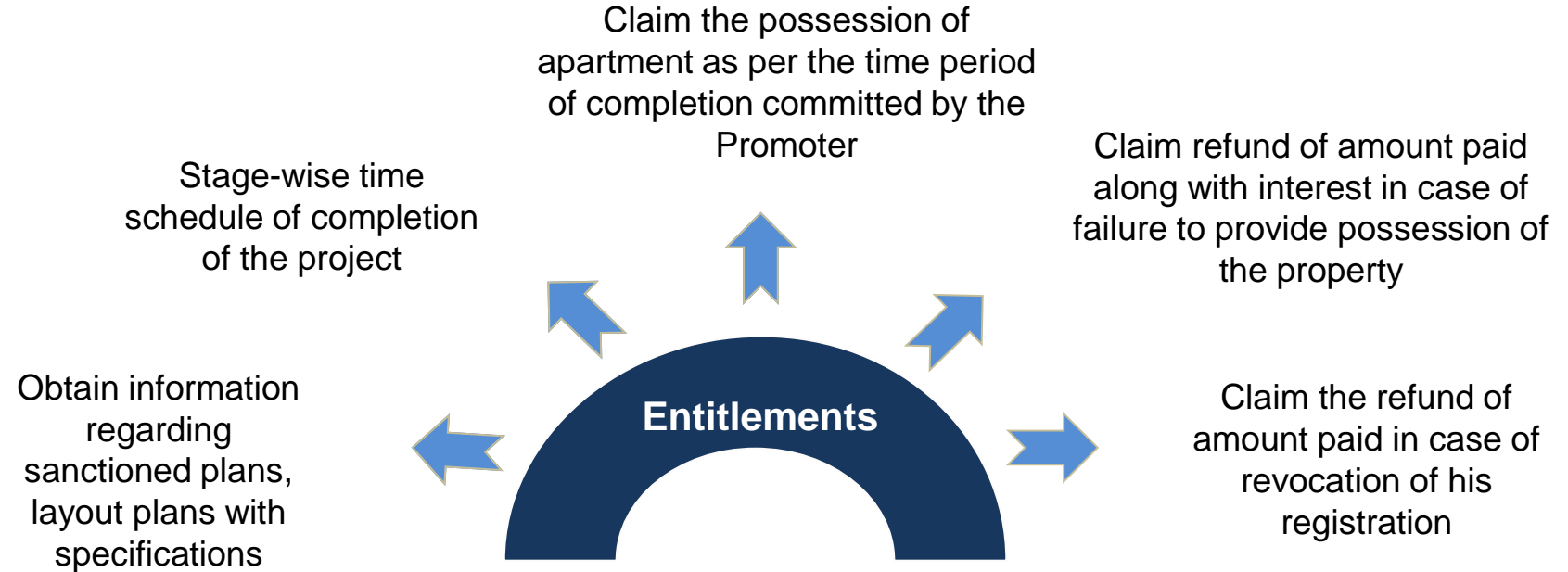


Contents

Summary

Content

Entitlements



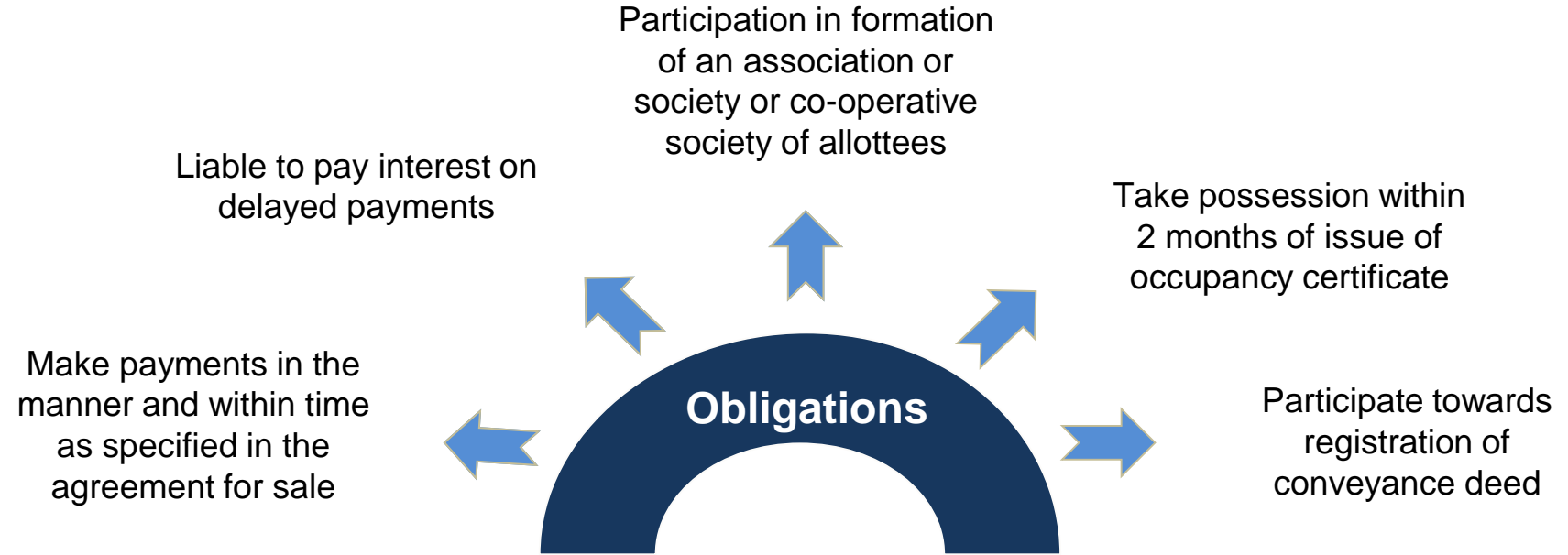
Section 2(d) - Allottee in relation to a real estate project includes a **person to whom a plot, apartment or building, as the case may be, has been allotted, sold** (whether as freehold or leasehold) or otherwise transferred by the promoter but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. **Normally, a person to whom the plot, apartment, building is given on leasehold basis would be paying rent and therefore a clarity is required to that effect**

Contents

Summary

Content

Obligations



Contents

Summary

Content

Judicial Mechanism

Page 30

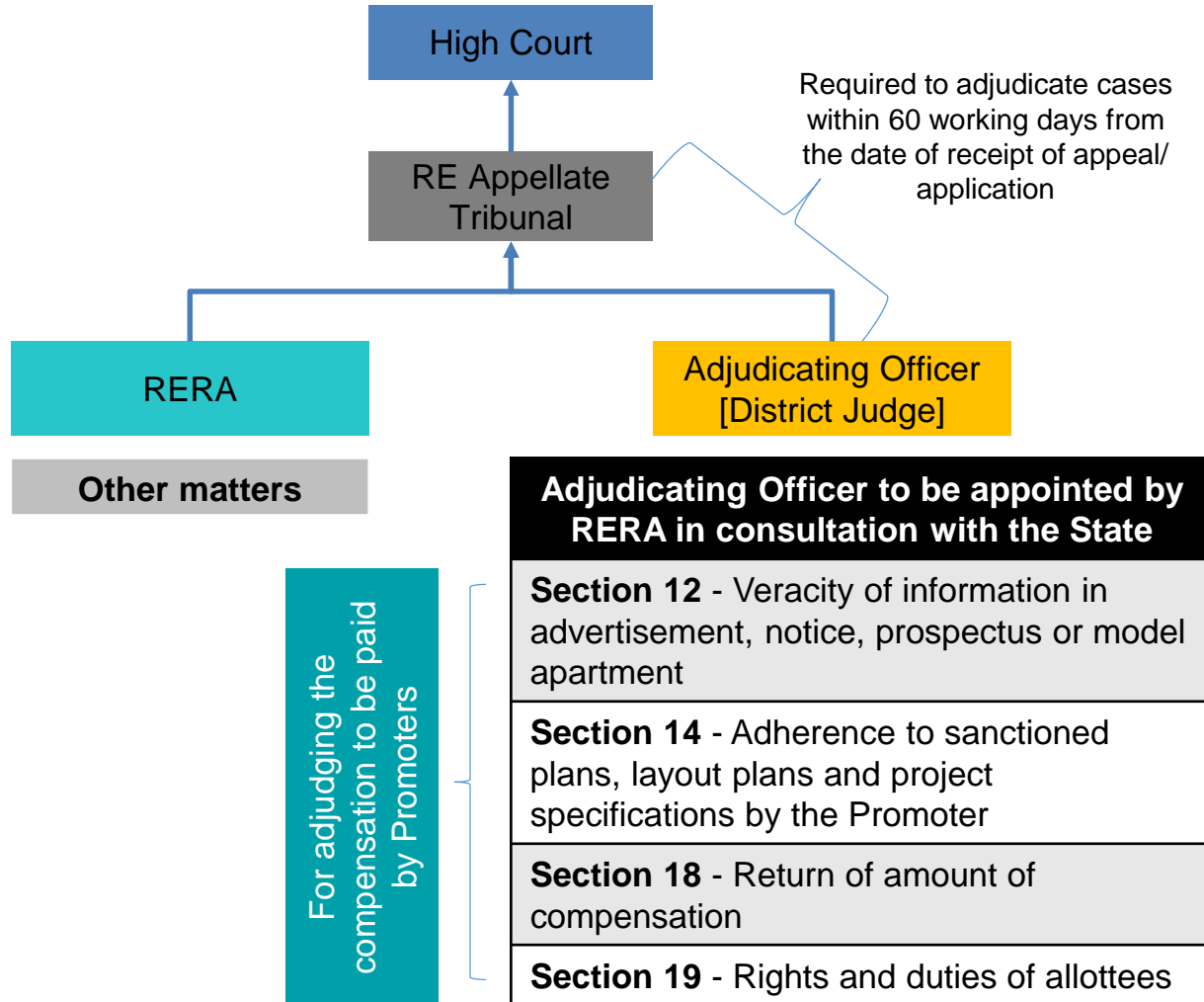
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August 11, 2017
Sandeep Jhunjunwala



