

Real Estate Regulations – What lies within?

Karnataka State Chartered Accountants Association - April 28, 2017

Presented By: **Sandeep Jhunjunwala**



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Presentation Overview

- Need and Objective
- The Build up to the Act
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- Judicial Mechanism
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- Pertinent points relating to some definitions
- Impact on Pricing
- A look at the Rules and deviations
- The Finale - Hits and Misses
- Overall Analysis

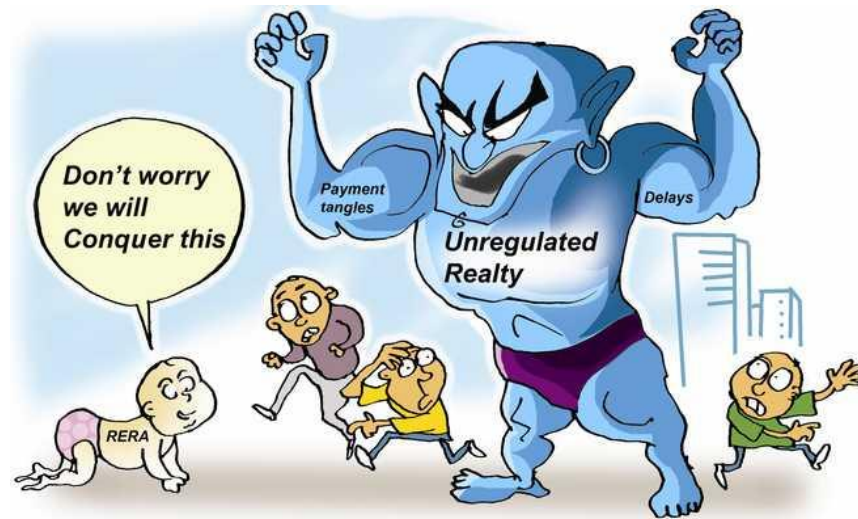


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Need and Objective



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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

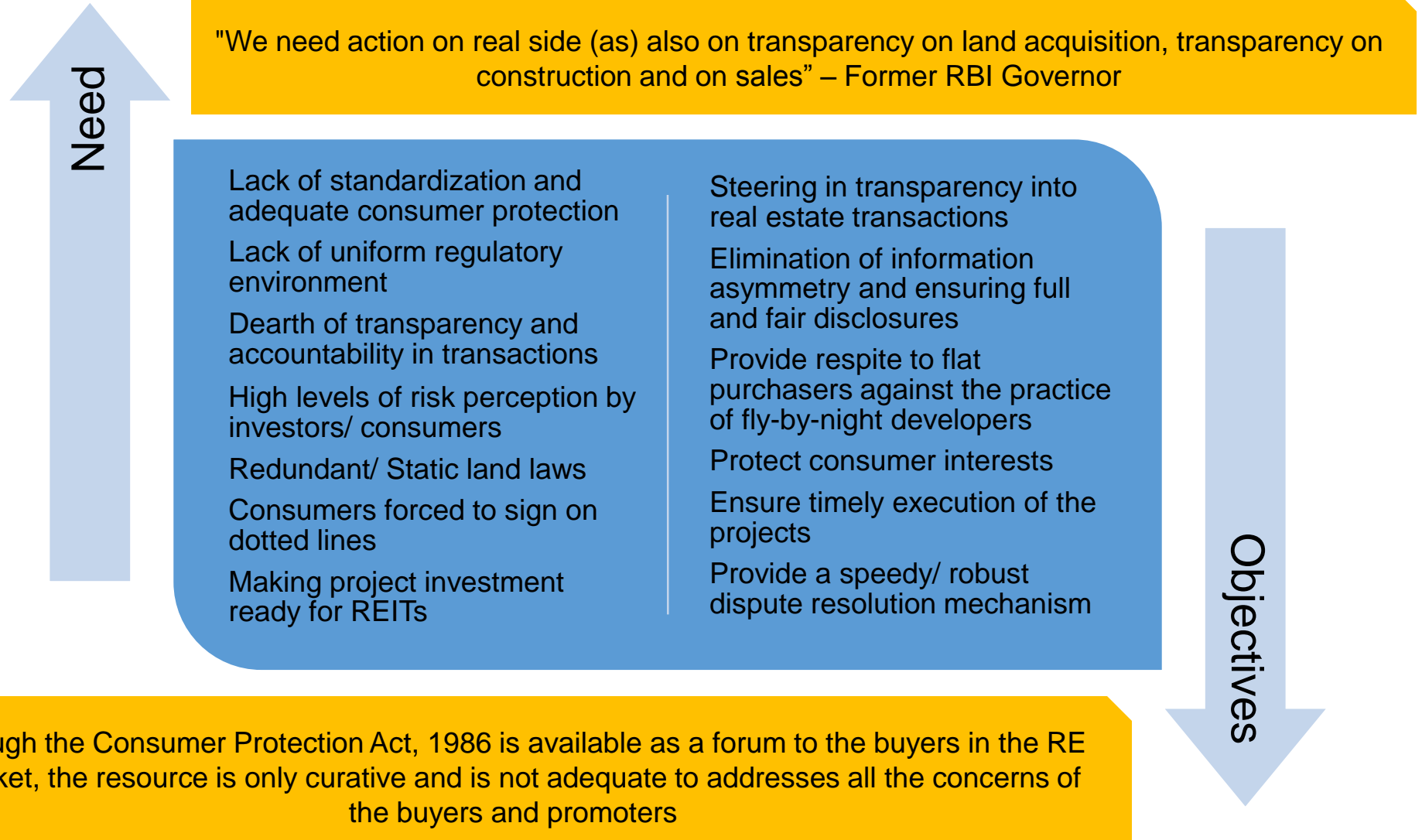
In India – Homebuyer activism, Trust-deficit, deliberate delays, defective land titles, fly-by-night operators, unregulated/ unorganized/ fragmented markets, no provision of compensation from the Government side, fraudulent advertisements, opaque records, pseudo-agents, long drawn litigation, curative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

