



THE REAL ESTATE

(REGULATION AND DEVELOPMENT)

ACT, 2016 AND RULES, 2017

OF **MahaRERA**

We congratulate
Hon'ble Shri Gautam Chatterjee, IAS,
for his selection and appointment as the
Chairperson of MahaRERA

AND

Express our gratitude to him for
encouraging and guiding us to bring out
this Book and also for giving his foreword
message to this Book..... Authors



MahaRERA – Pioneer in Implementation of RERA



Acknowledged by Government of India as Leading state in RERA

एम. वेंकैया नायडु
M. VENKAIAH NAIDU



सत्यमेव जयते



शहरी विकास,
आवस और शहरी गरीबी उपशमन एवं
सूचना एवं प्रसारण मंत्री
भारत सरकार

MINISTER OF URBAN DEVELOPMENT
HOUSING & URBAN POVERTY ALLEVIATION
AND INFORMATION AND BROADCASTING
GOVERNMENT OF INDIA

12 May 2017

MESSAGE

Maharashtra is one of the most urbanized states and has taken many initiatives to improve the urban and housing infrastructure and services. Maharashtra is also one of the first states to notify and establish RERA, and it is hoped that the other states will also follow suit soon.

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(REGULATION AND DEVELOPMENT)

ACT, 2016

AND RULES 2017,

OF

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FOREWORD



I am happy to know that a book on '**REAL ESTATE (Regulation & Development) ACT, 2016 & RULES, 2017**' is authored by Adv. Vinod Sampat, Housing Guru Ramesh Prabhu, and other Contributors. They have come out of this book in a very short time.

This book will be helpful to all to know about RERA which has been implemented all over Maharashtra on 1st May 2017.

I hereby wish all the best to Adv. Vinod Sampat, Housing Guru Ramesh Prabhu, and others for their painstaking efforts and in bringing out this publication in a very short time, for the benefit of all the stakeholders and the public at large..

Gautam Chatterjee
Chairman,
Maharashtra Real Estate
Regulatory Authority
Government of Maharashtra
Mumbai.

Date: 6th June 2017

PREFACE TO THE FIRST EDITION

Housing is the most important basic necessity of human beings, next only to food and clothing. Due to scarcity of land many multi story buildings are constructed in Mumbai and other major cities. Though there are many laws to regulate the housing sector, there was no regulator to regulate this sector.

With more and more profit motive and to have future benefits attached with the land like additional FSI, Development rights etc. some of the builders were not providing the required documents to the flat purchasers. In order to bring the required transparency, standardization, professionalism and efficiency in this sector, Government of India has enacted Real Estate (Regulation and Development) Act, 2016 effective from 1st May 2017 across India except Jammu and Kashmir.

During the course of our professional practice as Chartered Accountants, Advocates, and as consultants to the developers, builders, flat purchasers ,cooperative housing societies and as faculties to the RERA seminars across India, we have realized that there are many misconceptions about RERA and its implementation.

An attempt has been made to write this book, in order to educate and guide all the stakeholders of REAL ESTATE sector and the public at large with regard to the role and the responsibilities of the land owners, builders, contractors, professionals, flat purchasers societies, association of allottees, regulators, adjudicating officers, Appellate Tribunals and the legal remedies available under various circumstances to get the rights of consumers exercised under RERA and applicable Rules..

We sincerely thank Hon'ble Prime Minister Shri. Narendra Modi, Hon'ble Housing Minister Shri. **M Venkaiah Naidu** , Hon'ble Chief Minister Shri. Devendra Fadnavis, Hon'ble Housing Minister Shri. Prakash Mehta , Hon'ble Shri. Gautam Chatterjee, Chairman, Maharashtra Real Estate Regulatory Authority (MahaRERA) , Shri. Vasant Prabhu, Secretary, MahaRERA and all the concerned Government Officers, the contributors , flat owners, developers, builders and professionals who have encouraged and helped us to bring out this book within a short period. We express our special gratitude to Hon'ble Shri. Gautam Chatterjee, Chairman, MahaRERA for encouraging and guiding us to bring out this publication in addition to giving the foreword to this book.

We are sure that this publication will be of immense use to all the stakeholders connected with the real estate sector, flat purchasers and the public at large in understanding various provisions of RERA, Rules, Regulations, orders and other applicable laws of the real estate sector in the state of Maharashtra.

The book being the first edition will have lot of scope for improvement. I request the readers to give their valuable suggestions, point out the mistakes or errors committed to us for making the necessary additions and corrections in the next edition.

Ca. Shailesh Ghedia,
Chairman, Consumer Guidance Forum

Adv.Vinod Sampat
President, Coop Users
And Resi.Welfare Assn.

RAMESH S. PRABHU
Chairman, MahaSeWA

And all other contributors.

Place : Mumbai

Date : 07.06.2017

The suggestions for improvement of this edition may be send to the publisher of this book

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CHAPTER – I

Real Estate (Regulation and Development) Act 2016 and Rules 2017 – MahaRERA

Source: www.maharera.mahaonline.gov.in

INTRODUCTION

Government of India has enacted the Real Estate (Regulation and Development) Act 2016 and all the sections of the Act shall come into force with effect from May 1, 2017. Under this Act, Government of Maharashtra established Maharashtra Real Estate Regulatory Authority (MahaRERA), vide Notification No. 23 dated 8 March 2017, for regulation and promotion of real estate sector in the State of Maharashtra.