Contents

Summary Content

Judicial Mechanism



- Any dispute resolution relating to matters on any violation or contravention of provisions is through RERA or the Adjudicating Officer
- **No recourse to civil courts** on matters covered under the RE Act – Declaration that case is not pending needs to be given.
- **Consumer forums (National, State or District) not been barred** from the ambit of the Act
- In respect of matters pending before Consumer Courts, the Appellants **have the option to withdraw such** complaint and file an application before the Adjudicating Officer
- **Pre-deposit at REAT level:** 30 percent of penalty for Promoters or 100 percent of interest/compensation for allottees
- REAT to be headed by a sitting or retired Judge of the High Court, with one judicial and one administrative/technical member
- **Consumer court case versus RERA - Which one to choose?**

* Section 31 – As per the definition of “aggrieved person”, even an outsider (who is not the customer or the association of allottees) could file a complaint with the Adjudicating Authority or the officer

Contents

Summary

Content

Punitive Provisions

Page 32

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Defaults and Penalties

#	Nature of offence	Penalty	Prosecution
Promoter			
1	Advertise, market, sell or offer for sale or invitation to public to purchase the plot, apartment or building without registration with RERA	Extending up to 10 percent of the estimated cost of RE project	In case of non-deposit of penalty or continued violation - Imprisonment for a term extending up to 3 years or fine upto 10 percent of the estimated cost of the RE project or both
2	Failure to make an application for registration of RE project or providing false information	Extending up to 5 percent of the estimated cost of the project	-
3	Failure to comply with the orders or directions issued by RERA	Penalty for per day of default, which may cumulatively extend up to 5 percent of the estimated cost of the project	-
4	Failure to comply with the orders or decisions of the Appellate Tribunal	Penalty for per day of default, which may cumulatively extend up to 10 percent of the estimated cost of the project	Imprisonment for a term extending up to 3 years or fine
5	Contravene any other provisions other than listed above (including failure to register the agreement for sale)	Extending up to 5 percent of the estimated cost of the project	-

- Any punishment with imprisonment may, either before or after the institution of the prosecution, be compounded by the Court on such terms and conditions and on payment of such sums as may be prescribed - Section 70 of the Act

Defaults and Penalties

#	Nature of offence	Penalty	Prosecution
RE Agent			
1	Failure to obtain registration or fails to comply with his functions as prescribed	Penalty of INR 10,000 for everyday during which the default continues, cumulatively which may extend up to 5 percent of the cost of the apartment, plot or building	-
2	Failure to comply with the orders or directions issued by the RERA	Penalty for per day of default, which may cumulatively extend up to 5 percent of cost of the project	-
3	Failure to comply with the orders or decisions of the Appellate Tribunal	Penalty for per day of default, which may cumulatively extend up to 10 percent of the estimated cost of the project	Imprisonment for a term extending up to 1 years or fine
Allottees			
1	Failure to comply with any order or decision of RERA or Appellate Tribunal	Penalty for per day of default, which may cumulatively extend up to 5 percent of cost of the project	Imprisonment which may extend to 1 year or fine (imprisonment is compoundable as per Section 70)

- Any punishment with imprisonment may, either before or after the institution of the prosecution, be compounded by the Court on such terms and conditions and on payment of such sums as may be prescribed - Section 70 of the Act
- In the cases of companies (which is defined as per Section 69 to mean body corporate, firm, association of individuals), every person is in charge for the conduct of the business and the Company shall be deemed to be guilty of the offence. The person in charge would not be liable for punishment if it is proved that the offence was committed without his knowledge or that due diligence was exercised to prevent the commission of such offence.



Contents

Summary

Content

Teething Issues/ Prevailing Concerns

Page 35

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjunwala



Teething Issues/ Prevailing Concerns

Ring Fencing of Project Receivables:

- Amount required towards construction is generally 40-50 percent of the collection (depending on the city); excess 20-30 percent would be lying idle in the account whereas at the same time, the developer may need to pay interest on loans borrowed for construction etc
- Withdrawal only for cost of construction and land:
 - Fund for meeting customer refunds for cancelled units?
 - Seed capital for commencement of another projects – Should the promoter rely on balance 20-30 percent?
- Interpretation can be derived from Accounting Standard - 7 on "Construction Contracts" to compute the percentage completion - Does not provide for inclusion of land cost in determining the completion ratio.
- PoC to be considered including land cost or excluding that (AS-7/ Ind-AS-11)?
- How can a professional certify a withdrawal to be in proportion with PoC even before the withdrawal is made? Clarity needed on this aspect
 - A. % of completion of project till date
 - B. Amount that could be withdrawn based on (A)
 - C. Cumulative amounts already withdrawn till date
 - D. Amount that could be withdrawn = B – C

Teething Issues/ Prevailing Concerns

- PoC is a subjective concept
 - Format of certification
 - PoC on accounting principles (CA)/ physical progress (Architect & Engineer)?
 - PoC to be considered including land cost or excluding that (*conflicting views from AS-7*)?
 - PoC – Project wise/ tower wise (if multiple towers in same phase)?

- Seventy percent withdrawal would:
 - Result in negative working capital and deleveraging
 - Impact individual projects cash flow (may not have significant bearing on entity level cash flow)

- Section 4(2)(I)(D) of the Act uses the word “seventy percent” and not “at least 70 percent”.
 - Appears from the intention of the requirement that the promoter can deposit more than 70 percent of the amount realized
 - Intention could be to provide a cushion of 30 percent to the promoter so that the funds could be used to book lead for other projects

- Commercial properties, even if partly held for sale, shall be covered – Triggered if developer/ land owners takes "stock-in-trade" positions on commercial developments (position now common for Projects – CBDT circular dated April 25, 2017 and SC rulings of Chennai properties and Rayala Corporation)

- Long lease transactions/ Built-to-lease models/ SEZs – Whether long leases are regarded as "sale"?



Teething Issues/ Prevailing Concerns

- **Section 11(4)(e)** – Promoters responsible for formation of Association or society; within 3 months from the date of majority of units being booked.
 - What constitutes "Majority"? – Maharashtra RERA says 51 percent of booking constitutes "Majority"
 - What if allottees are not willing to form Association? Usually customers are not very keen to form Associations at the booking stage
- **Section 11(4)(f)** – Undivided proportionate title in the common area to be registered with the Association of Allottees
 - Current practice is to distribute the undivided share of common area to all the units in the project
 - Stamp Duty implications?
 - Indirect tax (VAT/ Service tax) implications? Who would bear the costs?
- **Section 11(4)(g)** – Outgoings collected from customers
 - Water/ Electricity related deposits, Khata charges, taxes etc could not be collected on an adhoc basis as the Promoter needs to pay actual amounts so collected, to the authorities
 - Separate disclosures in agreement?
- **Section 11(4)(h)** – Not to mortgage or create charge on apartment, plot or building subsequent to agreement for sale
 - Whether this would restrict the builder from mortgaging the land for arranging construction finance?

Teething Issues/ Prevailing Concerns

- **Section 11(5)** – Cancellation as per agreement for sale – What if the customer books the unit and does not turn up for executing the agreement for sale?
- **Section 15 – Transfer of RE Project to third parties**
 - Project level stake sale possible?
 - Requires approval from 2/3rd allottees + RERA
- **Section 16 – Insurance**
 - Insurance of land title to ensure that claims made on the land can be satisfied by the Insurance companies. Developer not to be burdened to make payments in respect thereof
 - So far, only few Insurance companies have launched such schemes (prevalent in some European countries).
 - Shall ensure marketability of the apartment to be purchased by the homebuyer
 - Insurance to stand transferred to the Allottees or Association at the time of promoter entering into the agreement for sale. Currently, insurance taken by the builder is endorsed/ transferred to the lender till the date of the complete repayment of borrowing
- **Section 17 – Conveyance deed** to be executed within 3 months of the date of obtaining occupancy certificate
 - As per local laws, builder need not complete the common area to obtain occupancy certificate, completion of essential services suffices
 - Whether Association would accept the conveyance deed before completing the common area in all respects?
 - What is the customer has not paid the entire dues to the builder within 3 months of getting occupancy certificate?