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The Build up to the Act

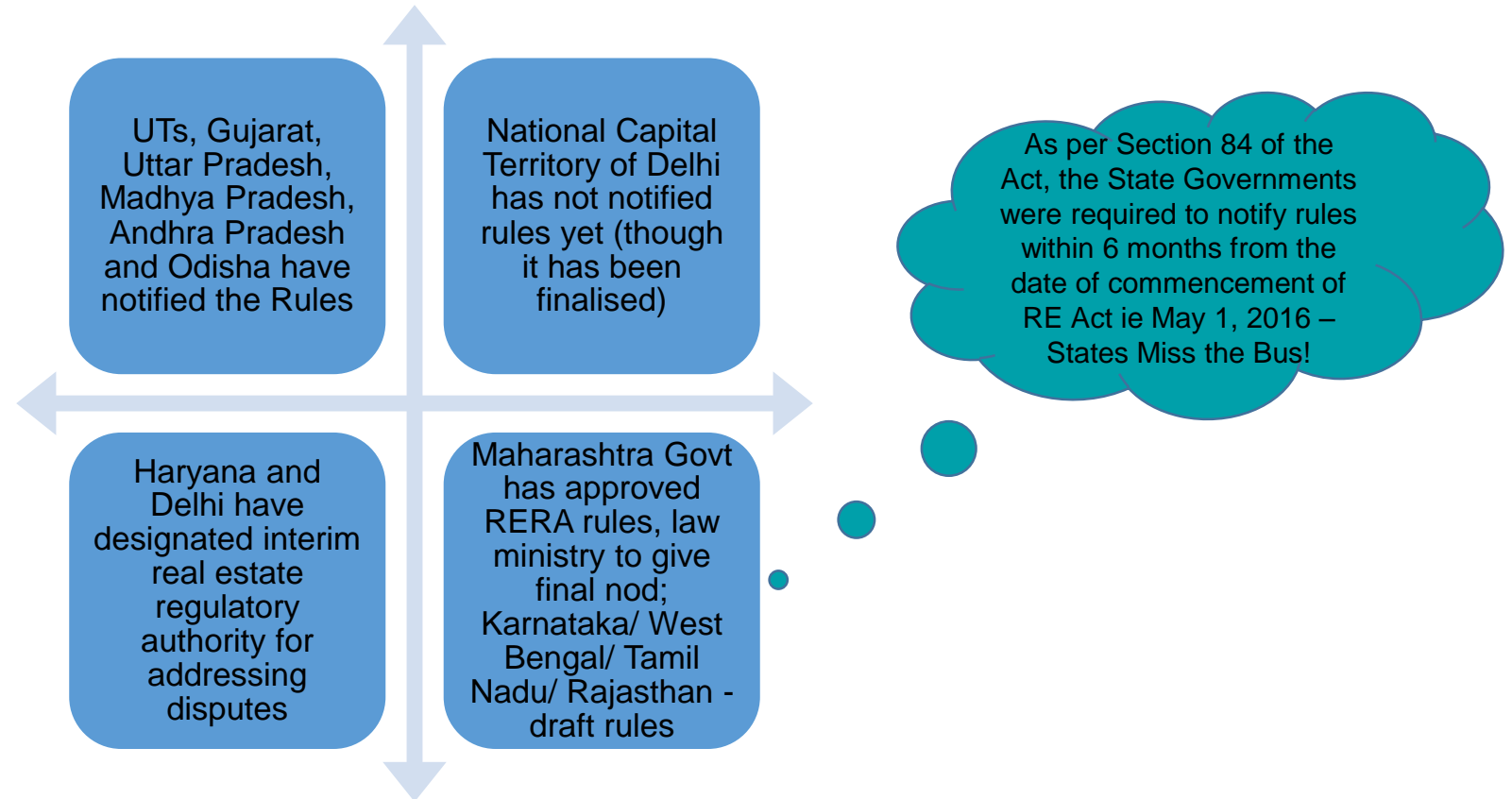
Date	Event
January 20, 2009	National conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs proposing a law for RE sector
July, 2011	Ministry of Law & Justice suggested central legislation for RE sector under specified entries of concurrent list of the Constitution 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

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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



*Source: Press Information Bureau, Government of India

UTs: Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Chandigarh

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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

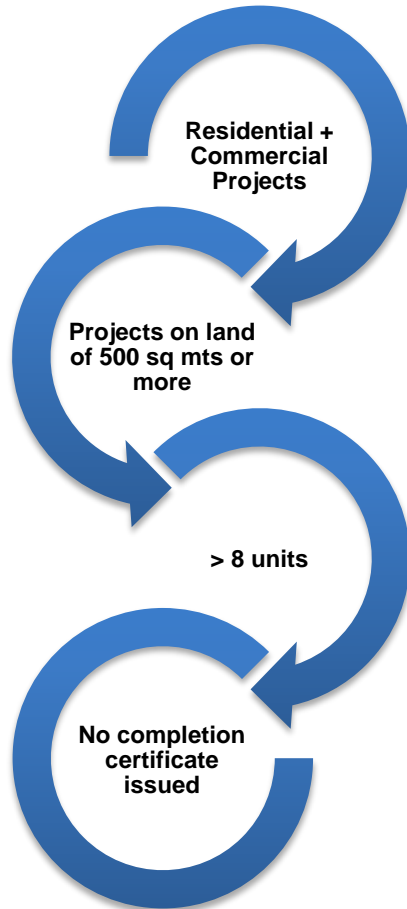
Chapter IX

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:

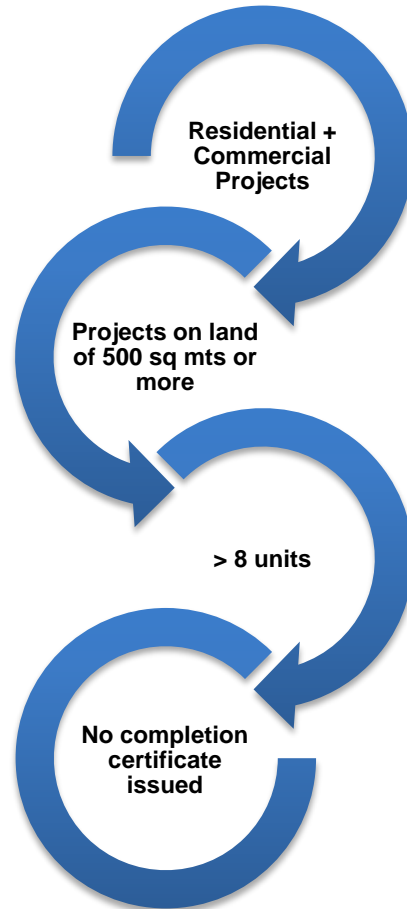
- Commercial RE projects including shops, offices, showrooms, godowns
- Residential Apartments
- Plotted Developments
- Ongoing projects in respect of which completion certificates have not been issued - **Retrospectivity?**
- Challenge of "impossibility of performance" in absence of a regulatory body 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

➤ 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 – *only few have notified, most 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

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Real Estate Regulatory Authority

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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 - **Delhi and Haryana nominated**
- 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

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Impact on Promoters/ Developers