The key components of Real Estate (Regulation and Development) Act, 2016 are as follows:

1. REAL ESTATE REGULATORY AUTHORITY AND APPELLATE TRIBUNAL

Under this Act, appropriate government shall establish Real Estate Regulatory Authority for regulation and promotion of the real estate sector in the State / UTs. The Authority shall strive to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector while protecting the interest of allottees, promoters and real estate agents. The authority shall also establish an adjudicating mechanism for speedy dispute redressal regarding registered real estate projects. The key responsibilities of the Authority shall be as follows:

- Ensuring Disclosures of Real Estate Projects by Promoters
- Real Estate Projects Registration
- Real Estate Agents Registration
- Complaints Redressal
- Provide recommendations to appropriate Government on in matters relating to the development & promotion of real estate sector;

2. REAL ESTATE PROJECTS REGISTRATION

All commercial and residential real estate projects will have to register except in projects where

- area of land proposed to be developed does not exceed five hundred square meters
- number of apartments proposed to be developed does not exceed eight inclusive of all phases
- promoter has received completion certificate for a real estate project prior to commencement of this Act
- 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

3. REAL ESTATE AGENTS REGISTRATION

All Real Estate Agents should register under this Act. No real estate agent shall facilitate the sale or purchase of 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, without obtaining registration under this section.

If any real estate agent fails to register, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent 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

4. FILING OF COMPLAINTS

- Any aggrieved person may file a complaint with MahaRERA or the adjudicating officer, as the case may be, with respect to any registered real estate project, for any violation or contravention of the provisions of this Act or the rules and regulations made there under. The Authority shall establish an adjudicating mechanism for speedy redressal of such complaints.
- Any person aggrieved by any direction or decision or order made by MahaRERA or by an adjudicating officer may file an appeal before the Appellate Tribunal
- Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court

5. Financial Discipline

The Act strives to ensure greater financial discipline in the real estate sector. Some of its provisions are as follows:

- A promoter shall not accept more than ten per cent 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 for sale with such person and register the said agreement for sale
- Seventy per cent 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
- 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.
- Promoter to compensate buyer for any false or incorrect statement with full refund of property cost with interest
- Project Accounts to be Audited / FY. Copy to be submitted to MahaRERA
- Provision for MahaRERA to freeze project bank account upon non-compliance
- Provision for stronger financial penalties for MahaRERA non-compliances

6. Transparency

The Act shall drive great transparency in the real estate sector as follows:

Details of all the Registered Projects shall be available online for citizens including:

- sanctioned plans, layout plans, along with specifications, approved by the competent authority
- Proposed Plan, Proposed Layout Plan of the whole project and Floor Space Index proposed to be consumed in the whole project, as proposed by the promoter
- Proposed Number of building(s) or wing(s) to be constructed and sanctioned number of the building(s) or wing(s).
- the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.
- quarterly update of the list of number & types of apartments or plots, as the case may be, booked
- quarterly update of the list of number of covered parking, garages booked;
- quarterly update of the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- quarterly update of the status of the project; and
- such other information and documents as may be specified by the regulations made by MahaRERA.

The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of MahaRERA, wherein all details of the registered project have been entered and include the registration number obtained from the Authority

7. CITIZEN CENTRICITY

- Citizens shall be able to view, on MahaRERA website, all disclosures pertaining to registered projects. This shall enable data driven informed decision making.
- Promoter cannot make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities etc. without the previous consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.
- If 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, to return the amount received by him with interest
- Promoter to enable formation of Legal Entity like Cooperative Society, Company, Association, Federation etc. within three months from the date on which sixty per cent of the total number of Purchasers in such a building or a wing, have booked their apartment.
- Promoter shall execute a registered conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate or sixty per cent of the total number of Purchasers in such a building or a wing, have paid the full consideration to the promoter, whichever is earlier.

The complete Act, Rules and regulations are uploaded on our website :
www.mswahousing.org | www.mswa.co.in . For more details you may contact us on : 022-42551414/32..

CHAPTER – II

FACILITIES FOR THE STAKEHOLDERS IN REAL ESTATE

Source: www.maharera.mahaonline.gov.in

PROMOTERS

Under Real Estate (Regulation and Development) Act 2016, Promoters shall have to register all commercial and residential real estate projects with MahaRERA, except in projects where:

- area of land proposed to be developed does not exceed five hundred square meters
- number of apartments proposed to be developed does not exceed eight inclusive of all phases
- promoter has received completion certificate for a real estate project prior to commencement of this Act
- 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

No promoter shall advertise, market, book, sell or offer for sale, 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, without registering the real estate project with MahaRERA. Promoter of ongoing real estate projects, in which all buildings as per sanctioned plan have not received occupation or Completion Certificate, shall also be required to be registered for such phase of the project which consists of buildings not having occupation or completion certificate. They shall also need to provide the quarterly updates to authority from time to time.

The key facilities being provided to promoters are as follows:

- Registration of Real Estate Projects
- Quarterly update provision for each project
- Extension of Real Estate Projects
- Complaints Filing

REAL ESTATE AGENTS

Under Real Estate (Regulation and Development) Act 2016, all Real Estate Agents shall have to register with MahaRERA before facilitating any sale. Promoters while applying for registration to MahaRERA will have to provide the names of registered real estate agents who would be facilitating the sale of apartments in the said project. The registration shall be valid for five years and can be renewed thereafter.

The key facilities being provided to real estate agents are as follows:

- Registration of Real Estate Agents
- Renewal of registration of Real Estate Agents
- Complaints Filing

CITIZENS

Under Real Estate (Regulation and Development) Act 2016, Citizens shall be provided the following services:

- Complaints Filing
- Online Access to details on Registered Projects

Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, with respect to any registered real estate project, for any violation or contravention of the provisions of this Act or the rules and regulations made there under.