Teething Issues/ Prevailing Concerns

- Projects recently approved, but not formally launched – whether this Act would apply?
- Calibration with Land Acquisition, Rehabilitation and Resettlement Act, 2013
- Strict compliance with sanction plan
 - As per local laws, deviation up to 5 percent is accepted by the authorities
- States to establish state regulators within the timelines provided and implement the Act (no ratification/ consent required as this Act is not a Constitutional Amendment Act affecting the States)
- Act under the purview of the concurrent list and hence both the Union and the State can legislate – Fate of the State enacted real estate legislations such as the Karnataka Apartment Owners' Act, 1972
- Glaring differences in Karnataka State legislation for RE and RERA – Advance (10 percent vis-à-vis 20 percent), Defect liability period (5 years vis-à-vis 1 year), Alternation and Penalty related clauses – Home buyers could be entangled between the two laws – State laws need to be ironed out accordingly
- Section 88 and 89 of RERA – Contradictory? – Provisions of RERA will be in addition to and not in derogation to any other law currently applicable + Overriding principles retained
 - Should the stronger of the contradicting provisions in RERA and the State legislation (ie one more beneficial to the buyer) apply?
 - A fair reading suggests this

Teething Issues/ Prevailing Concerns

➤ Doctrine of occupied field?

- When on a particular subject of the concurrent list on which the State has made a law and subsequently the Union also makes a law on that subject, the field get occupied by the Union legislation and the State legislation cannot hold something contrary to the Union legislation

➤ When a state law has been passed with President's assent instead of the Governor's. In such a case, which law prevails?

- Maharashtra Housing (Regulation and Development) Act has President's assent
- Article 254 (2) of the Constitution of India – *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State*

➤ Law allows state to create one or more Real Estate Regulatory authorities as may be needed with regard to its geographical extents, diversity and real estate development activity

- Consumer Protection law has a well defined spatial grid – present in every district
- Real Estate Regulatory authority being a state forum would be located in the capital city
- Approvals to be obtained locally and adjudication in capital city; additional benches could have been set up in cities with high degree of RE development activity



Teething Issues/ Prevailing Concerns

- Responsibility of the Regulatory Authority (Section 32, 33 and 34)
 - No 'assurance' function like other parties which accord development permission such as local government, PWD, Fire safety etc
 - Function essentially to create an information forum
 - Authority takes no responsibility of streamlining the approvals/ NOC process, nor does it reduce the no of approvals required for a RE project

- By default, the law should apply to all such projects where a completion/ occupancy certificate has not been issued. However, some states (such as Gujarat and Uttar Pradesh) have gone ahead with Rules that effectively dilute the provisions of the law:
 - Making the law not effective retrospectively ie projects already under development on the day of notification of the Rules being exempted
 - Exemption to projects where services have been handed over to the Resident Welfare Association/ Apartment Owners' Association for maintenance
 - Exempting projects where development work is completed and sale/ lease deeds of 60 percent of the units/ plots have been executed

- State-level dilution may give leeway to realtors

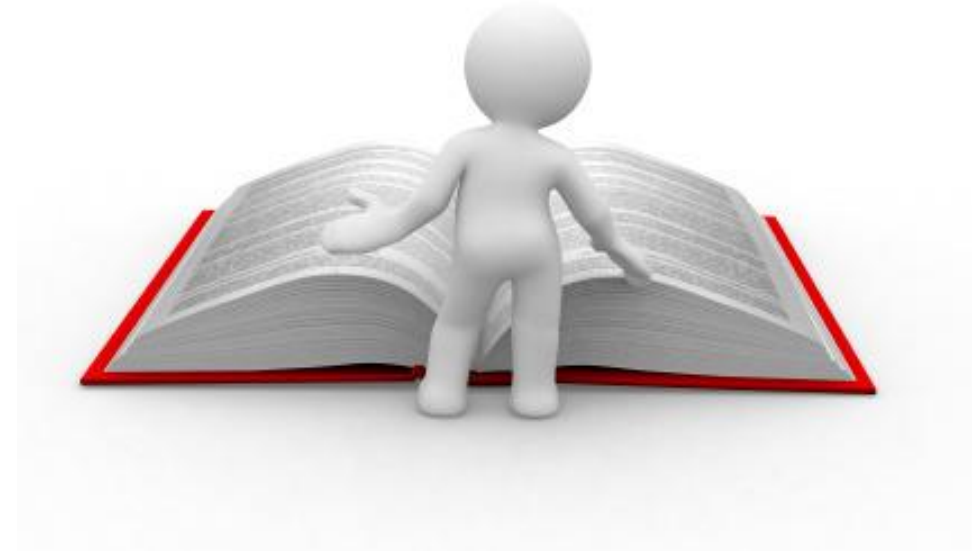
- Borderline Projects?

Contents

Summary

Content

Pertinent points relating to some definitions



Pertinent points relating to some definitions

➤ Definition of the term “**Promoter**”

- The term “cause to be constructed” suggest the inclusion of land owners as promoters in the case of Joint Development Agreements (JDAs)
- Development authorities – governed by the asset disposal rules – whether municipal bodies/ Housing Boards which are engaged in providing housing under the Pradhan Mantri Awas Yojana/ Rajiv Awas Yojana get covered - *FAQs suggest Yes*
- Separate entities for each project – No litigation history, Flaw?
- Power of Attorney holder (prevalent in the northern part of India) should get covered

➤ Definition of the term “**Real Estate Project**”

- Land as such being sold without plotting activity should not be covered and hence lies outside the ambit of this Act

➤ Is the audit of accounts in addition to the ones required under the Companies Act and the Income tax Act? The threshold under these legislations should not apply to the requirement of undertaking audit under RERA.

➤ Financial penalty for any contravention ranges from 2 percent to 10 per cent of the project cost/ estimated project cost

- “**Estimated Project cost**” defined under Section 2(v) of the Act to include “other charges”
- A clarity on this would help avoid ambiguity at a later stage – *Though FAQs provides some guidance*
- The term “**Project Cost**” is not defined which may lead to conflicting interpretation

➤ A need for the definition of the term ‘**Structural defects**’ to avoid misinterpretation in the futures

Pertinent points relating to some definitions

- A clarity in the definition of "**minor additions or alterations**" in the Explanation to Section 14
- By including terraces, open parking areas etc as being part of "**common areas**", the practices of selling open parking areas, terraces, etc should be discontinued
- Definition of the term "**Company**" includes only the companies incorporated and registered under the Companies Act, 2013
 - Totally disregards that the present developers are incorporated and registered under the erstwhile Companies Act, 1956 and projects taken thereunder
 - Requires clarity whether these developers would need to comply with the provisions of this Act
- Definition of the term "**Carpet Area**"
 - Contrary to legislations such as the Developmental Control Regulations 1991 applicable in the state of Maharashtra which provides that internal partition walls are not to be included
 - Definition not compliant with IS:3861 (2007)
 - Does not refer to the International Property Measurement Standards (IPMS) that are now de-facto choice for most corporate real estate providers

Contents

Summary

Content

Impact on Pricing



Impact on Pricing

- Cost of capital would go up (may be a short-term trend)
 - No recourse to interest free liquidity of the upfront payments received on pre-launches etc
 - Developers may look for equity (or mezzanine credit - mix of debt and equity) rather than structured debts to finance buying of land as paying interest may get tougher (with the new condition of selling units after project approvals + Withdrawal related restrictions)
 - Lease Rental discounting (LRD) could go up
 - Debt product offering by Banks may change
 - Stressed Balance sheets
 - Operating cost of the developers would increase
- Sale on the basis of carpet area alone would necessitate change in pricing policies etc
- Need to relook at Stamp Duty rates and premium Floor Space Index (FSI) rates on carpet area basis
- Developers may also collect likely penal costs indirectly from consumers
- Added cost of compliances may also indirectly impact pricing:
 - Disclosures (which was hitherto done only by listed entities)
 - Registration costs
 - Insurance
 - Defect liability period
 - Ongoing compliance costs

Contents

Summary

Content

Karnataka Real Estate (Regulation & Development) Rules, 2017 - A brief Analysis

Page 48

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjhunwala



Contents

Summary

Content

Broad construct of the Rules

Structure

Chapter I
Preliminary
Section 1-2

Chapter II
Real Estate Projects
Section 3-8

Chapter III
Real Estate Agent
Section 9-14

Chapter IV
Details to be published on website of the
Section 15

Chapter V
Rate of interest and timelines for refund
Section 16-17

Chapter VI
Real Estate Regulatory Authority
Section 18

Chapter VII
Salary and Allowances of The RERA Authority
Section 19-22

Chapter VIII
Powers and Functions of RERA Authority
Section 23-26

Chapter IX
Conditions of service of RERA Authority
Section 27-28

Chapter X
Filing of complaint
Section 29-30

Chapter XI
Real Estate Appellate Tribunal
Section 31-44

Chapter XII
Offences and Penalties
Section 45

Chapter XIII
Miscellaneous
Section 46-47

Chapter XIV
Budget and Report
Section 48-49

49 Rules divided into
14 chapters

Registration of Project – Rule 3

- Requirement to furnish annual report including **audited profit and loss account, balance sheet, cash flow statement, directors report** and the **Auditors' report** of the promoter for the **immediately preceding 3 financial years** and where annual report is not available, the audited profit and lost account, balance sheet, cash flow statement and the auditor report of the promoter for the immediately preceding three financial years – *Requirement of income tax returns as per the draft rules replaced by this onerous requirement*
- Authenticated copy of the of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents for **chain of the title** – *Collating legally valid documents for chain of title may be cumbersome*
- Declaration in Form – B stating that the Promoter shall not discriminate against any allottee at the time of allotment of **any apartment, plot or a building**, as the case may be, **on any grounds** - *Cases of price discrimination, customisation of units?*