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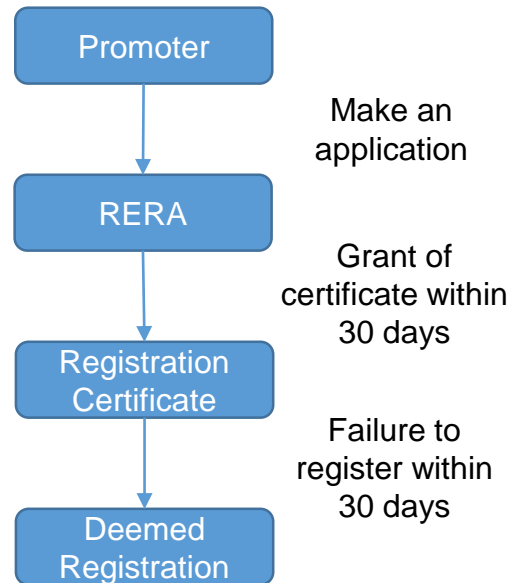
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Registration



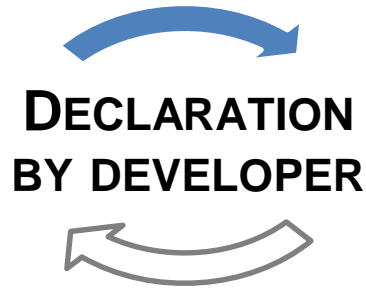
- Registration to be granted for a **specified period** (time period within which the developer expects to complete the project).
- **Extension possible upon application in reasonable circumstances without promoter's faults (including "Force Majeure" conditions). Period of extension in aggregate not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

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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.

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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

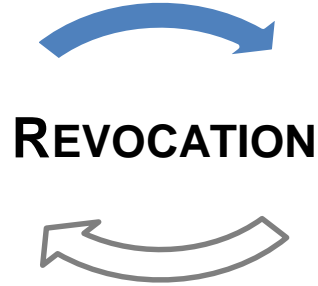
Payment and Construction Schedule

	Instalment	% Completion
Agreement	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)
Agreement	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

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

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

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



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Real Estate Agent

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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

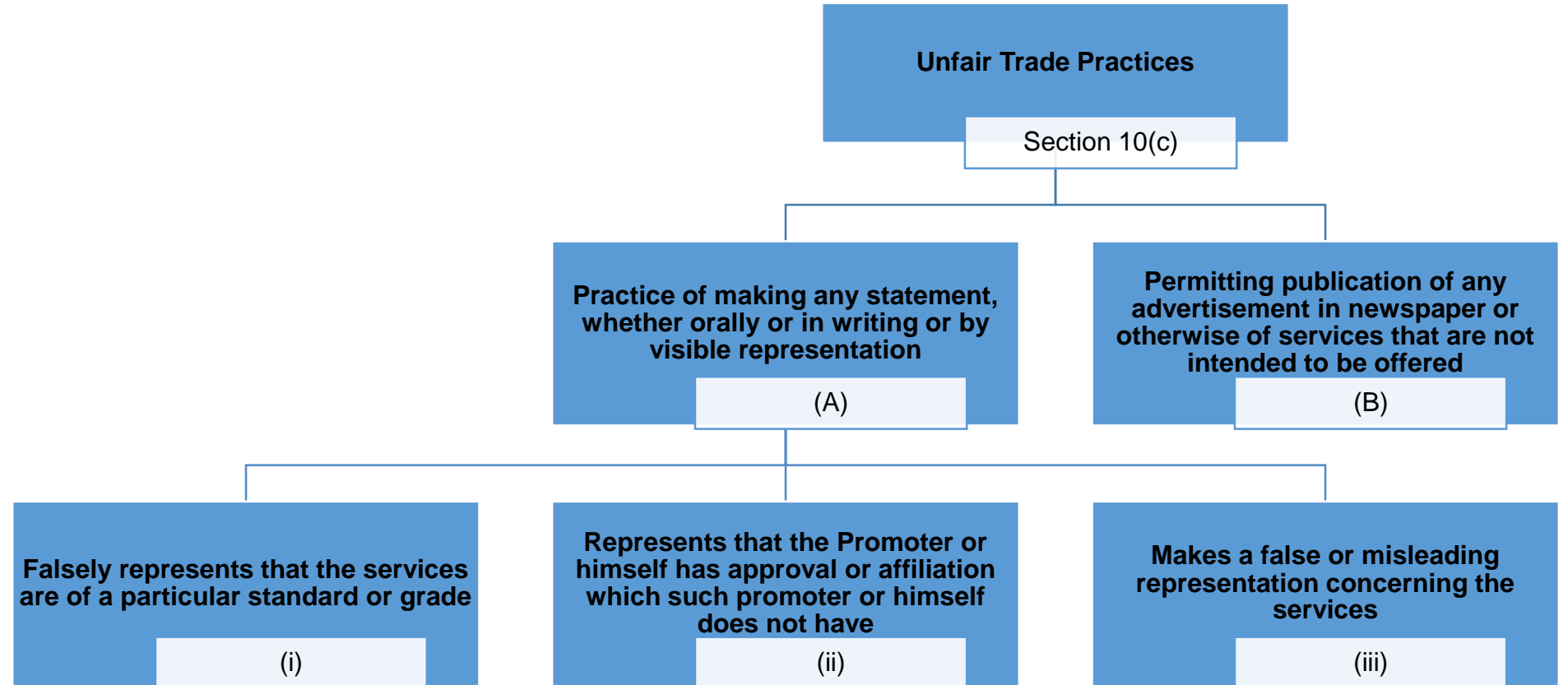
Section 2(zm) - "Real Estate Agent" means **any person**, who **negotiates or acts on behalf of one person** in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, **by way of sale**, with another person or transfer of plot, apartment or building, 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**

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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!)

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Allottees – Rights and Obligations