CHAPTER – III

Real Estate (Regulation and Development) Act 2016 and Rules 2017, REGULATIONS, ORDERS, RULINGS - MahaRERA

Source: www.maharera.mahaonline.gov.in

ACT

Title	View/Download
The Real Estate (Regulation and Development) Act, 2016	Download
Notification of Government of India regarding commencement of Act dated 26th April 2016	Download
Government of India's Real Estate Removal of Difficulties of Act Order dated 28th October 2016	Download
Government of Maharashtra Notification for establishment of Maharashtra Real Estate Regulatory Authority under section 20 of the Act dated 8th March 2017	Download
Notification of Government of India regarding commencement of Act dated 19 4 2017	Download

RULES

Title	View/Download
1. 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 vide Notification No. REA 2016/CR No.79/DVP-2 Dated 20th April, 20172.	Download
Maharashtra Real Estate Regulatory Authority, Officers and Employees (Appointment and Service Conditions) Rules, 2017 vide Notification No. No. REA 2016/CR No. 79/DVP-2. Dated 17th April, 20173.	Download

Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 vide Notification No. REA.2016/CR No.79/DVP-2. Dated 20th April, 20174.	Download
Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2017 vide Notification No. Dated April, 20175. Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017 vide Notification No. REA2016/CR.No. 123/DVP-2 Dated 18th April, 2017	Download

REGULATIONS

Title	View/Download
Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017.	Download
Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.	Download

ORDERS OF MAHARERA

Charges for accessing MahaRERA web-based Application for registration of project and real estate agents, extension of registration for projects and real estate agents including updating website, database management and maintenance under regulation 48 of the MahaRERA General Regulations, 2017

Title	View/Download
Fees for updating of website, database management and maintenance of the website	Download
Definition of Co-promoter: Individual/other than individuals, having share in revenue/Share in total area developed in the Real Estate Project	Download
Office order making Local address mandatory for Promoter/ Agent for Registration	Download

RULINGS BY MAHARERA

Title	View/Download
Legal Advisor, MahaRERA V/s Sai Estate Consultant Chembur Pvt. Ltd (Suo Motu Case No. 1 of 2017) dated 05th June 2017	Download

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

3rd Floor, A-Wing, Slum Rehabilitation Authority,
Administrative Building, Anant Kanekar Marg,
Bandra (E), Mumbai 400051

Phone No.: 26590036

Email Id : maharera.helpdesk@gmail.com

have been committed against them by the abovenamed builder.

- Fraud : Section 17
- Misrepresentation : Section 18
- Coercion : Section 15
- Breach of contract : Chapter 6

(C) The following offences under the Maharashtra Ownership of Flats Act being alleged to have been committed against them by the builders.

- Not disclosing nature of title and not giving true copy of title certificate and not giving true copy of all documents of title relating to the land on which the flats are constructed or are to be constructed : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing encumbrances on land and not giving true copy of all documents relating to encumbrances: Sections 3, 4 and 13 and Rules 3, 4 and 5
- Not giving inspection of approved plans and specifications of building : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing nature of fixtures, fittings, amenities : Sections 3 and 13 and Rule 3 and model agreement in Form-V
- Not disclosing materials to be used in construction : Sections 3 and 13 and Rule 3
- Not disclosing agreements entered by builder/promoter with architects and contractors regarding design, materials and construction of building : Sections 3 and 13 and Rules 3 and 4
- Not disclosing date by which possession of the flat is to be handed over : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing list of flats with their numbers, the price charged/agreed to be charged : Sections 3, 4, 5 and 13 and Rules 3, 4, 5 and 10 and model agreement in Form-V
- Not disclosing the nature of the organization of persons to be constituted and to which title is to be passed : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing all outgoing: Sections 3 and 13 and Rule 3 and 4
- Not disclosing other prescribed information : Sections 3, 4, 5 and 13 and Rules 3, 4 and 5
- Not disclosing true copies of documents as asked for : Sections 3 and 13 and Rules 3 and 4 and model agreement in Form-V
- Not disclosing all the documents, plans and/or specifications at the site and not permitting inspection thereof : Sections 3, 4 and 13 and Rules 3 and 4 and model agreement in Form-V
- Not disclosing the carpet area of the flat : Sections 3, 4 and 13 and Rules 4 and 5 and model agreement in Form-V
- Not making agreement on the basis of carpet area of the flat : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing the price of the flat including the proportionate price of the common areas and facilities : Sections 3, 4 and 13 and Rules 5 and 10 and model agreement in Form-V
- Not disclosing the nature, extent and description of the common areas and facilities : Sections 3, 4 and 13 and Rule 5 and model agreement in Form-V
- Not entering into a registered written agreement for sale as per the prescribed format in

spite of taking the full booking amount : Sections 4 and 13 and Rule 5 and model agreement in Form-V

- Not specifying liability of the promoter to construct the building according to the plans and specifications approved by the local authority : Sections 4 and 13 and Rules 3, 4 and 5
- Not specifying the percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold : Sections 4 and 13 and Rule 5 and model agreement in Form-V
- Not disclosing statement of the use of which the flat is intended and restriction of its use : Sections 4 and 13 and Rules 5 and 10 and model agreement in Form-V
- Not maintaining a separate account in any bank of sums taken as advance or deposit : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Not disbursing the moneys collected for the purpose for which they were given : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Not making full and true disclosure of all transactions in respect of the said account : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Making alterations in the structures without consent of my clients : Sections 7 and 13
- Creating third-party rights on the flat after execution of agreement : Sections 4, 5, 9 and 13 and Rule 5 and model agreement in Form-V
- Not registering co-operative society / company : Sections 10 and 13 and Rule 8
- Not fixing his title for the land : Sections 11 and 13
- Not executing conveyance : Sections 11 and 13 and Rule 9
- Not passing on documents of title : Sections 11 and 13 and Rule 9
- All persons being in charge of the company/companies becoming liable to be proceeded against : Section 14

(D) Alleged Violations of RERA Act

- Functions and duties of promoter. Sec.11
- Obligations of promoter regarding veracity of the advertisement or prospectus. Sec.12
- No deposit or advance to be taken by promoter without first entering into agreement for sale. Sec.13
- Adherence to sanctioned plans and project specifications by the promoter. Sec.14
- Obligations of promoter in case of transfer of a real estate project to a third party. Sec.15
- Obligations of promoter regarding insurance of real estate project. Sec.16.