Additional disclosures for ongoing projects – Rule 4

- Status of the project (extent of development carried out till date and the extent of development pending) including the **original time period disclosed to the allottee for completion of the project** at the time of sale including the delay and the **time period within which he undertakes to complete the pending project**, which shall be **commensurate with the extent of development already completed** and this information shall be **certified by an Engineer, an Architect and a Chartered Accountant in practice – *Scientific proposition leaving little room for discretion in determining the completion period***
- For ongoing projects, the promoter shall, **within a period of three months of the application for registration of the project** with the Authority, deposit in the separate bank account, **70 percent of the amounts already realized from the allottees, which have not been utilized for construction of the project or the land cost for the project – *Retrospective application of the Rules, will be difficult to comply if the funds have already been diverted to another project (as is the usual practice in the industry)***
- If **receivable of the ongoing project < estimated cost of balance construction**, then the promoter is required to **deposit 100 percent of the amounts to be realised in the separate account - *Will be difficult to comply if the funds have already been diverted to another project (as is the usual practice in the industry)***
- In case of ongoing projects, approval from 2/3rd of the allottees in case of deviation from the sanctioned plan is not needed implementation of the **proposed plan has already been disclosed to the allottees under the agreement prior to registration**
- Disclose total amount of **money collected from the allottees** and the **total amount of money used for development of the project including the total amount of balance money lying with the promoter**

Ongoing Projects – Rule 4

- "Ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria **on the date of notification** of these rules:
 - In respect of layouts where the **streets and civic amenities sites and other services have been handed over to the Local/ Planning Authority for maintenance**
 - **Where all development works have been completed as per the Act and certified by the "Competent Agency" and sale/ lease deeds of sixty percent of the apartments/ houses/ plots have been registered and executed** - *Can this be extended to mean sale agreements being registered? The absence of the definition of "Competent Agency" may raise doubts*
 - **Where all development works have been completed as per the Act and certified by the "Competent Agency" and application has been filed with the "Competent Authority" for issue of completion certificate/ occupation certificate**
- *The definition of Development works as per the Act [including external and internal developmental work] seems to suggest only the basic trunk infrastructure. Ambiguity also in terms of the cut off dates for testing the above - May 1, 2017 [ie date of commencement of Section 3] vis-à-vis July 10, 2017 [ie date of notification of the rules]*

Others

Withdrawal of sum deposited in the separate account – Rule 5

- Withdrawal of sum from separate bank account permitted only for meeting cost of construction and land cost
- Land Cost to include **costs incurred by the Promoter for acquisition of ownership and title of the land parcels** for the real estate project as an outright purchase lease etc or the **Guidance value in accordance with Section 45-B of the Karnataka Stamp Act 1957 relevant on the date of registration of the real estate project, whichever is higher** - *A life savior for the industry, may also help to enable higher withdrawals on a go forward basis and aid in establishing lower deposits for past collections as required under Rule 4(5) of the Karnataka RERA Rules*

Extension for registration for project – Rule 7

- The RE Act permits for extension only in case of *force majeure* conditions
- Rules seems to suggest possibility of getting extension otherwise too - Provided that where the promoter applies for extension of registration of the project due to force majeure he shall not be liable to pay any fee - *Dilution of the central provisions, if extension for non force majeure conditions is permitted*

Rate of interest in case of default and timelines for refund – Rule 16

- Rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the **State Bank of India highest marginal cost of lending rate (MCLR) plus 2 percent** - *Should work out ~11 percent; lower as compared to the interest rate prescribed under the draft rules*
- Any refund of monies along with the applicable interest and compensation, if any, payable by the promoter, shall be payable by the promoter to the allottee within **60 days** from the date on which such refund along with applicable interest and compensation, if any, becomes due

Others

Details to be published on the website of the Authority – Rule 15

In addition to other disclosures –

- Annual report including audited profit and loss account, balance sheet, cash flow statement, directors' report and the Auditors' report **of the Promoter** for the immediately preceding 3 financial years
- Where annual report is not available then the audited profit and loss account, balance sheet, cash flow statement and the Auditors' report **of the Parent Company** for the immediately preceding 3 financial years
- Status of approvals – Approvals to be applied for and the date planned for application, expected date in case of approvals applied for
- Land title search report from an advocate having experience of **at least 10 years in land related matters**
- Details of encumbrances on the land on which development is proposed including any rights, title, interest or name of any party in or over such land along with details or non encumbrance certificate from the concerned sub-registrar **of past 12 years**

Listing of documents such as financial statements etc for public viewing may pose a significant threat to the data confidentiality aspect

Others

Other significant matters

- Insurance as required by the Act (on land title and construction) not notified; mandated by the Act though
- Format of "Agreement for sale" absent in the final rules
- Format of various certificates not prescribed yet. The Rules should specify the tone and tenor of such certificates to provide clarity
- Fine payable for compounding of offences prescribed under Rule 45 (extends up to 10 percent of the estimated cost of real estate project)
- No mention of provisions regarding the timeline for formation of association of allottees
- Provisions related to conveyance of title related to common areas not provided

Press Note dated July 14, 2017

- A press note was issued by the Department of Housing, Government of Karnataka on July 14, 2017 in relation to the notified Karnataka Rules
- Aspects related to "**Development work**" and "**Competent Agency**" concerning ongoing projects laid out, but not clearly discussed in the note

Contents

Summary

Content

Components of cost (Rule 5)

LAND COST

Costs incurred for acquisition of ownership and title of the land parcels as an outright purchase lease or Guidance Value in accordance with Section 45-B of the Karnataka Stamp Act 1957 relevant on the date of registration of the real estate project, whichever is higher

Amount paid for acquisition/
purchase of TDR

Amount paid to the Competent Authority for project approval, No objection certificates, Stamp Duty, Transfer charges, Registration charges, Conversion charges, taxes, statutory payments to State and Central Government

CONSTRUCTION COST

All such costs, incurred by the promoter towards on-site and off-site expenditure for the development of the real estate project including payment of taxes, fees, charges, premiums, interests etc to any competent Authority, or statutory Authority of the Central or State Government, including interest, paid or payable to any Financial Institutions including scheduled banks or non banking financial companies etc

Contents

Summary

Content

Karnataka RERA Registrations - Report Card



Contents

Summary Content

Karnataka RERA Registrations - Report Card

- Karnataka RERA received a lackluster response of registering property from builders as well as real estate agents
- ~990 projects registered as on last day (July 31, 2017) with Karnataka RERA [as per press releases]
- ~350 applications for real estate agent registration [as per press releases]
- As per industry estimates, Karnataka has close to 85,000 ongoing projects (primary supply) which are not delivered till date + Over 25,000 agents who deal in real estate
- Details of applicants (Projects and agents) available on:
http://rera.karnataka.gov.in/resources/staticpage/ApplicantData_31_07_2017.pdf
- Some technical glitches were noted (open vs closed car parking, percentage of completion done, email id of the promoter etc) – to be rectified later through separate letters/ emails
- Email/ Registered post approach for large files such as blueprints and approvals (file size beyond 5MB)?

The screenshot shows the homepage of the Real Estate Regulatory Authority Karnataka. The header includes the RERA logo, the text "Real Estate Regulatory Authority Karnataka Government of Karnataka", and the word "Karnataka". Navigation links include Home, About RERA, FAQs, Important Links, Defaulters List, Contact Us, Help, and Login. A large banner image shows a modern apartment building. Below the banner, there is a search bar with the text "Search project name, Builder or Agent" and a "Search" button. Three main service buttons are visible: "PROJECT REGISTRATION" (Promoters/Developers may click here to register their project), "AGENT REGISTRATION" (Agents may click here to register), and "COMPLAINT REGISTRATION" (Users may click here to register their complaints).

The screenshot shows the homepage of the Department of Housing, Government of Karnataka. The header includes the Government of Karnataka logo, the text "ವಸತಿ ಇಲಾಖೆ ಕರ್ನಾಟಕ ಸರ್ಕಾರ" and "Department of Housing Government of Karnataka". Navigation links include Home, Dept. Structure, Boards & Corp., RTI, Annual Report, Circulars, Contacts, and Login. A prominent message states: "Please note that July 31, 2017 is the last date for registration under RERA Act. Please visit RERA Karnataka Portal for registration." Below this, there is a photo of a residential project labeled "RGRHCL" with the number "1" below it. A red banner at the bottom reads: "Website will be stopped due to upgradation from 11/08/2017 8PM to 11/08/2017 10PM Sorry for Inconvenience". The footer includes "Sri. M. Krishappa Housing Minister", "Sri. Kapil Mohan, I.A.S Principal Secretary to Government of Karnataka", "Boards & Corporation RGRHCL", and "Rajiv Gandhi Rural Housing". A link for "Employment Notification (RERA)" is also present.