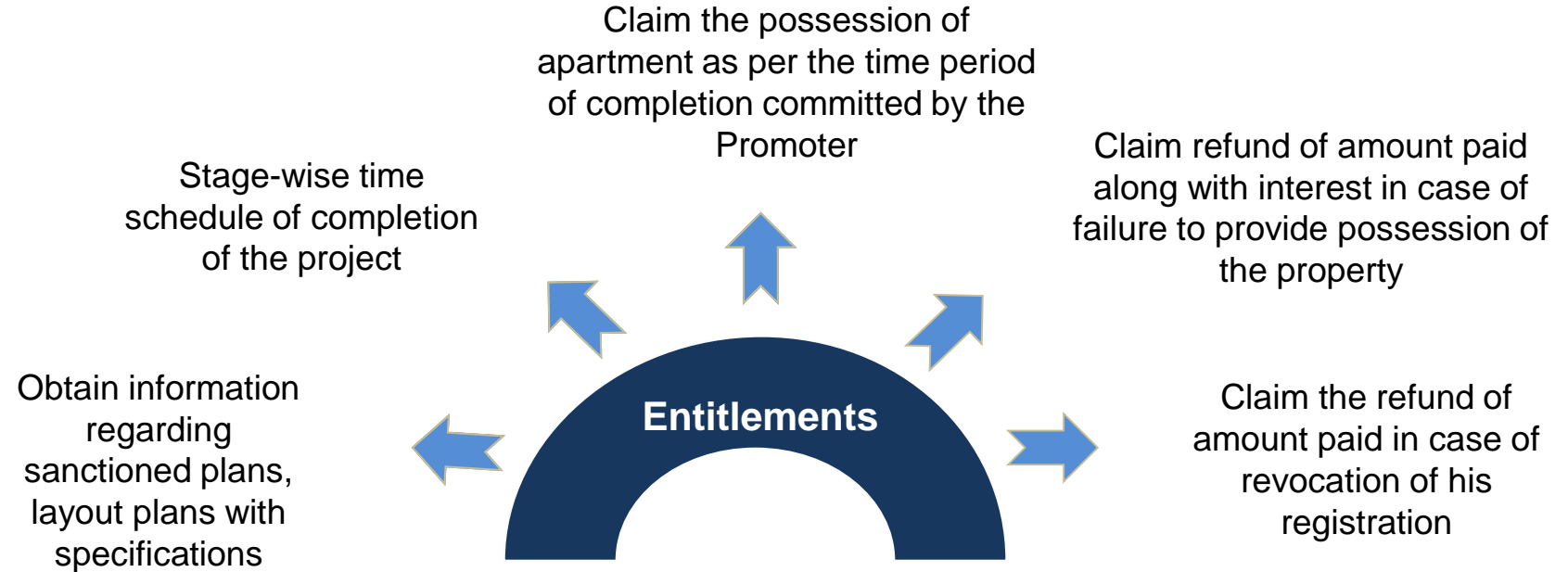


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Entitlements



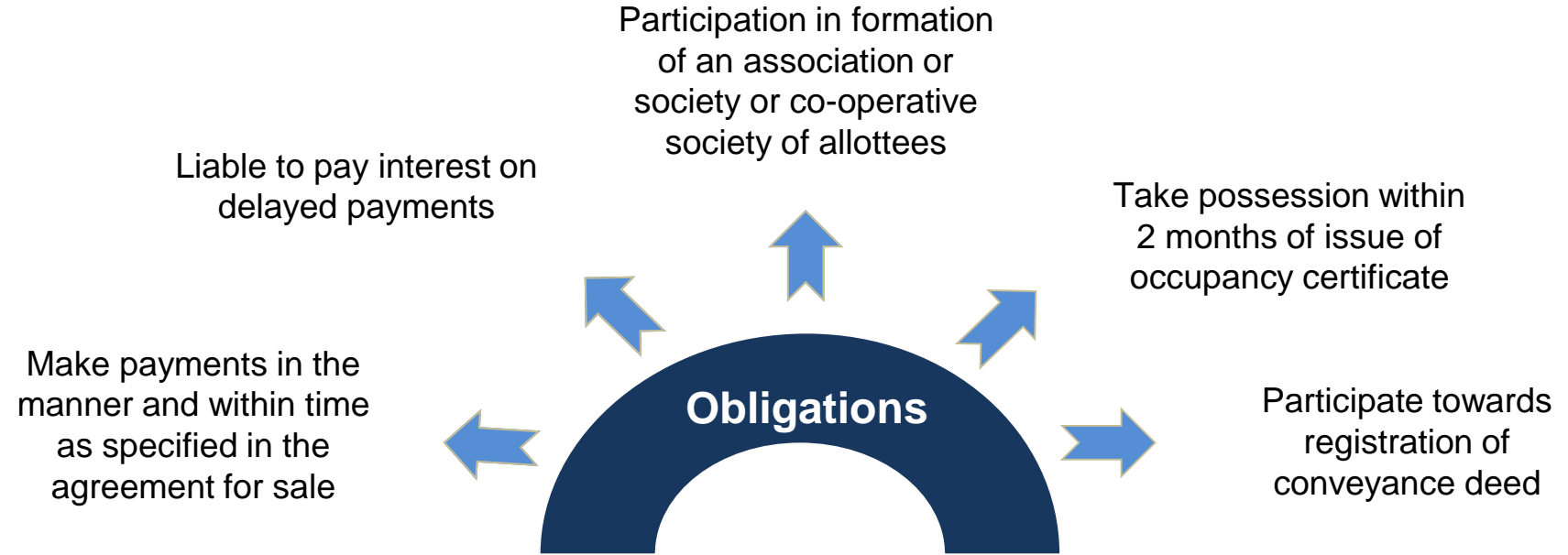
Section 2(d) - Allottee in relation to a real estate project includes a **person to whom a plot, apartment or building, as the case may be, has been allotted, sold** (whether as freehold or leasehold) or otherwise transferred by the promoter but does not include a person to whom such plot, apartment 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**

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Obligations



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Judicial Mechanism

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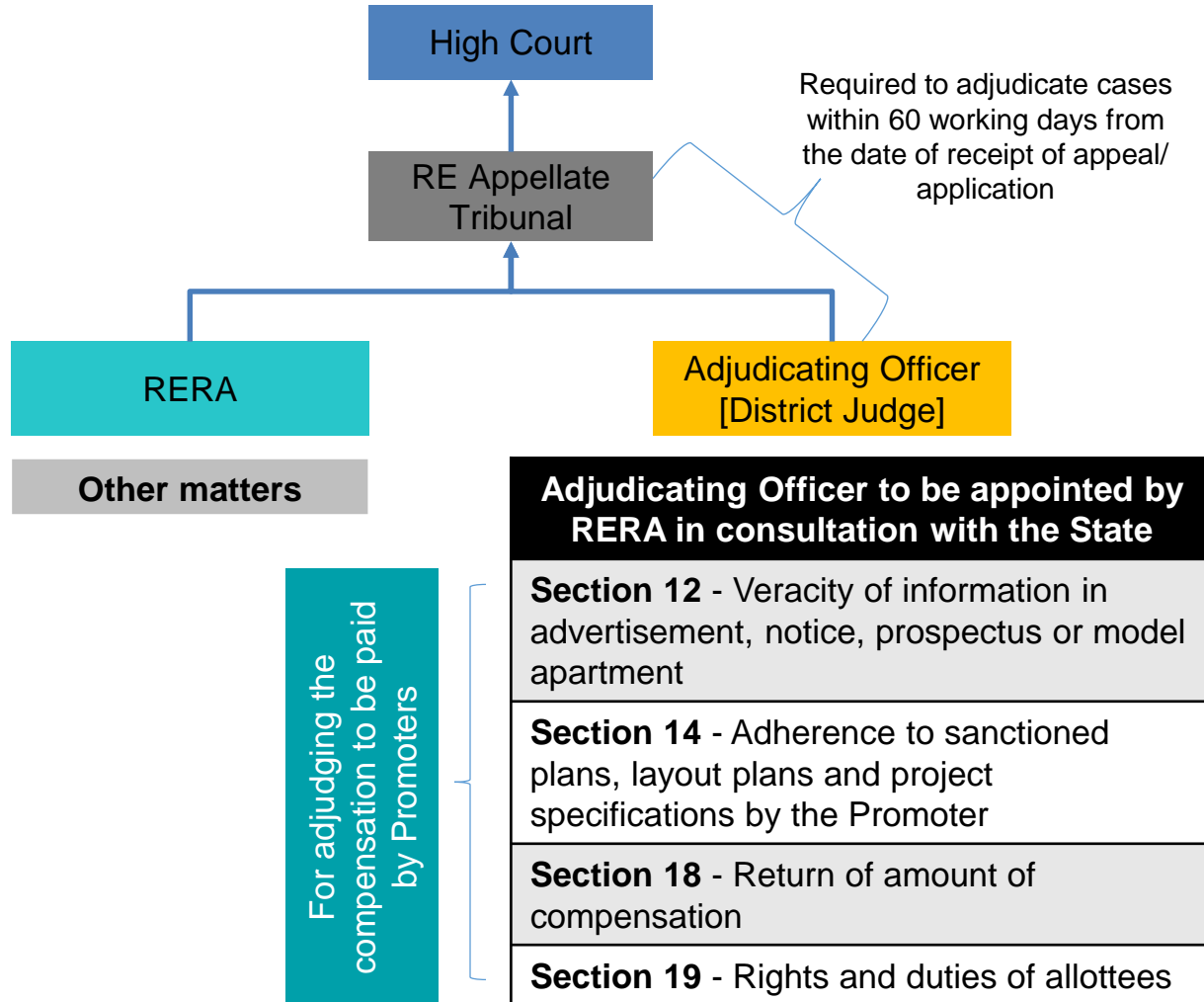
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Judicial Mechanism