(E) Penalties under RERA Act

- Punishment for non-registration under section 3. (sec. 59).
- Penalty for contravention of section 4. (sec. 60).
- Penalty for contravention of other provisions of this act. (sec. 61).
- Penalty for non-registration and contravention under sections 9 and 10. (sec. 62.).
- Penalty for failure to comply with orders of Authority by promoter. (sec. 63).

CHAPTER – V

RECENT CIRCULAR ISSUED BY INSPECTOR GENERAL OF POLICE, GROUND REALITIES & BUILDERS OBLIGATION TOWARDS FLAT PURCHASERS.

**By. Adv. Vinod Sampat, Adv. Mithil S Sampat
and Adv.Dhirmin S Sampat.**

It is an open secret that ever since the enactment of Maharashtra Ownership Flats (MOF) Act flat purchasers have been exploited. In my view every political party has got builders as it's leaders who are able to protect the commercial interest of builders lobby. The origin of areas like New Cuffe Parade and Upper Worli in my view are nothing but marketing strategies to promote the project. The law stipulates that carpet area has to be mentioned. How many builders mention about the same in advertisements is left to my readers to guess.

I call it a systems failure. Let me substantiate my views. Why it is that MOF Act is a toothless Act? To begin with there is no machinery in the government which has any systematic check on the builders. The standard reply is we have resource constraint. I ask a simple question. What stops the government from obtaining data from builders at the time when they submit the proposal for construction to municipal authorities as regards their past projects and status of their past projects? Why cannot a hefty amount in the nature of deposit or a lien of say 10% of the total construction be an IOD condition and it should be released only after receipt of occupation certificate and Conveyance in favour of legal entity? No wonder some call the full page advertisements given by builders in newspapers jokingly as advertisements to fool the purchasers. The enclosed data obtained under the right to information act as regards receipt of occupation certificate, building completion certificate will shed light. That's why I call it a systems failure.

I have no hesitation in saying that not even 15% of the cooperative Housing societies in Maharashtra have the Conveyance of properties in their names.

The only thing builders are afraid as of date is consumer courts. The enclosed judgments may be of use to cooperative Societies and flat purchasers.

Look at the authority trail. A telephone call hardly costs Re. 1/- but how efficiently check has been kept by the authority? A flat can cost more than a core of Rupees but the element of supervision and control in my view is totally lacking. When the builders started selling open terrace, stilt, car parking, garden areas. Why did our housing department and urban department remain a silent spectator since 1963? Only after the judgment of Supreme Court in the case of Nahalchand Laloochand vs Panchali Co-operative Housing Society Ltd. the practice of cheating has to a certain extent been curtailed. Why has the government authorities not black listed some of the builders who have failed to comply with their statutory obligations?

Government Officers in my view are also partners in crime when they overlook their obligations. We all know slums have come up on government lands. Why has no action including suspension of government employees not been done for allowing slums to multiply? The ground reality in my opinion is government employees know that many premises in slums are in excess of the permitted height but would dare not antagonise the slum lords. Why cannot bmc officers have a continuous system of checking flats for misuse of nitch, drying space areas? Same is the case with compliance as regards firefighting equipment's and maintenance of the same.

Let me share with you certain parts of the supreme court judgment in the case of Friends Colony vs.The gist of the same is as under.

Now coming to our MOF Act the same in my view is in force. Sec. 11 stipulates Promoter to convey title etc. The implications of the same in my view is anything and everything connected with transfer of property has to be done by our builder friend. The role of a builder does not come to an end with collection of money and handing over possession of flat. He has to procure building completion certificate in Mumbai as per the provisions of section --- of Mumbai Municipal Corporation Act. Strangely our government officer friends are masters at losing files in building proposal department. Not a few files but thousands of files are lost. As usual no action worth mentioning is being taken against the officials. I have been informed that our ex chief minister had openly stated standing committee of the Bombay Municipal Corporation is an understanding committee for the betterment of corporation. I am informed that there is drastic change in the life styles of corporators after they acquire power. Persons staying in glass houses are reluctant to throw stones at one another. That reminds me to state that many buildings in Mumbai which have glass covering the four sides of the building. The same could be breeding grounds of FSI scams. The passage areas are literally used as part and parcels of office. No wonder people are tempted to call BMC as Bachelor's and Masters of Corruption. I am informed that the BMC offices themselves have unauthorized constructions. If the BMC Commissioner wants proof of the same I can consider providing my help for the same. My letter to the Municipal Authorities with instances is also on record.

Section 64C of the Mumbai Municipal Corporation Act states that however all said and done the moot question is how many of us are aware of such laws and have the will to fight the high and the mighty?