Contents

Summary

Content

RERA – Challenged!



Page 59

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjhunwala

How Rules have diluted overall essence of RERA!

- Various states have digressed to an extent that their tinkered watered-down rules violate the parent Act. State Rules littered with gaps which will make it smoother for builders to circumvent the law.
- The Ministry of Housing and Urban Poverty Alleviation (MHUPA) had notified its rules under the Act in October 2016. Such central rules are applicable to all Union territories without their own legislature and were meant to serve as template for rules in other states
- Rules (draft/ final) effectively issued by some states favour RE developers/ construction industry over home-buyers
- Press articles suggest that:
 - PMO has sought a report from the Housing Ministry with respect to violation of central provisions
 - Amid reports that key provisions of the Act have been diluted by some states, the Central Government had forwarded the rules notified by the states to a parliamentary committee (Committee on subordinate legislation) for examination
 - **Parliamentary committee has suggested MHUPA to instruct States to amend diluted rules or re-notify them (August 11, 2017)**
- Statistics reveal that home-buyers in 65 percent of ongoing projects across 8 cities - including Ahmedabad, Mumbai and NCR-Delhi are staring at a delay ranging between a few months and over 5 years

WHAT THE STATES DID

MAHARASHTRA

Builders only have to submit details of last sanctioned plan, not changes at various stages; also allowed to sell open areas within a project as parking lots

MADHYA PRADESH

Builders only have to submit details of last sanctioned plan, not changes at various stages

GUJARAT

Act applicable only on projects launched after November 2016

DELHI

Union ministry mandates that builders disclose cases disposed of; they can keep pending cases under wraps

KARNATAKA

Relaxes rules for ongoing projects

UTTAR PRADESH

Certain ongoing projects out of regulator's purview, lower penalty for violations

How Rules have diluted overall essence of RERA!

➤ Few noted deviations:

- Cancellation by promoter on a week's notice
- Registration fee at Re 1 per square metre (Central rules prescribed Rs 10/ Rs 50 per square meter depending on area of development)
- Increase in appeal filing fee (Rs 1,000 to Rs 10,000)
- Exclusion of disclosures (including pending court cases!)
- Payment of 30 percent of the total cost while signing the agreement and 45 percent on reaching plinth level
- Deletion of anti-discriminatory clauses (given under UT model Rules)

➤ Questions unanswered:

- Clarity on how homebuyers who have not agreed to a change in building plans will be affected in the case of ongoing projects
- Provision on compounding rule for penalties carries the phrase "no proceeding shall be instituted or continued" once fine has been paid - Whether this provides lifetime immunity to the developer? – Rule 42(2) of Karnataka draft Rules

➤ Madhya Pradesh and Kerala have appointed a housing regulatory authority as mandated under the law

➤ Others such as Haryana, Maharashtra, Punjab and Delhi have appointed an interim Regulatory Authority (All states have to appoint the authority by end of April 2017 as per the Act)

WHAT THE STATES DID

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Act and Rules challenged in the courts of law

- Builders take Centre to court, say RERA illegal on grounds such as *retrospective application on ongoing projects/ Infringement of right to privacy/ land being state subject*
 - Builders and Developers Welfare Association - PIL before Jabalpur Bench of Madhya Pradesh High Court (*Writ Petition No 7456/ 7348 of 2017*)
 - Swapnil Promoters and Developers - Nagpur bench of Bombay High Court (*Writ Petition No 4419 of 2017*)
 - MIG (Bandra) Realtors and Builders Pvt Ltd

- The Housing and Urban Development Ministry has decided to move the Supreme Court for clubbing of all cases relating RERA which have been filed in different high courts, so that these can be decided by one court

- Plot owner in Maharashtra move HC on RERA making them co-promoters
 - Petition says the Authority by notifying the definition of "co-promoter" foists a liability on the owner which was never contemplated either under the Maharashtra Ownership Flats Act or RERA and only "promoter" is defined under both acts.
 - Even Parliament chose not to add the definition of co-promoter in RERA, it adds

- Buyers across India, in parallel, have challenged *safe harbor to ongoing home projects, legal validity & composition of interim regulatory authority and several other diluted provisions under RERA*

Contents

Summary

Content

Questions – Unanswered (Karnataka RERA Rules perspective)



Questions - Unanswered

- In case there are changes to the clauses in the agreement to sale pursuant submission of the proforma before the Authority at the time of registration, would there be a requirement to obtain a fresh approval for the same?
- In cases of agreements executed prior to May 1, 2017, whether new agreements in line with the RERA Act/ Rules required to be executed by way of a supplementary agreement and whether the contractual obligations such as interest/ compensation, structural defect liability etc would prevail as per the old agreement or as per the provisions of the Act/ Rules?
- Whether a Contractor on a standalone basis be considered as a "Promoter" as per Section 2(zk) of RE Act?
- In case of ongoing projects, where sales were effected prior to May 1, 2017 and no further sales are contemplated henceforth (balance unsold inventory to be sold post completion of the project development and receipt of completion/ occupancy certificate), whether registration under RERA mandatory?
- Whether interest related to finance taken for acquiring land be considered as cost of land for the purpose of computing costs under Rule 5 of the Karnataka RERA Rules?
- Whether withdrawal from the designated account permitted for marketing costs incurred by the Promoter?
- Does the Developer need to submit the certificates to Banker or retain with him for records/ audit?
- Is there a need to stop sales or construction for ongoing projects till receiving the registration (cases involving registrations applied for)?
- Is insurance of the project compulsory? What are the provisions regarding insurance under Karnataka Rules?

Questions - Unanswered

- Clarification is required where the plans are sanctioned for larger development (such as townships) but the promoter decides to develop the same in phases. In such a case, shall the promoter be entitled to register the project in phases and the requirement of 2/3rd consent from the existing allottee for construction or revision of plans for the subsequent phases should be exempted or can the entire township be registered as a single project? Same in case of multistoried building where the plan is to buy additional TDR for additional floors?
- Whether the landowner (in case of area sharing Joint Development Agreement) needs to register his share of the units in the apartment/ building as a separate project? If not, how would the mechanism of withdrawal of moneys based on percentage of completion work for the consideration received by the landowner on sale of his share of units?
- If an ongoing project is registered, would the provisions of the RERA Act/ Rules such as clauses related to interest rate for compensation, structural defect liability period etc be applicable for the entire project or only to the units sold post registration of the project?
- Is the Real Estate Agent registration mandatory for persons marketing the projects outside India (projects situated in Karnataka and marketed/ advertised outside India)?
- RERA Act defines the term "Real Estate Agent". In the view of the said definition, in cases where, say Company A, registers its real estate projects under RERA, and uses the services of employees of the marketing team of Company B (a group company), whether such entity (ie Company B) need to register as a real estate agent under RERA as its employees to be marketing the project undertaken by Company A?
- Would the employee of the developer entity engaged in marketing of a project required to obtain Real Estate Agent Registration? Would the scenario be different in a case where such employee gets sales based/ success based compensation or commission depending on sales target achieved?

Questions - Unanswered

- There being no State amendment to Registration Act in Karnataka making it mandatory to register and Agreement of Sale, it may be clarified if it is compulsory to register the Agreement of Sale? Further, if registration of Agreement of Sale is mandatory, the method of cancellation of the same upon termination by either parties has to be prescribed
- If registration is mandatory, with respect to registration of the agreement for sale where more than 10 percent has already been collected, in case the customer is a non-resident/ foreign national and is not in a position to travel to India for registration until completion of the project and the developer is willing not to cancel the apartment of the customer on account of not appearing for registration, will there be any adverse consequences on the Promoter?
- Section 17 of RERA Act requires that the common areas which includes the entire land with all the common amenities is to be conveyed to the Association. However, Karnataka Rules have not prescribed the manner in which the common areas have to be conveyed to the Association. Further there is no provision in the Karnataka Apartments Ownership Act for conveyance of common areas to the Association and the same may be required to be amended to make provision for the same as also to the form of Deed of Apartment and model bye law of the Association.
- In view of the requirement of conveying only the carpet area to the allottee under the deed of conveyance, the Karnataka Rules have not prescribed the method for doing so. The Karnataka Stamps Act for the purpose of valuation currently follows the system of valuing an apartment on the basis of Super Built Up Area