- Any dispute resolution relating to matters on any violation or contravention of provisions is through the RERA or the Adjudicating Officer
- **No recourse to civil courts** on matters covered under the RE Act
- **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

* 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

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Punitive Provisions

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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.



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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?
 - Expenses for meeting Head office and site overheads (*Karnataka Rules allows withdrawal for "onsite" expenditure only*)?
 - Payment of taxes?
 - Servicing of loans (construction finance position)?
 - 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
- 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”?
 - 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, Insurance companies have not 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

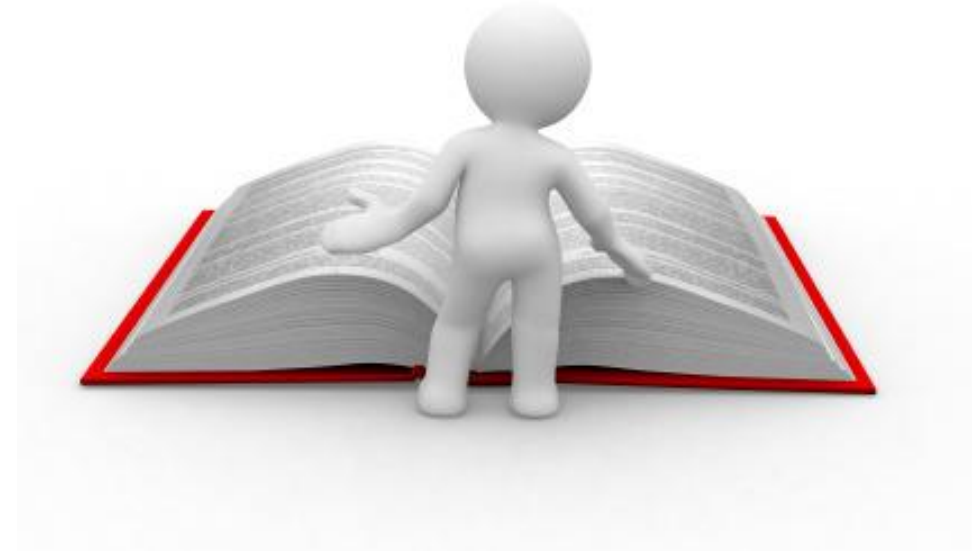
- Responsibility of the Regulatory Authority (Section 32, 33 and 34)
 - No 'assurance' function like other parties which accord development permission such as local government, PWD, Fire safety etc
 - Function essentially to create an information forum
 - Authority takes no responsibility of streamlining 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?

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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

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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

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Real Estate Rules - A brief Analysis

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Basavanagudi CPE Study
Circle
April 28, 2017
Sandeep Jhunjhunwala



Overview – Rules in Karnataka (1/2)

- Karnataka Real Estate (Regulation and Development) Rules, 2016 released for public consultation
- Draft Rules released on November 4, 2016
- Draft rules – An exact replica of the Union government’s flawed draft rules instead of the final rules
- While many states have dropped the requirement of income tax return of the promoter for registering the project (owing to confidentiality aspect), the draft rules released by Karnataka Government provides for the requirement of income tax return of the promoter for preceding 3 years
- "Cost of construction“ to mean **onsite expenditure** for the physical development of land - for withdrawal based on PoC method
- Agreement for sale
 - Roles, responsibilities and obligations of promoters/ allottees specified
 - Buyer can stop making payment if the project does not achieve the construction milestones because of promoter’s fault
 - Undertaking from the promoter for timely delivery of the project
 - Promoter required to clearly indicate date of delivery
 - Provision for extension of project delivery date in cases of delay caused due to "force majeure"
 - Date of grant of commencement certificate, land title, number of storeys and plots in the project, carpet area, common area, total price to be mentioned
 - Total price is escalation free except when development changes are altered



Overview – Rules in Karnataka (2/2)

- Karnataka Government in the process of setting up the Real Estate Regulatory Authority
- Disclosure required for ongoing projects
 - For ongoing projects without completion certificate
 - Required to disclose status of project, extent of completion, size of apartment etc
 - Additional disclosures: PAN card of the promoter, audited financials of the promoter for the preceding financial year, income tax returns of the promoter for preceding 3 financial years, copy of the legal title deed/ JDA, details of encumbrances if any
 - In absence of RERA notified for Karnataka and this being a draft rule, currently may not be operational
 - States such as Maharashtra have mandated 70 percent fund parking condition for ongoing project too (absent in draft rules released by Karnataka)
 - Draft rules of Tamil Nadu specifically states that agreement for sale as specified by RERA not applicable to ongoing projects
- Requirement to update the webpage for the project within 7 days from the expiry of each quarter
 - Bookings made for apartments/ plots/ garages;
 - Status of project (with photographs);
 - Any approvals, etc

Overview – Maharashtra & Tamil Nadu

- The Government of Maharashtra had issued the following draft Real Estate Rules:
 - Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2016;
 - Maharashtra Real Estate Regulatory Authority, Officers and Employees (Appointment and Service Conditions) Rules, 2016;
 - Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2016; and
 - These rules may be called the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2016.
- The Government had sought suggestions and objections on these rules by December 23, 2016
- Press releases suggest that the Maharashtra Government has approved RERA rules, law ministry to give final nod
- The Government of Tamil Nadu had released the draft of Tamil Nadu Real Estate (Regulation and Development) Rules, 2016
- Draft Rules released on January 28, 2017