The recent circular issued by Inspector General of Police Shri Pravin Dixit signed on 1-7-2016 directing police officers in Maharashtra to file FIR for MOF Act and MRTP Act violations was required to be issued in 1963 when MOF Act was introduced. Why it is that matter has to be referred to law and judiciary department after issuance of circular rather than taking approval in advance before issuing any circular? The builders lobby with lightning speed have met Chief Minister. After the initial instances of filing FIR in a few instances the momentum has come to a standstill. Is it a victory of note bank over vote bank? Well time will tell us the outcome as regards the life span of the said circular. In all probability the circular is referred to law and judiciary department. The moot question that arises is when projects costing thousands of crores per

annum in aggregate are being taken up why has the government not taken steps worth mentioning to keep a check on the activities of builders. I personally feel that if RERA is implemented (which I doubt very much) in letter and spirit than 50% of the builders in a few years would shift to some other profession. Till date no formalities for registration of builders or estate agents have commenced in Maharashtra.

Let us see the mockery of justice. To begin with laws are drafted at times by incompetent officers. Courts do not frame laws. They only interpret laws. One high court judge personally told me if laws are drafted without ambiguity substantial time of the court would be saved and justice can be delivered speedily. Now coming to our real estate laws I have no hesitation in saying that. Not even 5% of the agreements in my opinion are drafted as per MOF Act. The statutory clauses are invariably missing. Note 1 of model agreement commonly known as Form V stipulates that certain clauses are mandatory in nature and have got to be incorporated in each and every agreement being executed by builder. One of the clause talks about the FSI potential. Builders do not mention about the same as they are very keen to use the future FSI and TDR benefits. Similarly Note 2 mentions that the chain of developers having right in the property from the name as appearing in property card should be incorporated as a confirming party.

Builders are reluctant to comply with this statutory obligation as they fear that in the event of a dispute with the land owners than the owners earlier parties will not come for registration and may even terminate the power of attorney. My question to the bankers financing individual flat purchasers is when you have a legal department why are such statutory violations being overlooked? But then in my view it is an open secret and an unwritten rule that the big and mighty dominate the laws of the land. If builder does not do the construction on time banks don't release the fund.

However interest for the same is recovered from the flat purchasers. Is this fair? Similarly when the law was enacted that the Licence would become the owners in seventies by paying a few months' rent many big corporate houses grabbed the flats of poor people who were nowhere at fault. Landlords are in fact landless lord in my opinion have been exploited by the government because of political compulsions. All said and done I am of the view that if the government authorities are serious they can improve the system if they have the will to improve. The need of the day is to do operation rather than giving pain killers.

CHAPTER – VI

CIRCULAR - REGARDING COGNIZABLE OFFENCE IN BUILDING CONSTRUCTION

Kr.PoMS/22/Fraud/Construction Business/Builders/253/2016 Dated:- 01/07/2016

Sub:- Regarding Cognizable Offence in Building Construction

CIRCULAR

Government of Maharashtra has enacted the Maharashtra Ownership Flats Act, 1963 (MOFA) and Maharashtra Regional and Town Planning Act, 1966 to regulate the promotion of the construction of the sale and management and the transfer of flats on ownership basis and to effectively prevent the Sunday abuses and malpractices which were on the increase. Please perusal the same.

Section 3 of the MOFA Act: Is about builder fails to give possession of flat on agreed date, not acquired Occupation Certificate, not displaying plans approved by the Municipal Corporation.

Section 4 of the MOFA Act: Is about Builder has not executed agreement according to Registration Law even after taking less than 20% amount of the flat price.

Section 5 of the MOFA Act: Not keep the advance amount taken from the flat purchasers in the bank by Opening Separate Account for it.

Section 7 of the MOFA Act: Construction is not made according to approved Plans. Constructed more floors than approved plan.

Section 10 of the MOFA Act: Builder did not submit an application for Registration of Co-operative Housing Society within 4 months.

Section 11 of the MOFA Act: Within 4 months of the Society Registration, Conveyance is not made of the entire Land & Buildings on it.

For all this offences, the aforesaid act has made the provision of 3 years, 5 years and 1 year imprisonment. As provided in the Act the Police have Authority to file the FIR. Cheating by doing illegal construction, not doing the Registration as Co-operative Housing Societies, not executing the Conveyance Deed, Breaching Trust of the Consumers, all these are the cognizable offences.

(Prabhat Kumar)

Special Inspector General of Police (Law & Order)

For Director General of Police, Maharashtra State, Mumbai

Copy:-

All Police Commissioner

All Police Superintendent (District & Railway)

Copy for necessary action:-

Additional Director General of Police

All Regional Special Inspector General of Police

CHAPTER - VII

OVER VIEW OF RERA

Promoter is required to register the project before starting any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.

Promoter is required to **register** the project **before** starting any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.

1. It is mandatory for the real estate developer to register the project with the RERA and obtain a **valid registration number** before proceeding
2. We **cannot change the information** once entered very easily. So have to be very careful in what we upload. And the owner/Director will be responsible for all the information provided.
3. Every project measuring more than **500 square meters** or more than **eight apartments** will have to be registered with the RERA.
4. **Society** to formed within three months from the date 51% of the flats booked, in such a building or a wing, even if the project is Under construction. This I feel will have a greater impact on Developers, as there will be 2 Authorities checking on the promoter i.e. RERA and the CHS.
5. **"Carpet area"** means the net usable floor area of an apartment, excluding 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**.
 - Explanation. — For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;
 - Therefore, to let the consumer know what he/she is paying for, it is mandatory for the real estate developer to specify the carpet area thus enacting a straightforward definition to be adopted across the country.
6. The real estate developer is required to **submit all documents** related to the project which is considered necessary by the RERA
7. The real estate developer has to specify the **project completion time** in the RERA application form. Hence the real estate developer is accountable to follow the timelines otherwise he will suffer losses/ penalties.
8. The real estate developer must deposit 70% of the payment received from the consumers in an **escrow account** and ensure that the amount is solely used for the development of the project for which it was taken
9. Every phase will be considered a standalone real estate project and the developer have to

obtain registration under this Act for **each phase separately**.