Contents

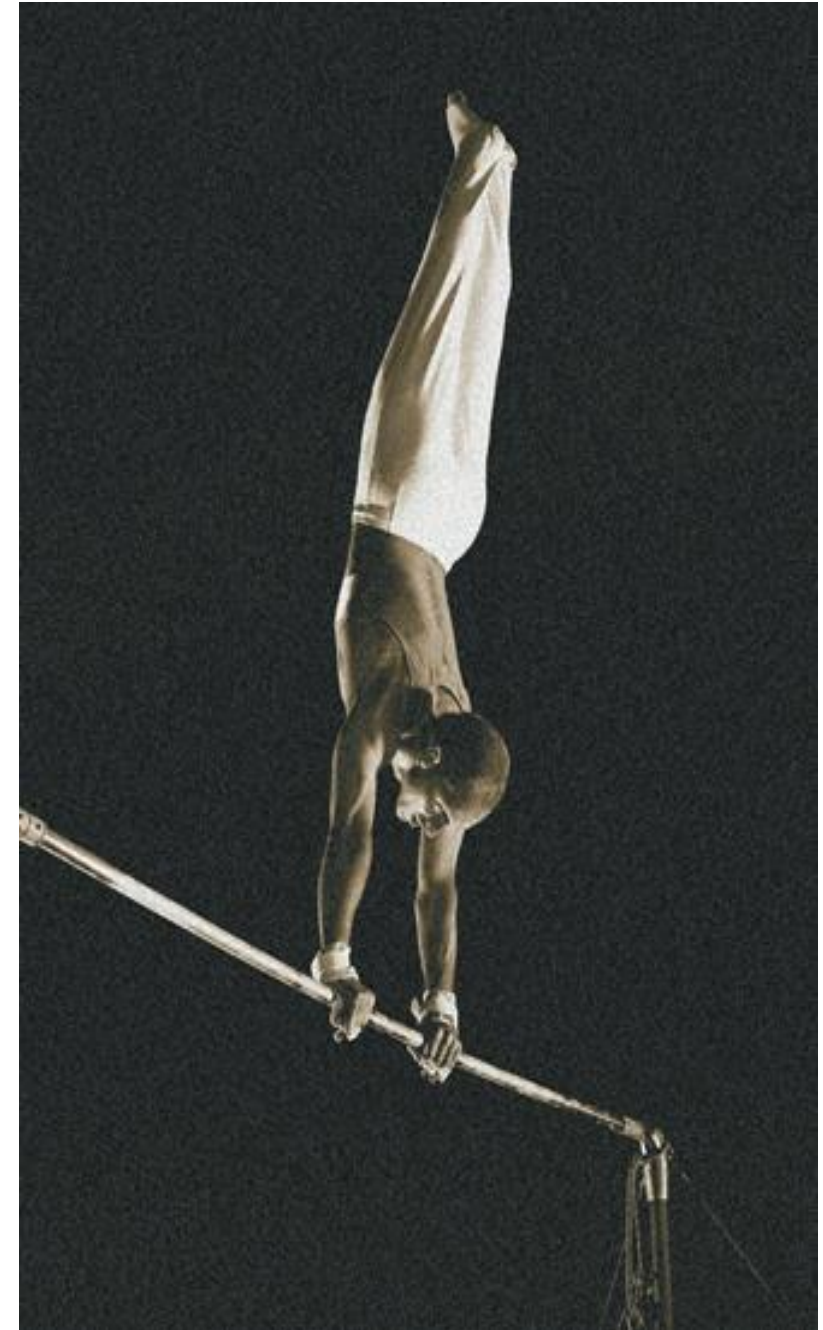
Summary

Content

The Finale - Hits and Misses

Page 67

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjhunwala



Hits and Misses – For Consumers



Hits

- Increased affirmation on timely completion/ delivery of RE projects
- Increase in quality of construction - Defect liability period of 5 years from the handing over of possession
- Balanced builder-buyer agreements (otherwise agreements heavily loaded in favour of developer)
- Regulated RE Agent/ Broker environment
- Greater visibility into the developer's delivery track record
- Sale on the carpet area basis/ terms to help improve transparency in pricing and bring in standardisation



Misses

- Timelines for approval by the regulatory authorities not defined
- May lead to slightly higher prices for RE due to the reduced competition, insurance and other ancillary costs passed on by the Developers etc
- Little elbow room to utilise money collected from homebuyers. Combination of this with plethora of guidelines to be followed may put brakes on the number of new launches (in the short term)
- Existing practice of soft launch may end due to the restriction on the launch of projects before getting approvals

Hits and Misses – For Developers



Hits

- A more regulated sector would bring in efficiencies and result in higher investments (FDI) and possible reduction of the cost of funds
- Increased scope for eliminating casual operators, leading to the better organisation of the sector
- Greater visibility into the developers' delivery performances
- Higher focus on project delivery capabilities
- Overleveraging which generally result in project delays may not be possible



Misses

- Power of RERA- disproportionately coercive and may limit the ability/ incentive of developers to compete, especially when it involves undertaking market risks
- Fixing a rigid capital reserve ratio (70 percent deposit and 10 percent booking amount) in the statute itself imposes greater liquidity constraints on developers, consequently impacting their entry into the market, subsequent expansion and project cost
- Multiple forums for dispute resolution of grievances (Consumer forums, RERA, CCI) could facilitate forum-shopping and lead to conflicting jurisprudence – FAQs state not possible
- Accountability of buyers/ developers/ brokers set - Government Agencies?

Contents

Summary

Content

Revisiting Business and operational models – Developer's perspective



Departments – Increased roles & responsibilities



Finance

- Cash flow / liquidity management (70 percent clause)
- Managing project wise bank accounts and withdrawal certification
- Impact on pricing
- Alternate ways of funding/ sourcing equity partners
- Insurance
- Monitor cost and schedule overruns
- Auditing of project accounts
- Institutionalize periodic RERA checks



Legal

- Revised agreement of sale/ affidavits/ declarations as per Rules
- Deep land due diligences
- Registrations/ Extensions/ Updation of details on RERA website
- Formation of association of allottees within 3 months from the date of majority of units being booked
- No mortgage or charges etc
- Vendor management/ Dispute Resolution/ Cyber Security
- Ring-fencing senior management/ promoters liabilities



Design

- Prioritize design development and delivery capabilities
- Fix structural defects or any other defect in workmanship, quality or provision of services or any other obligations of the promoter – 5 year warranty period
- Minor vs major additions/ alterations (changes) to the structure as per sanctioned plan – careful consideration
- Institutionalize periodic RERA checks



Operations

- Strengthen delivery and management capabilities around execution, monitoring, handover and operations
- Managing alterations and additions
- Empanelment of channel partners (including architects, engineers, real estate agents etc)
- Institutionalize periodic RERA checks & process compliance audits
- Redefine indemnities and liabilities for channel partners and associates



Marketing/ Sales/ CRM

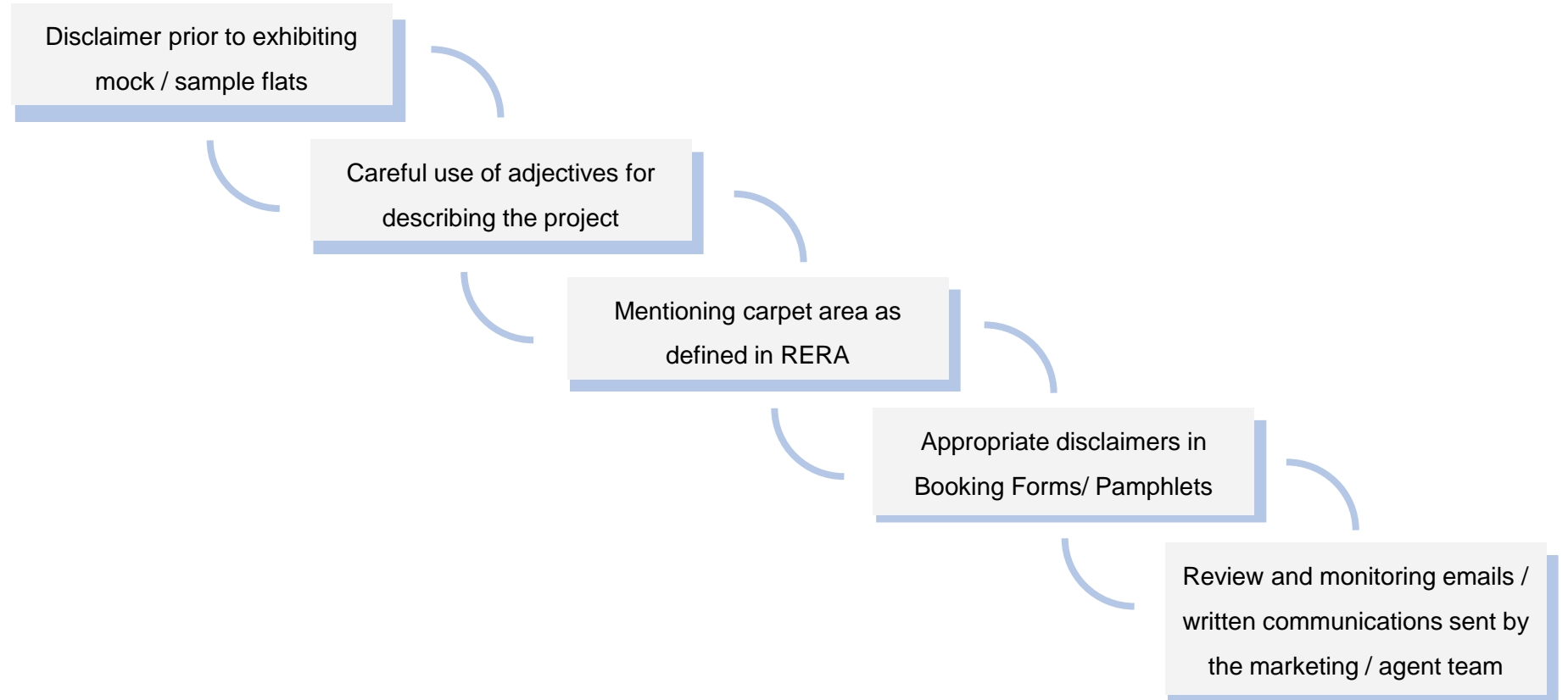
- No project promotions/ advertisements/ marketing before registration
- Provide information to allottees - sanctioned plan, layout plan, stage wise schedule of completion
- Sanitize marketing collaterals/ brochures etc (identify and address conflicting customer commitments) and align to RERA regime
- Email and communication exchange with customers
- Managing cancellations (to be compliant with the terms agreed)