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Comparative Analysis

Parameters	Karnataka RE Rules	Tamil Nadu RE Rules	Maharashtra Rules
Current status	Draft rules, yet to be notified	Draft rules, yet to be notified	Draft rules, yet to be notified
Date of release*	November 4, 2016	January 28, 2017	December 8, 2016
Registration fee for RE projects	Not specified	Registration fee payable by the promoter shall be a sum calculated at the rate as specified by the Authority from time to time No registration fee to be levied on Tamil Nadu Slum Clearance Board developed projects, Affordable Housing projects of Tamil Nadu Housing Board and Housing projects executed by Tamil Nadu Police Housing Corporation	Rupee 1 per square meter for RE projects where the area of land proposed to be developed does not exceed 1,000 square meters; Rupees 2 per square meter for RE projects where the area of land proposed to be developed exceeds 1,000 square meters [Subject to a maximum limit of Rs 100,000]

*Source - <http://naredco.in/notifications.asp?links=gnc1>

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Comparative Analysis

Parameters	Karnataka RE Rules	Tamil Nadu RE Rules	Maharashtra Rules
Time period for registration of ongoing RE projects	Ongoing projects for which completion certificate has not been obtained to apply for registration within 3 months of notification of the Act	Ongoing projects for which completion certificate has not been obtained to apply for registration within 3 months of notification of the Act (“ongoing project” specifically defined in the Rules)	Ongoing projects for which completion certificate has not been obtained to apply for registration within 3 months of notification of the Act
Fee for extension of registration of RE project	An amount equivalent to twice the registration fee along with an explanatory note setting out the reasons for delay in the completion of the project and the need for extension of registration for the project, along with documents supporting such reasons	An an amount as may be specified by regulations made by the Authority along with an explanatory note setting out the reasons for delay in the completion of the project and the need for extension of registration for the project, along with documents supporting such reasons	Rupee 1 per square meter for RE projects where the area of land proposed to be developed does not exceed 1,000 square meters; Rupees 2 per square meter for RE projects where the area of land proposed to be developed exceeds 1,000 square meters [Subject to a maximum limit of Rs 100,000]

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Comparative Analysis

Parameters	Karnataka RE Rules	Tamil Nadu RE Rules	Maharashtra Rules
Registration fee for RE Agents	<p>Within the jurisdiction of Bangalore Metropolitan Region Development Authority ("BMRDA") - Rs 50,000 in case of an individual and Rs 500,000 for other than an individual</p> <p>Within the jurisdiction of any planning area outside the jurisdiction of the BMRDA - Rs 25,000 in case of an individual and Rs 250,000 for other than an individual</p>	<p>Rs 25,000 in case of an individual and Rs 50,000 for anyone other than an individual</p>	<p>A sum of Rs 10,000 in case of agent being an individual</p> <p>Rs 100,000 in case of agent being an entity not registered under Companies Act, 2013</p> <p>Rs 25,00,000 in case of agent being a body corporate, registered under the Companies Act, 2013</p>
Renewal of Registration	<p>Application to be filed within at least 3 months prior to the expiry of registration granted. Fee: BMRDA - Rs 25,000 and 250,000 respectively for individuals and non - individuals; others - Rs 15,000 and Rs 150,000 respectively</p>	<p>Application to be filed within at least 3 months prior to the expiry of registration granted.</p> <p>Fee: Rs 5,000 in case of individual and Rs 50,000 for anyone other than an individual</p>	<p>Application to be filed at least 60 days prior to the expiry of registration.</p> <p>Fee: Same as for new registration</p>

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Comparative Analysis

Parameters	Karnataka RE Rules	Tamil Nadu RE Rules	Maharashtra Rules
Interest payable by promoter and allottee	State Bank of India Prime lending rate + 2 percent	Repo Rate of the Reserve Bank of India + 2 percent	Prevailing State Bank of India Prime lending rate as on the date on which the amount becomes due + 2 percent
Timelines for Refund	45 days from the date on which such an amount becomes due	45 days from the date on which such an amount becomes due	30 days from the date on which such an amount becomes due. Every case of such refund payment shall be reported by the concerned promoter to the Authority within 30 days
Filing of appeal before the Appellate tribunal	Filing fee: Rs 1,000	Filing fee: Rs 1,000	Filing fee: Rs 5,000
Penalty for non-registration by the Promoter	10 percent of the estimated cost of RE project	10 percent of the estimated cost of RE project	2 percent of the estimated cost of the RE project (may extend to 10 percent)
Penalty for failure by the Promoter to comply with, or contravention of any of the orders, decisions or directions of the Appellate Tribunal	10 percent of the estimated cost of RE project	10 percent of the estimated cost of RE project	5 percent of the estimated cost of RE project (may extend to 10 percent)

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Comparative Analysis

Parameters	Karnataka RE Rules	Tamil Nadu RE Rules	Maharashtra Rules
Failure by the RE Agent to comply with, or contravention of any of the orders, decisions or directions of the Appellate Tribunal	10 percent of the estimated cost of the plot, apartment or building, as the case may be, of the RE project, for which the sale or purchase has been facilitated	10 percent of the estimated cost of the plot, apartment or building, as the case may be, of the RE project, for which the sale or purchase has been facilitated	5 percent of the estimated cost of the plot, apartment or building, as the case may be, of the RE project, for which the sale or purchase has been facilitated, subject to maximum of ten percent
Failure by the allottee to comply with, or contravention of any of the orders, decisions or directions of the Appellate Tribunal	10 percent of the estimated cost of the plot, apartment or building, as the case may be	10 percent of the estimated cost of the plot, apartment or building, as the case may be <i>(Provided that the Government may, by notification, amend the rates specified above)</i>	5 percent of the estimated cost of the plot, apartment or building, as the case may be, subject to maximum of ten percent

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
- 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 has forwarded the rules notified by the states to a parliamentary committee for examination
- 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
- State Rules littered with gaps which will make it smoother for builders to circumvent the law

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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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

