

A REVIEW ARTICLE

ON

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

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Abstract

The present article is a brief review of the Real Estate (Regulation and Development) Act, 2016 (RERA), Author has elaborated salient features of the RERA in a simple and understandable language, so that everyone who is planning for buying an apartment in near future can become fully aware about the RERA before entering into transaction and agreement with the developer. The article has also explained objectives of the RERA and defined various important property related terms which has been given in the Act. Author has referred few articles on internet and a standard RERA Act book for preparing the present article.

Key words

allottee, promoter, apartment, regulatory authority, project, Regulatory Authority

Introduction

The Real Estate Bill was passed by the Rajya Sabha on 10th March, 2016 and the Lok Sabha on 15th March, 2016 in the Parliament with a number of amendments in the original Real Estate (Regulation and Development) Bill, 2013 after a lot of deliberation and opposition. The Hon'ble President of India assented to the Bill on 25th March, 2016 and was published in the Official Gazette on the very next day on 26th March, 2016 for public information. Thus, the Real Estate (Regulation and Development) Act, 2016 came into effect from 1st May, 2016 through the notification of the Central Government of India.

Objectives of the RERA

The RERA is intended to achieve the following objectives:

- To ensure accountability towards allottees and protect their interest.
- To infuse transparency, ensure fair play and reduce frauds and delays.
- To introduce professionalism in the real estate sector.
- To establish symmetry of information between the promoter and allottee
- To impose certain responsibilities on the promoter, allottees and real estate agent.
- To establish regulatory oversight mechanism to enforce contracts.
- To establish fast track dispute resolution mechanism.
- To create good governance in the sector, this in turn would create confidence among the investors.

Important terms defined by the RERA

➤ Promoter

Promoter is a person who develops / constructs or causes to be developed/ constructed an independent building or a building consisting of apartments or converts an existing building or part thereof into apartments, for the purpose of selling some of the apartments to other persons and includes his assignees.

➤ **Allottee**

In relation to real estate project ‘allottee’ means the 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, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise. but does not include a person to whom such plot, apartment or building, as case may be, is given on rent.

➤ **Apartment**

The term ‘apartment’ whether called block, chamber, dwelling unit,flat,office,showroom,shop,godown,premises,suit,tenement,unit or by any other name, means a separate and self-contained part of any immovable property ,including one or more rooms or enclosed spaces, located on one or more floors or any part thereof ,in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying an any business, occupation, profession, or trade, or for any other type of use ancillary to the purpose specified.

➤ **Covered Parking**

Cover parking space means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and /or stilt and/or podium and/or space provided by mechanized parking arrangements and shall not include a garage and/or open parking.

➤ **Garage**

Garage means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking space.

- **Appropriate Government** It means the State and Central Government. In respect of State having legislature, there the State Government shall be Appropriate Government and in respect of Union Territories like Andaman & Nicobar Island which do not have legislature, there the Central Government shall be Appropriate Government.
- **Competent Authority** Competent Authority has been defined as “the local authority or any authority created or established under any law for the time being in force by the Appropriate Government which exercises authority over land under its jurisdiction ,and has powers to give permission for development of such immovable property”

Salient features of the RERA

1. Scope of the RERA

The scope of RERA is restricted to residential apartments, plots and residential or commercial buildings. The RERA is applicable to development of large piece of land into plots with or without superstructure if such development is carried with the object of selling the buildings, apartments or the plots. The Act also takes within its fold conversion of bungalow, hotel or existing building into apartments.

2. Registration of the Project

The promoter has to register their project (residential as well as commercial) with the Regulatory Authority before booking, selling or offering apartments for sale in such projects. In case a project is to be promoted in phases, then each phase shall be considered as a standalone project, and the promoter shall obtain registration for each phase.

3. Acceptance or refusal of registration

- Upon receipt of an application by the promoter, the Regulatory Authority shall within a period of 30 days, grant or reject the registration.
- Upon granting a registration, the promoter will be provided with a registration number, including a login Id and password for accessing the website of the Regulatory Authority and to create his web page and to fill in the details of the proposed project.