Contents

Summary

Content

Advertising – Caution list



**Usage of marketing phrases such as 10 minutes drive from International Airport Road, fully loaded gymnasium, 5 star clubhouse, investment hotbed, 50 percent appreciation in 2 years, assured rentals, last few apartments left, all approvals received etc - should be closely watched out for and rephrased appropriately. The overall essence for the marketing materials should be – "To be as Precise and Accurate" as possible.*

Contents

Summary

Content

Role of Professionals

Page 73

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjunwala

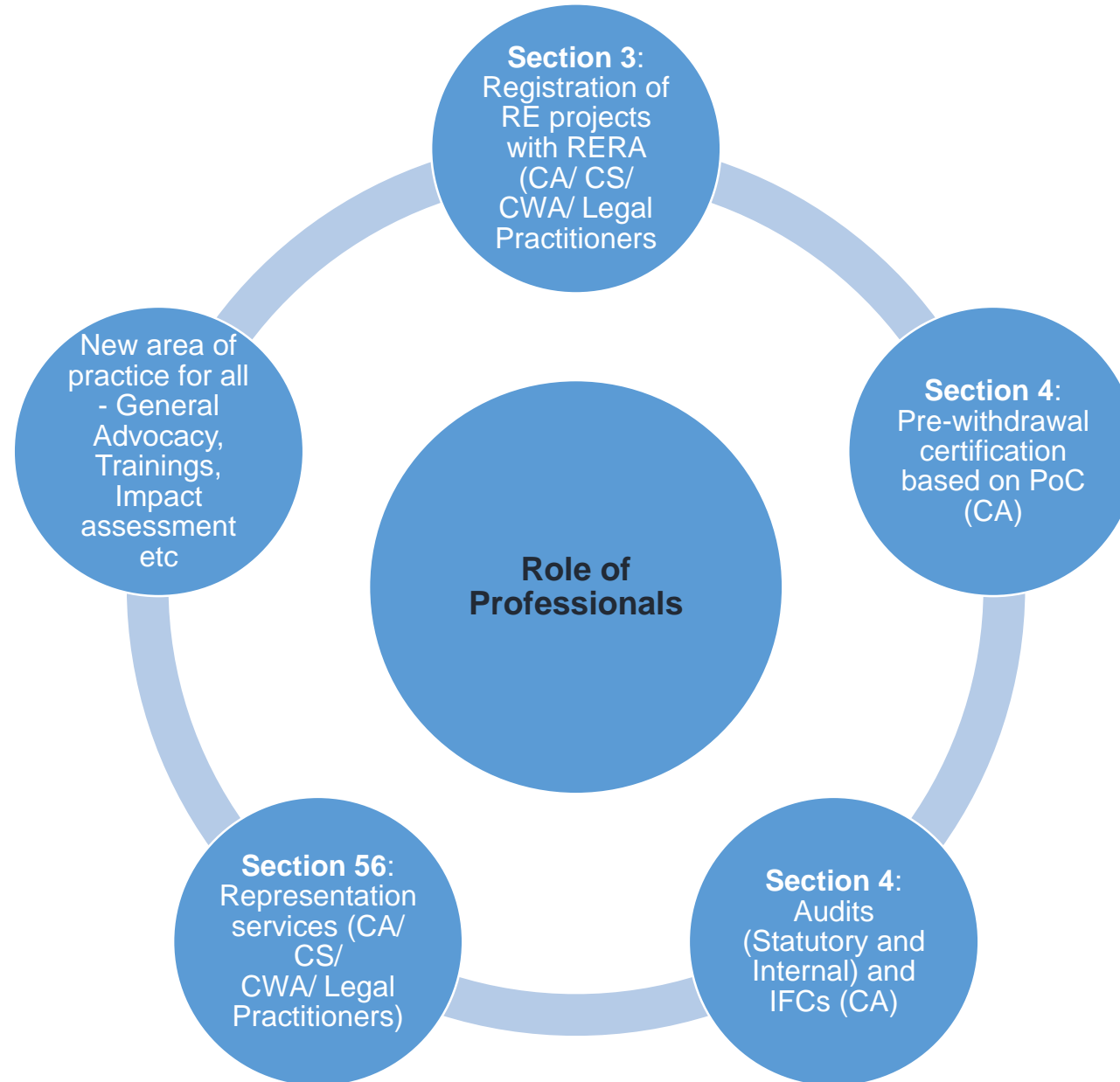


Contents

Summary

Content

Role of Professionals



Role of Chartered Accountants

- Certification (pre and post registration) - *No format prescribed yet, may lead to ambiguities*
- Need to adequately document the scope of work, technical positions taken,
- Scope limitations/ Professional indemnity (*Penalty for false information itself is 5 percent of estimated project cost as per Section 60 of RE Act*)
- Disclaimers (Interim/ Final) - For websites, marketing materials, emails (*though disclaimers may not provide legal protection in case of violation/ breach of law*)
- Sanitisation of marketing materials
- Pricing re-calculation based on RERA norms/ Cash flow Analysis
- Agreement for sale
- Commercial terms agreed with vendors/ land owner/ lenders/ banks
- Standard operating procedures for core teams (marketing, sales, finance, legal, designs etc)
- RERA Audits – *As RERA is applicable from May 1 of 2017, RERA audit should apply for FY 2017-18 and some guidance on audit procedures should be available before September 31, 2018 (ie the audit completion date)*
- Representation services – Builder vis-à-vis consumer side – Need to understand facts/ scope completely
- Ongoing compliance/ advisory support – updation of records on RERA website

Knowledge Bank

For technical guidance, please refer:

- FAQs issued by Maharashtra RERA Authorities - *may have persuasive value for other states*
- Notifications/ Clarifications issued by Maharashtra RERA Authorities – *Seems to be fairly evolved and hence can provide reasonable guidance, even covers standard operating procedures post registration etc*
- Notifications/ Circulars/ FAQs issued by the Ministry of Housing and Urban Affairs, Government of India
- Press Articles and releases
- RERA websites of other states (such as Tamil Nadu, Madhya Pradesh, Rajasthan) etc – *may have persuasive value only*
- Case documents on the websites of the respective judiciaries (writs filed by builders or consumer community etc)
- Technical papers/ Representation/ White papers issued by associations of Builders/ Consumers
- Karnataka RERA/ Department of Housing Websites - Notifications/ Clarifications/ FAQs/ Press Releases

Contents

Summary

Content

Overall Analysis

Page 77

Karnataka State Chartered
Accountants Association
August 11, 2017
Sandeep Jhunjhunwala



Overall Analysis

- Law in its tone and tenor – hard on developers – would leave only serious developers in the market
- RE industry already facing liquidity crunch and mounting inventories. It's likely that the regulatory burden, cost of capital and compliance would increase
- May help Tier-II and Tier-III developers to attract PE funding with the increase in transparency. Currently ~80 - 85 percent PE funds invest in Tier-I developers owing to good corporate governance structure
- Tier-II and Tier-III cities may now appear on PE investment radar
- Restricted use of 70 percent – Well intentioned but may have little economic merit
- Dispute settlement mechanism - Given the experience of consumer courts, it's only a matter of time before the new mechanism gets as clogged as the existing
- Could revitalize consumer confidence in the over-supplied/ over-priced RE market
- Makes an agreement for sale compulsorily registrable. The Indian Registration Act, 1908 does not provide for compulsory registration of an agreement for sale
- Seems to penalize the developer but at the same time does not provide any real relief to the end user
- Silo style of operation should stub out with the requirement to make disclosures of project details
- Pre-launch/ Soft launch sale of projects will now be a history!