10. If the project is being done **phase wise** and if in the 1st phase we are not providing common amenities like Club House etc. then we cannot put ads and make brochures showing common amenities.
11. At the time of registration RERA mandates details of **past 5 years projects done** including what was the possession date promised and when was possession given.
12. Details of **FSI** proposed and approved.
13. **Project cost estimation** where in one needs to bifurcate the Land Cost and the Construction cost. This will enable the public to know how much is a Developers profit.
14. **Estimated figures given can be changed**. But there is lot of information which cannot be changed. So have to be careful will putting information.
15. **Both the developers and the landlord** or any such party which is the beneficiary of a sale of a project & receive payments from consumers as real estate developers (Promoters) are **liable** to adhere to the Act. That's even true where the land owner is a CHS in case of Re Development.
16. As per the government rules, **only registered agents are legally allowed** to function in the real estate business. Also, the RERA makes it mandatory for a developer to make a declaration about the real estate agents, architects, structural engineers and similar parties to the appellate Tribunal of the RERA.
17. The real estate developer must share **quarterly progress report** of the project, receipt of **pending approvals** and other such declarations which are related to project delivery on a regular basis.
18. Upload of sanctions on receipts basis
19. To **update the project details in 3 months** but it was suggested to do it ASAP.
20. A real estate developer can **leave the project mid-way by selling** to another developer or party by taking **written approval of 2/3rd of project's consumers** and also the **prior approval of the RERA**. If a consumer or his family holds more than one unit in the project then he/she will be considered as one consumer only.
21. Plans and layouts can be changed only with the **permission from 2/3rd buyers**.
22. Sale or allotment of **Open Parking** Areas by the Promoter is not permissible
23. **Covered Parking** and **Garage** as defined in the Act is permitted to be sold
24. The **penalties** are quite high. It may extended up to 10% of the cost of the project including imprisonment.
25. **Everything online** (registration, payment of fees etc.) , hence one need not go to RERA office except for complaints hearings.
26. Promoter shall execute a **registered conveyance deed** in favor of the allottee within three months from date of issue of occupancy certificate or fifty one per cent of the total number of Purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.
27. If due to a change in government policy, the promoter is entitled to **additional FSI** etc., the promoter can **build additional floors** in a registered ongoing project where initially those floors were not planned but **with consent** of allottees
28. **MOFA** has not been repealed, however, in case of inconsistent provisions, the provisions of the Central Act (RERA) shall prevail.

29. Section 13(1) of the Act prohibits the promoter from taking more than **10% of the cost of apartment** without entering into a written agreement for sale, duly registered.
30. The **file size limit** is 1MB per file and only PDF files can be uploaded on the application
31. If your project has no **encumbrances**, then one can upload a self-certification stating that your project has no encumbrances.
32. Upload copy of the organization's **PAN Card**
33. **Withdrawals** to be made in accordance with the certificate issued by the CA which certified by Engineer, Architect and CA
34. Must adhere to the **project plan** at all times
35. **Refund** the money taken from the consumers with an applicable interest in case the project cannot be completed.
36. **Compensate** the consumer for the time delay if any
37. To **repair** any structural defects in the construction even after 5 years of handover of the project

CHAPTER-VIII

REGISTRATION OF REAL ESTATE PROJECTS REQUIREMENTS PRECAUTIONS TO BE TAKEN WHILE REGISTRATION ISSUES & PRACTICAL PROBLEMS

Information to be furnished by the promoter for the registration of each real estate project/ phase.

1. Promoter's - Name, photograph, contact details, address and PAN card
2. Details of the past projects (in the preceding 5 years) already launched by the real estate developer and their current status
3. Copy of legal title to land
4. Details of encumbrances on the land (if any)
5. Location of the project with clear demarcation with latitude and longitude of the land for the project
6. The development plan for the project
7. Details of basic facilities being made available like drinking water, electricity etc.
8. Approval and commencement certificates obtained from the competent authority for each phase of the project separately.
9. Details of amenities and common facilities
10. Details of both proposed and sanctioned
 - layout plan
 - details of amenities and common facilities
 - FSI proposed to be consumed
 - number of buildings or wings, floors to be constructed
11. Number, type and carpet areas of units/flats to be sold
12. The details of open areas if any like terraces, balconies etc.
13. Aggregate area in sq. meters of the recreation open space
14. Number of covered parking spaces
15. Details of associated engineers, contractors, architects and intermediaries in the project
16. Details of Architecture and design standard, type of construction technology, earthquake resistant measures for building, common area and amenities
17. The nature of the organization of allottees to be constituted and to which the title of such land parcels is to be conveyed and the specific local laws to govern such organization of allottees on completion of real estate project
18. Pro forma of allotment letter, agreement for sale and conveyance deed to be signed with the consumers under RERA
19. Land cost
20. Cost of construction
21. A declaration stating that the land of the project is verified & authenticated and the developer has a legal title to it
22. A written declaration stating that the project will be completed within specified period of time and 70% of the received funds from the consumers will be deposited in a dedicated escrow account and this amount will be used only for that particular project

CHAPTER – IX

PROTECTION AND BENEFITS FOR FLAT PURCHASERS UNDER RERA

By –Adv. Anisha Shastri & Mr Naresh Pai

With the Real Estate (Regulation and Development) Act, the government hopes to bring transparency and fair practices to the realty sector. The Real Estate (Regulation and Development) Act came into force in Maharashtra on May 1. The law will change your home-buying experience. Here are some key take aways:

BENEFIT TO CUSTOMERS:-

1. The customers can view all the documents, as the promoter is required to submit all documents related to the project which is considered necessary by the RERA
2. The Promoter has to form and register the Society within three months from the date 51% of the flats booked, in such a building or a wing, even if the project is under construction.
3. Customers will only pay for carpet area
4. If the Promoter want to leave the project mid-way by selling to another Promoter or party, then the Promoter is require to take written approval of 2/3rd of project's consumers and also the prior approval of the RERA. If a consumer or his family holds more than one unit in the project then he/she will be considered as one consumer only.
5. If the Promoter want to amend or change any Plans and layouts, then the Promoter has to take the permission from 2/3rd buyers.
6. The Promoter has to specify the project completion time in the RERA application form. Accordingly, the Promoter is accountable to follow the timelines otherwise he will suffer losses/ penalties.
7. Project cost estimation where bifurcation of Land Cost and the Construction cost has to be mentioned, this will benefit the public at large as they will be aware about the profit that will be earned by Promoter.
8. To repair any structural defects in the construction even after 5 years of handover of the project.
9. Upload of sanctions on receipts basis and the project details in 3 months but it was suggested to do at earliest.
10. If due to a change in government policy, the promoter is entitled to additional FSI etc., the promoter can build additional floors in a registered ongoing project where initially those floors were not planned but with consent of allottees
11. Section 13(1) of the Act prohibits the promoter from taking more than 10% of the cost of apartment without entering into a written agreement for sale, duly registered.

OBLIGATION OF DEVELOPER:-

1. The Promoter has to register the project before he starts any form of advertising, marketing, booking, selling, offer for selling or inviting people to purchase plots, apartment or buildings.
2. It is mandatory for the Promoter to register the project with the RERA and obtain a valid registration number before proceeding.
3. The Promoter must deposit 70% of the payment received from the consumers in an escrow account and ensure that the amount is solely used for the development of the project for which it was taken.
4. Every phase will be considered a standalone real estate project and the Promoter have to obtain registration under this Act for each phase separately. If the project is being done phase wise and in the 1st phase we are not providing common amenities like Club House etc., then promoter cannot put ads and make brochures showing common amenities.
5. At the time of registration, the Promoters shall provide the details of past 5 years projects done and even what was the possession date promised and when was possession given.
6. The Promoter shall provide the details of FSI proposed and approved.
7. The Promoter must adhere to the project plan at all times.
8. Estimated figures given can be changed. But there is lot of information which cannot be changed. Therefore, the Promoter shall be careful while putting information.
9. Both the developers and the landlord or any such party which is the beneficiary of a sale of a project & receives payments from consumers as real estate developers (Promoters) are liable to adhere to the Act. That's even true where the land owner is a CHS in case of Re Development.
10. The Promoter must share quarterly progress report of the project, receipt of pending approvals and other such declarations which are related to project delivery on a regular basis.
11. Sale or allotment of Open Parking Areas by the Promoter is not permissible. However, the Covered Parking and Garage as defined is permitted to be sold
12. Promoter shall execute a registered conveyance deed in favour of the allottee within three months from date of issue of occupancy certificate or fifty one per cent of the total number of Purchasers, in such a building or a wing, has paid the full consideration to the promoter, whichever is earlier.
13. The file size limit is 1MB per file and only PDF files can be uploaded on the application. The Promoter shall upload copy of the organization's PAN Card
14. If your project has no encumbrances, then you can upload a self-certification stating that your project has no encumbrances.
15. MOFA has not been repealed, however, in case of inconsistent provisions; the provisions of the Central Act (RERA) shall prevail.

BENEFITS OF AGENTS:-

As per the government rules, only registered agents are legally allowed to function in the real estate business. Also, the RERA makes it mandatory for a developer to make a declaration about the real estate agents, architects, structural engineers and similar parties to the appellate Tribunal of the RERA.

PENALTY AND COMPLAINT

1. The penalties are quite high.
2. Refund the money taken from the consumers with an applicable interest in case the project cannot be completed.
3. Compensate the consumer for the time delay if any
4. Everything online so no needs to go to RERA office except for complaints hearings.

CERTIFICATE FROM THE PROFESSIONAL:-

If the Promoter want to withdraw the amount from the Escrow Account, then the Promoter is require to obtain the work completion certificate from Engineer, Architect and Chartered Accountant.

CHAPTER - X

GUIDELINES FOR THE HOME BUYERS BEFORE BUYING THE FLAT POST RERA.

*By CA. Hrudyesh Pankhania and
CA. Ashwin Raje , Adv. Ashwin Naik*

Introduction :

The very purpose of the Act is to empower the flat buyers to take an informed decision before you buy a flat from any developer either directly or through the broker. Before RERA, there was no authority from whom we could get all the information about the developer or the project at one place. By visiting the maharera website, the customers should know the legal provisions, FAQ and orders passed earlier. They can also know the details of the project registered and the brokers registered. The entire exercise of the government is to serve the customer and all the customers should take the full benefit of the same before buying the property.

Know the approvals and permissions regarding the project:

Once the buyer decides to purchase a property you need to get the RERA registration number.

In case, you do not know the registration number, you may visit the website of www.maharera.mahaonline.gov.in and search all the project details sitting at home.

How to search the Real Estate Project details:

You have to visit the website: maharera.mahaonline.gov.in

On the first page of this website, you will get the button called search for the real estate project.

Once you click the button on the search real estate projects, you will get a menu asking for the following

- (1) Division
- (2) District
- (3) Taluka

Once you select the proper division, district and the taluka where the property is registered, you will get the list of registered projects.

Once you click the name of the registered project in which you want to buy the property , you will get all the details of the project and the promoter

Know the past records and credential of the Promoter:

Once you select the real estate project, all the details of the registered project is available on the website

All the required permission, 5 years his track record, the names of the director/ partner or others who are managing the project.