- If the Regulatory Authority fails to grant or reject the application of the promoter within the period of 30 days, then the project shall be deemed to have been registered.
- The registration, if granted, will be valid until the period of completion of the project as committed by the promoter to the Regulatory Authority. This period shall be extended by the Regulatory Authority for a period not exceeding one year in aggregate, only due to force majeure and on payment of such fee as may be specified by regulations made by the Regulatory Authority.

4. Project exemption from registration

The following types of projects shall not be required to be registered before the Regulatory Authority:

- Where the area of land proposed to be promoter does not exceed 500 square meters or the number of apartments to be constructed in the project does not exceed eight apartments. However, the appropriate Government (Central and State Government) may, if it considers appropriate, reduce the threshold limit below 500 square meters or eight apartments;
- Projects for the purpose of renovation or repair or re-development which does not involve marketing, advertising, selling and new allotment of any apartment plot or building.

5. Website of the Regulatory Authority

After registration of the project with the regulatory authority, the promoter shall create his web page on the website of the Regulatory Authority and enter all details of the proposed project including:

- Details of the registration granted by the Regulatory Authority;
- Quarterly up-to-date list of the number and types of apartments or plots or garages, as the case may be, booked;
- Quarterly up-to-date status of the project along with the list of approvals obtained and approvals pending subsequent to commencement certificate; and
- Such other information and documents as may be specified by the regulations made by the Regulatory Authority.

6. Advertisement or prospectus issued by the promoter

- The promoter cannot do advertisement of the project without registration.
- The advertisement or prospectus issued or published by the promoter should prominently mention the website address of the Regulatory Authority,
- Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus and sustains any loss or damage because of any incorrect, false statement included in these, he/she shall be compensated by the promoter in the manner as provided under the Act. Also, if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, intends to withdraw from the proposed project, his entire investment (along with interest at such rate as may be prescribed and compensation in the manner provided under the Act), will be returned to him.

7. Limit on receipt of advance payment

A promoter shall not accept a sum more than 10% percent 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 written agreement of sale with such person and register the said agreement of sale, under any law for the time being in force.

8. 70% of the amount received from the allottee to be deposited in a separate bank account

- It is mandatory that a promoter shall deposit 70% of the amount received from the allottee / buyer, from time to time, in a separate account of any scheduled bank.
- The promoter shall be entitled to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. However, such withdrawal can only be made after it is certified by an engineer, an architect and chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

- The promoter is also required to get his accounts audited within six months after the end of every financial year by a practicing chartered accountant.

9. Carpet Area

Under the Bill, promoters / 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.

10. Structural defect

In case any structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoters is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, the promoter shall rectify such defect without any further charge, within thirty days. If the promoter fails to rectify such defect within such time, the aggrieved allottee shall be entitled to receive appropriate compensation in the manner as provided in the Act.

11. Restriction on addition and alteration in the plans

The promoter cannot make any other addition or alteration in the approved and sanctioned plans, structural designs and specifications of the building and common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such a building.

12. Restriction on transfer and assignment

The promoter shall not transfer or assign his majority rights and liabilities in respect of a project to a third party without obtaining prior written consent from two-thirds of the allottees, except the promoter, and without the prior written approval of the Regulatory Authority.

13. Refund of amount in case of delay in handing over possession

In case the promoter is unable to hand over possession of the apartment, plot or building to the allottee in accordance with the terms of the agreement of sale due to any of the reasons then the promoter shall be liable, on demand being made by the allottee, to return the amount received by him from the allottee with interest and compensation at the rate and manner as provided under the Act. This relief will be available without prejudice to any other remedy available to the allottee.

However, if an allottee does not intend to withdraw from the project, he shall be paid interest by the promoter for every month of delay, till the handing over of the possession, at a prescribed rate.

14. Adjudicating Officer

For adjudging the compensation to be paid by the promoter in accordance with the provisions of the Act, the Regulatory Authority shall appoint (in consultation with the appropriate Government) one or more judicial officers as deemed necessary, who is or has been a District Judge, to be an adjudicating officer for holding an inquiry in this regard. However, such an appointment will be made after giving any person concerned a reasonable opportunity of being heard.