OPEN HOUSE & DISCUSSIONS

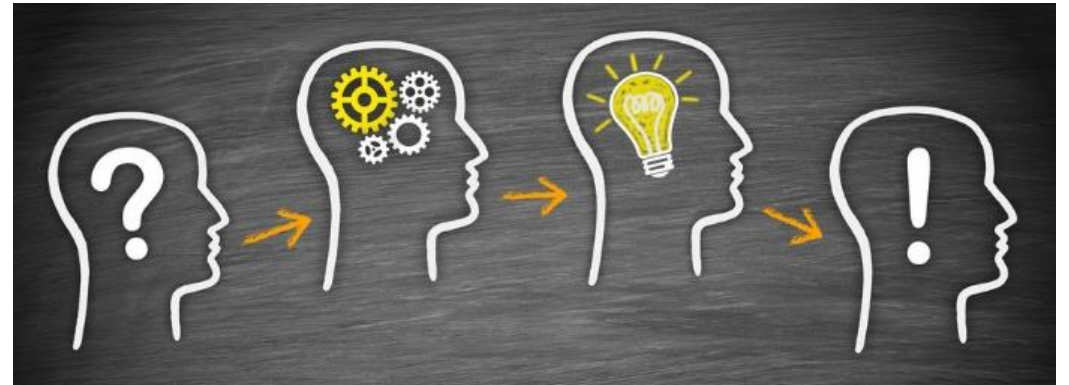
THANK YOU

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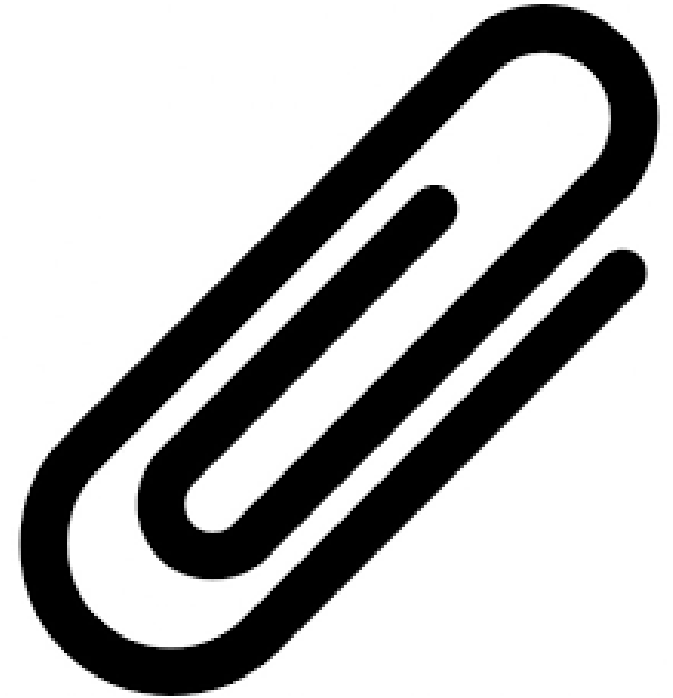
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Contents

Summary
Content

Annexures

Annexures

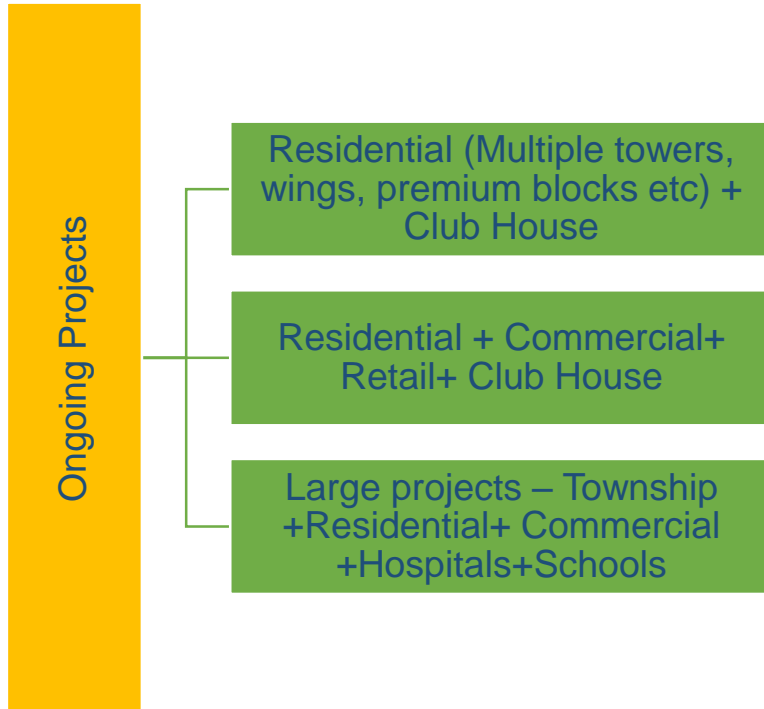


Contents

Summary
Content

Annexures

What is a Phase?



- The Real Estate (Regulation and Development) Act 2016 does not define phases
- Defines "Project" [Section 2(zj)] and "Real Estate Project" [Section 2(zn)]
- Mentions that where RE project is developed in phases, every such phase shall be considered a standalone RE project requiring separate registrations
- Maharashtra RERA Rules: "Phase of a Real Estate Project" may consist of a **building or a wing of the building in case of building with multiple wings or defined number of floors in a multi-storeyed building**
- Different phases would act like individual projects and this would help developers deal with multiple project execution hurdles like time taken for government approvals, long term project financing, construction delays etc



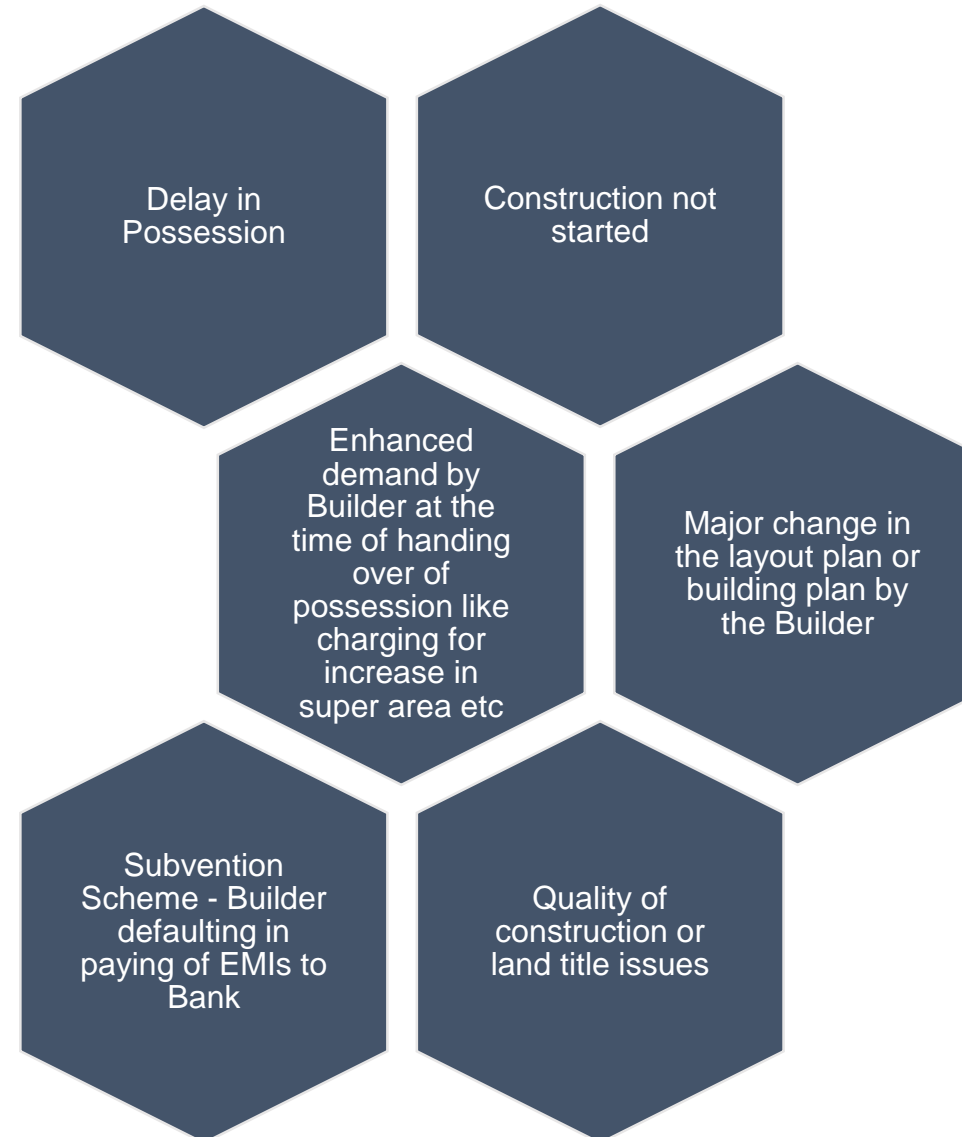
Contents

Summary

Content

Annexures

Major grievances of homebuyers



Contents

Summary
Content

Annexures

National Consumer Commission vs RERA – Which one to choose?

For making a complaint to a consumer court, the home buyer will have to determine the pecuniary jurisdiction and file the case depending upon the subject matter and compensation claimed. Under RERA, a home buyer can file the complaint with the Authority of the State where the property is situated

After the verdict from the highest consumer court, appeal lies before the Supreme Court of India. Under RERA, complaint could be filed before the Adjudicating Authority/ RERA, followed by appeal before the Appellate Tribunal and the High Court of the state concerned

A consumer can approach consumer court in cases where the unit/ flat/ apartment has been delivered by the Builder. A consumer can retort to judicial appellate path under RERA only if it is a RERA registered project (projects with completion or occupancy certificates - partial or complete, cannot be challenged under RERA

In case a person has Consumer Court for relief, there is no bar to approaching appropriate authority or initiating criminal proceedings against the Builder. The RERA Rules for most states, specifically take an undertaking from the complainant at the time of making a complaint to the Authority that the home buyer has not made any other complaint