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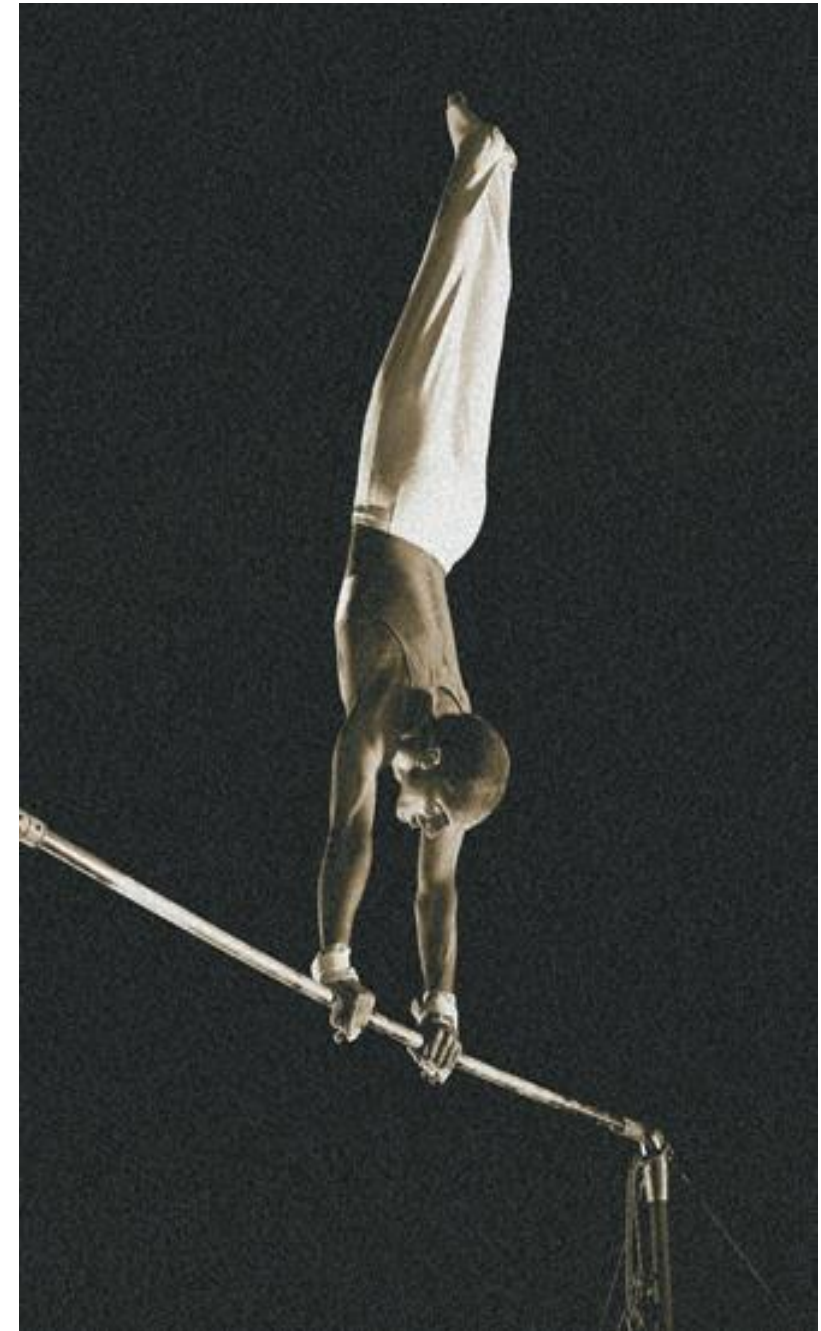
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The Finale - Hits and Misses

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Karnataka State Chartered
Accountants Association
April 28, 2017
Sandeep Jhunjunwala



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?

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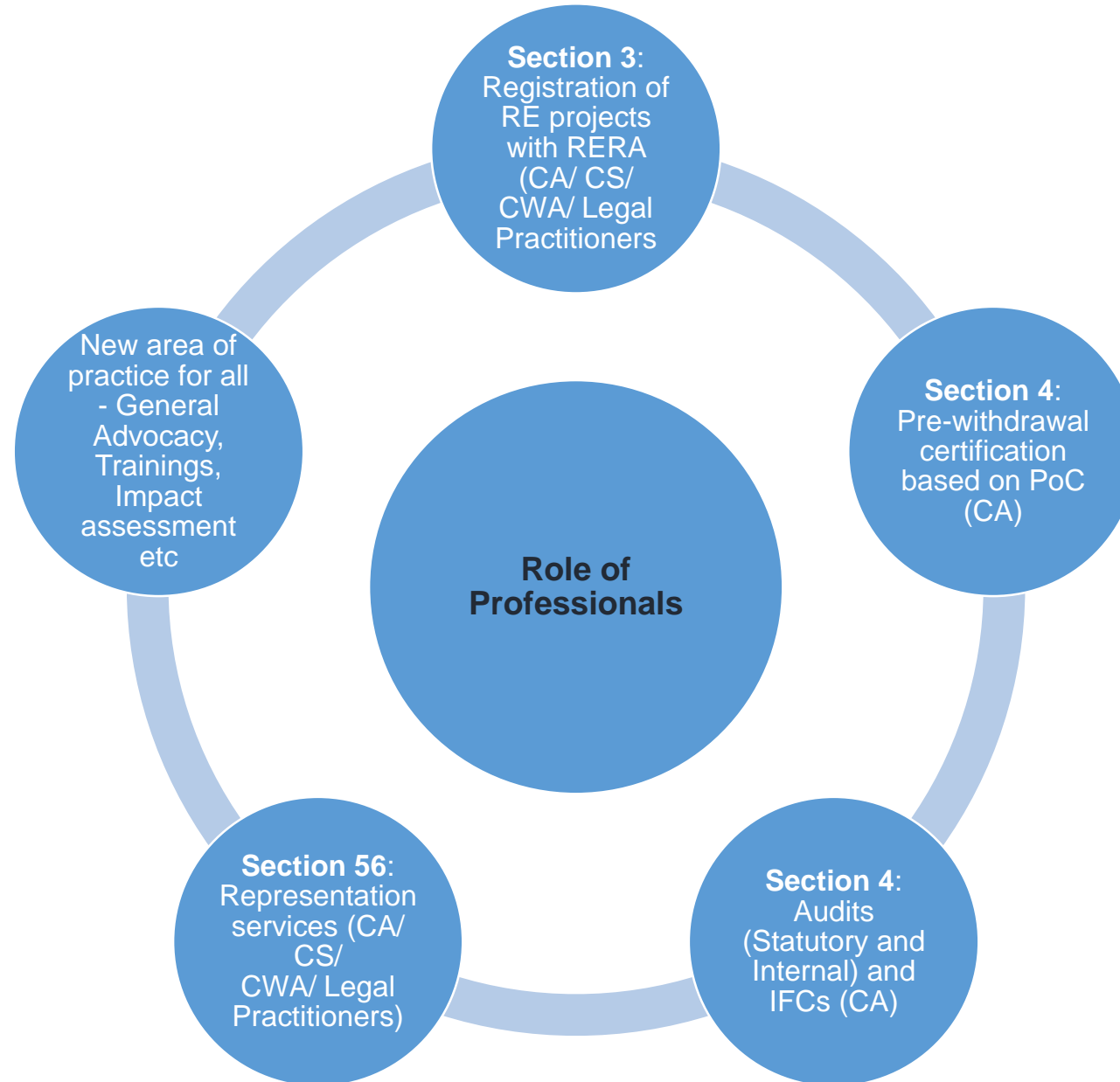


