

## Salient features of RERA

### THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate (Regulation and Development) Act, 2016 (“**RERA 2016**”) is enacted with a laudable objective of regulating and promoting the real estate sector and to govern sale of units in real estate project, in an efficient and transparent manner by protecting the interest of consumers.

#### Salient Features

The salient features of RERA 2016 are the following:

#### 1. Prior registration of real estate project with Real Estate Regulatory Authority

i. Under RERA 2016, registration of all new and on-going, commercial and residential real estate projects with the Real Estate Regulatory Authority<sup>1</sup> (“**Authority**”) of relevant state is mandatory<sup>2</sup> except in the following cases:

- Where the area of land proposed to be developed does not exceed 500 square meters;

- Where the number of apartments proposed to be developed does not exceed eight (8) inclusive of all phases;
- Where the promoter has received completion certificate for a real estate project prior to commencement of RERA 2016;
- for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.
- ii. In case of on-going projects on the date of commencement of RERA 2016 and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of

1. The Authority in the State of Maharashtra is MahaRERA, the details whereof are available on <https://maharera.mahaonline.gov.in>  
2. Registration to be completed within 90 days of notification i.e. no later than July 30, 2017.

three (3) months from the date of commencement of RERA 2016<sup>3</sup>.

iii. In case the promoter fails to register himself with MahaRERA<sup>4</sup>, the promoter cannot do the following activities:

- advertise, market, book, sell or offer for sale any plot, apartment or building as the case may be;
- or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area within Maharashtra.

iv. In case any promoter fails to register himself with MahaRERA, he shall be liable to a penalty which may extend up to ten per cent (10%) of the estimated cost of the real estate project<sup>5</sup>. On continued violation, he shall be punishable with imprisonment for a term which may extend up to three (3) years or with fine which may extend up to a further ten per cent (10%) of the estimated cost of the

v. Apart from registration, the promoters shall be required to provide quarterly updates on the status of the project to the authority.

vi. Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority. The promoter shall enclose the documents as mentioned in Section 4 of RERA 2016 along with the Application form.

## 2. Registration of real estate agents

i. Under RERA 2016 it is compulsory for every real estate agent to register himself with MahaRERA in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.

ii. A real estate agent who is not registered with MahaRERA cannot do the following activities:

- Sale or purchase of any plot, apartment, building, as the case may be, in a real estate project or

3. RERA has been made effective from May 1, 2017.

4. As per Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017

5. Term of Co-promoter is defined vide notification dated May 11, 2017 who is also required to furnish declaration.

part of it, being the part of the real estate project;

- or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area within State of Maharashtra.

- iii. In case any real estate agent fails to register, he shall be liable to a penalty of Rs. 10,000/-(Rupees Ten Thousand Only) for every day during which such default continues, which may cumulatively extend up to five per cent (5%) of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated.

### **3. Duties of the Promoter**

- i. It shall be the duty of every promoter to create a web page on the website of the Authority and enter

the following details of the proposed project for public viewing –

- details of the registration granted by the Authority;
  - quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
  - quarterly up-to-date the list of number of garages booked;
  - quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
  - quarterly up-to-date status of the project; and
  - Such other information and documents as may be specified by the regulations made by the Authority.
- ii. The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from

- the Authority and such other matters incidental thereto.
- iii. The Promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force. The Promoter shall also be responsible to obtain lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees.
- iv. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under RERA 2016.
- v. In case the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale, he shall be liable to pay interest for every month of delay. Further, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, the promoter is liable to return the amount received by him with interest.
- vi. The promoter shall obtain all insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of:
- title of the land and building as a part of the real estate project; and
  - Construction of the real estate project.
- vii. In case any promoter, fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent (5%), of the estimated cost of the real estate

project as determined by the Authority.

Viii. In case any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three (3) years or with fine for every day during which such default continues, which may cumulatively extend up to ten percent (10%) of the estimated cost of the real estate project, or with both.

#### 4. Co-Promoters Roles and Responsibilities<sup>6</sup>

- i. Co-Promoter means and includes any person(s) or organization(s) who under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a total revenue generated from sale of apartments or share of the total area developed in the Real Estate Project.
- ii. The liabilities of such Co-Promoters shall be as per the agreement or arrangement with the Promoters, however for withdrawal from designated Bank Account, they shall be at par with

the Promoter of the Real Estate Project.

- iii. The agreement or arrangement of Co-Promoter(s) with the Promoter should clearly detail the share of Co-Promoter(s) and the copy of the said agreement or arrangement should be uploaded on the MahaRERA portal, at the time of registration along with other details of the Co-Promoter(s).
- iv. Such Co-Promoter/Individual/Organisation should submit a declaration in Form B<sup>7</sup>.
- v. Each of the Co-Promoter/Individual/Organisation entitled to share of the total are developed, should open a separate bank account for deposit of 70% of the sale proceeds realized from the allottees.

#### 5. Financial Discipline

- i. A promoter shall not accept more than ten per cent (10%) of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a

6. As per notification of MahaRERA dated May 11, 2017

7. As per Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

written agreement for sale with such person and register the said agreement for sale.

- ii. Seventy per cent (70%) of the amounts realized for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.
- iii. Withdrawal from such accounts shall be in proportion to the percentage of completion of the project, which shall be certified by an engineer, an architect and a chartered accountant in practice.

#### **6. Transfer of real estate project to third party**

The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third (2/3rd) allottees, except the promoter, and without the prior written approval of the Authority.

#### **7. Complaint to Authority**

Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of RERA 2016 or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be in such form, manner and fees for filing complaint as may be specified by regulations.

#### **8. Functions of the Authority**

- i. to register and regulate real estate projects and real estate agents registered under RERA 2016;
- ii. to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- lii. to maintain a database, on its website, for public viewing, and enter the names and photographs of pro-

- motors as defaulters including the project details, registration for which has been revoked or have been penalised under RERA 2016, with reasons therefor, for access to the general public;
- iv. to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under RERA 2016, with such details as may be prescribed, including those whose registration has been rejected or revoked;
  - v. to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
  - vi. to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under RERA 2016 and the rules and regulations made thereunder;
  - vii. to ensure compliance of its regulations or orders or directions made in exercise of its powers under this RERA 2016;
  - Viii. to perform such other functions as may be entrusted to the Authority by

the appropriate Government as may be necessary to carry out the provisions of RERA 2016.

#### **9. Real Estate Appellate Tribunal**

- i. An Appellate Tribunal to be known as the “(name of the State/Union territory) Real Estate Appellate Tribunal” shall be constituted within a period of one (1) year from the date of coming into force of RERA 2016.
- ii. Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under RERA 2016 may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter within sixty (60) days, provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent (30%) of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

iii. The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

**10. Appeal to High Court**

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty (60) days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one (1) or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

**11. Bar or Jurisdiction**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under RERA 2016 to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under RERA 2016.



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