15. Real Estate Appellate Tribunal

- In addition to the establishment of the Regulatory Authority, the Act also proposes to establish a Real Estate Appellate Tribunal (Appellate Tribunal) within one year from the date of commencement of the Act.
- Any person aggrieved by any direction or decision made by the Regulatory Authority or by an adjudicating officer, may make an appeal before the Appellate Tribunal within a period of 60 days from the date of receipt of a copy of the order or direction.
- The Appellate Tribunal shall deal with the appeal as expeditiously as possible and endeavour shall be made to dispose of the appeal within a period of 60 days from the date of receipt of appeal.
- The Appellate Tribunal shall have same powers as a civil court and shall be deemed to be a civil court. An appeal against the order of the Appellate

Tribunal may be filed before the jurisdictional High Court within a period of 60 days from the date of communication of the decision or order of the Appellate Tribunal.

16. Offences and Penalty

a) To the promoter

Stringent penal provisions have been prescribed under the Act against the promoter in case of any contravention or non-compliance of the provisions of the Act or the orders, decisions or directions of the Regulatory Authority or the Appellate Tribunal which are as under :

- If promoter does not register its project with the Regulatory Authority - the penalty may be up to 10% of the estimated cost of the project as determined by the Regulatory Authority;
- If promoter does not comply with the aforesaid order of the Regulatory Authority - imprisonment of up to three years and a further penalty of up to 10% of the estimated cost, or both; and
- In case the promoter provides any false information while making an application to the Regulatory Authority or contravenes any other provision of the Act - the penalty may be up to 5% of the estimated cost of the project or construction.

b) To the allottee

If any allottee fails to comply with, or contravenes any of the orders, decisions or directions of the Regularity Authority, there may be a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the cost of the plot, apartment or building, as the case may be, as determined by the Regulatory Authority. Further, if any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, this may entail imprisonment up to one year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the cost of the plot, apartment or building, as the case may be, or with both.

17. Revocation or lapse of registration

- a) The Regulatory Authority may revoke the registration granted on receipt of a complaint or *suo moto* or on the recommendation of the competent authority in case: i) The promoter makes a default in doing anything required under the Act or the rules or regulations made there under; ii) The promoter violates any terms of the approvals granted for the project; and iii) The promoter is involved in any kind of unfair practice of irregularities.
- b) In the event the registration is revoked by the Regulatory Authority or it lapses, the Regulatory Authority shall: i) Debar the promoter from accessing the website in relation to the project, specify his name in the list of defaulters on its website and also inform other Regulatory Authorities in other States and Union territories about such cancellation; ii) Facilitate the remaining development works to be carried out by competent authority or the association of allottees or in any other manner as may be determined by the Regulatory Authority. However, the association of allottees shall have a first right of refusal for carrying out the remaining development works; or iii) Direct the scheduled bank holding the project bank account, to freeze the account and thereafter take such further necessary actions, including consequent de-freezing of the account, for facilitating the remaining development works in the manner mentioned above.

18. Other relevant provisions

- a) After the promoter executes an agreement for sale for any apartment, plot or building, no mortgage or charge can be created by the promoter on such apartment, plot or building.
- b) The promoter shall execute a registered conveyance deed in favour of the (i) allottee in respect of the apartment, plot or building; and (ii) association of allottees of competent authority in respect of the undivided proportionate title in the common areas, and hand over possession of the same within the period as specified under the local laws. In the absence of any local law, such conveyance deed shall be carried out by the promoter within three months from date of issue of the occupancy certificate.

- c) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or buildings.
- d) The Regulatory Authority shall make a recommendation to the appropriate Government on (i) creation of a single window system for ensuring time-bound project approvals and clearances for timely completion of the project; and (ii) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials.

Conclusion

The RERA is indeed revolutionary initiative in the construction sector due to its benefits for flat buyers as well as to the developers who follow ethical practices in their business. All the features of RERA are substantially beneficial to the property buyers because this Act has taken complete care of common people, especially those who intends to have their dream home in the urban areas of India, where they are working since long and planning to have home for their growing family. Act has also compelled to the developers for completing their projects in time and hand over possessions of the apartment within the period agreed in the agreement with all the assured amenities and conveyance of the property.

References

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Bio

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