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Role of Professionals



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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

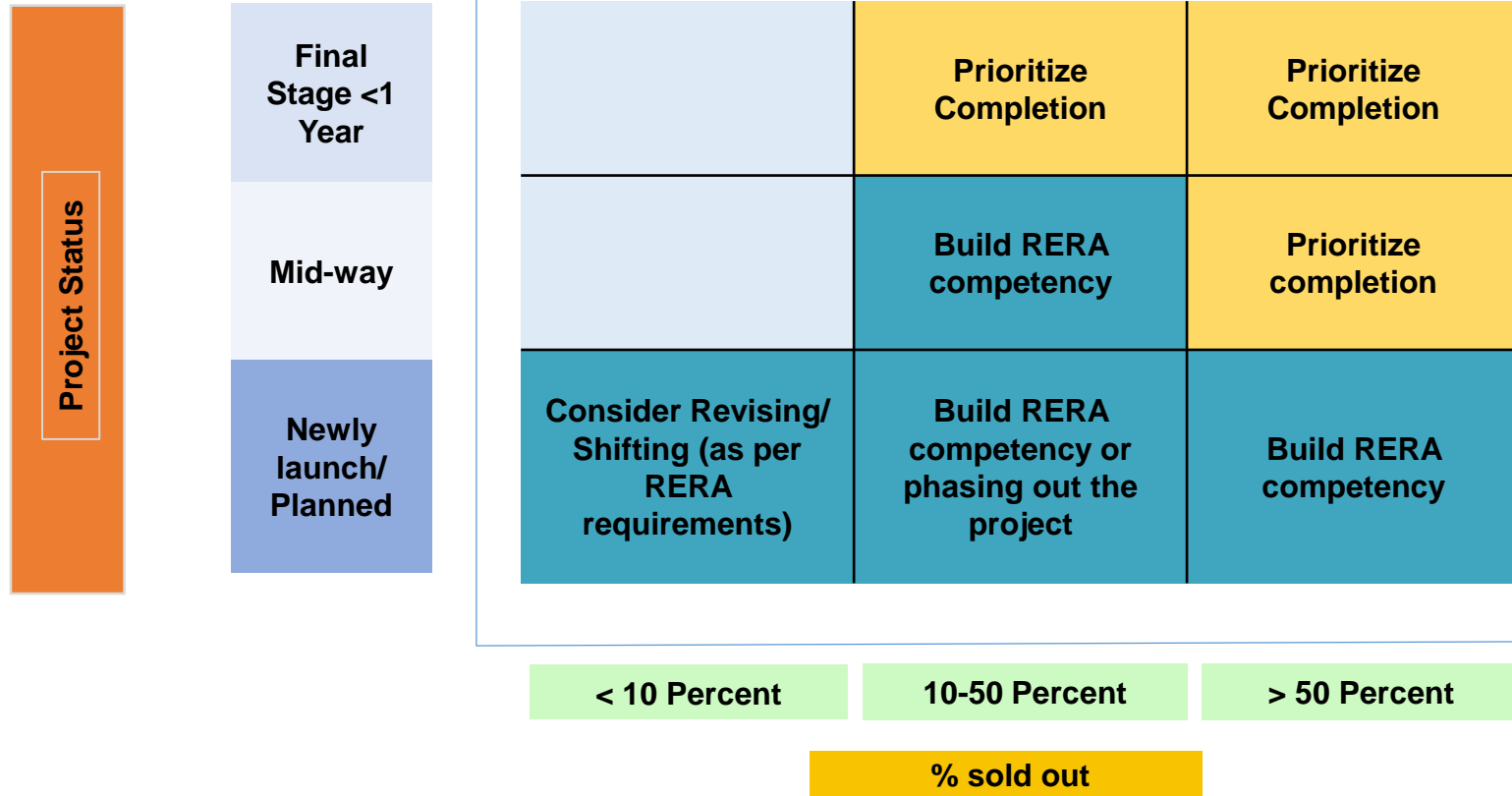
- No project promotions/ advertisements/ marketing before registration
- Provide information to allottees - sanctioned plan, layout plan, stage wise schedule of completion
- Sanitize marketing collaterals/ brochures etc (identify and address conflicting customer commitments) and align to RERA regime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

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Prioritize existing and planned projects



Priority status

Mid Low Top

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Overall Analysis

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Karnataka State Chartered
Accountants Association
April 28, 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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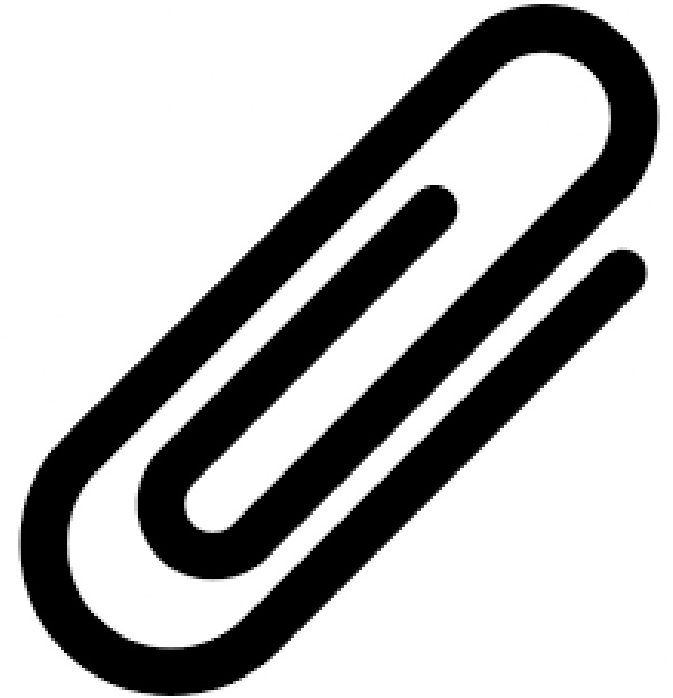
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Key Definitions

- Section 2(zh) - "**Planning area**" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time
- However, several states do not have planning are defined – and several Census Towns (areas which are urban as per Census, but not under the Municipal laws of the State) are still governed by Panchayats



Key Definitions

- Section 14(3) - In case any **structural defect** or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.



Key Definitions

➤ Section 2 (zk) - "**Promoter**" means

- i. a person who constructs or *causes to be constructed* an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- ii. a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- iii. any development authority or any other public body in respect of allottees of -
 - a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- iv. an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- v. any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- vi. such other person who constructs any building or apartment for sale to the general public.

Explanation - For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder



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