The details also include past 5 years projects under taken by the builder, the projects which have been delivered in time and which have not been delivered etc.

The flats which are booked and which are available for sale

All the facilities provided in the project
The project completion details etc.

Caution to the buyer:

The buyers should get satisfied about the title of the project, its permission, the track record and thereafter only book the flat

The dealing through the broker:

The customer , if wants to purchase the property through the broker, you need to deal with only the registered broker, so that any disputes with the brokers can be take before the regulatory authority.

Every customer should demand the registration number of the broker with RERA and then verify from the RERA about his credentials and also if any adverse orders are passed against him by the regulatory authority.

The details of the broker as per the present online system can be verified by inserting the broker registration number.

CHAPTER - XI

REGISTRATION OF ESTATE AGENTS AND THEIR DUTIES UNDER RERA

Section 9 deals with Registration of real estate agents.

- (1) No real estate agent shall facilitate the sale or purchase of 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, without obtaining registration under this section.
- (2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.
- (3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfillment of such conditions, as may be prescribed—
 - a. grant a single registration to the real estate agent for the entire State of Union territory, as the case may be;
 - b. Reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.
- (4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.
- (5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.
- (6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.
- (7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

Section 10 deals with Functions of real estate agents

Every real estate agent registered under section 9 shall—

- (a) not 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 sold by the promoter in any planning area, which is not registered with the Authority;
- (b) Maintain and preserve such books of account, records and documents as may be prescribed;
- (c) Not involve himself in any unfair trade practices, namely:—
 - (i) The practice of making any statement, whether orally or in writing or by visible representation which—
 - (A) Falsely represents that the services are of a particular standard or grade;
 - (B) Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - (C) makes a false or misleading representation concerning the services;
 - (ii) Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- (d) Facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
- (e) Discharge such other functions as may be prescribed

CHAPTER- XII

ROLE AND DUTIES OF PROFESSIONALS FOR RERA COMPLIANCE

- 1. Hold interactive Meeting with the management, staff to introduce and give an overview of RERA.**
 1. to resolve the queries regarding the registration under RERA,
 2. to explain regular updates and compliance required,
 3. to explain Escrow account provisions regarding withdrawal of money,
 4. RERA audit requirement,
 5. CA, Architect and Engineer certification requirement, etc.
 6. Meeting with project/ company's Architect, Engineer, Accountant, Advocates and other team to explain them the scope of work involved and the role of each of the professionals involved in the project.

- 2. Registration of a Project (Past or Current): Includes:**
 1. Provide the exact and specific list of documents required for registration of each project.
 2. Provide the exact and specific list of information required for registration of each project
 3. Compilation of the data and documents provided by the client
 4. Co-ordination with the company staff
 5. Verification of every detail submitted and find out whether it meets the requirement under RERA
 6. Verification of the income tax return filed and the income accounted in them
 7. Uploading all the information provided by the client on the website as per the rules and regulations and website requirements
 8. Prepare of a Declaration in Form B to be notarized and uploaded on the website
 9. Problem solving at each stage

- 3. Drafting of Documents as per RERA required for registration:**
 1. Draft Allotment letter
 2. Agreement for sale
 3. Conveyance deed
 4. Booking letter

- 5. Preparation of projections of Project Time-lines, Project Report as per RERA and Quarterly Cash Flow statement as per RERA**

1. Coordinate with the sales team, Engineers, Architects, various staff regarding the various time-lines and estimations
2. Preparation of the Project report
3. Preparation of project time-lines for each quarter including the work to be completed in each quarter.
4. Preparation of projections of quarterly cash flow statements

This is a very important step and basis on which all the information and projections are to be uploaded on the RERA website

6. Concurrent Audit, CA Certification for fund withdrawals and quarterly compliance requirements.

1. Every expense made from the separate account in which 70% of the sale proceeds are deposited need to be verified
2. Other expenses incurred for the project from other sources including 30% of the amount received from the customers need to be verified
3. Issue the certificate as and when required for withdrawal of the funds from the separate account
4. Upload the quarterly status of the project with the cost incurred on the Authority website
5. Upload the sanctions received within 7 days on the website of the Authority
6. Regular consultancy related to the RERA compliances
7. Comparison of the estimates done regarding the completion of the work, status of the project, amount to be incurred and the actual work done which need to be uploaded on the website
8. Any deviation from the projection need to be pointed out to the promoter for carrying out the necessary remedial actions

7. Consultancy on case to case basis, considering the facts of the matter.

8. Written opinion per project and per opinion, after verifying the facts of the case.

9. Appearing and representing before **RERA Authority**

10. Appeal filing with the **Appellate Tribunal.**

11. Application Filing before **Adjudicating Authority.**

CHAPTER – XIII

FAQs ON MahaRERA

Question 1. MahaSeWA/FAQ/01.05.2017

As RERA comes into effect from today, I have a query.

If CHS go for Self Re-Development, then CHS becomes the Developer, isn't it?

Then the RERA rules are applicable on the CHS as a Developer???

Even the CHS will have to register the project details with RERA???

In case of delay or default, even the CHS will be liable to penalties or punishment as per RERA rules???

So what is the way out or what precautions the CHS has to take to protect or indemnify itself. Looking for guidance from Architects or Legal experts in this group.

=====

Ans by Housing Guru Prabhu Ramesh

Under RERA, even if you appoint a developer, CHS being a land owner is considered as Promoter. Thus all obligations of the developer will become obligation of CHS. Therefore, it is better to go for self redevelop by engaging good Project management consultants under RERA era.

Question 2: MahaSeWA/RERA /02/08.05.2017

G M one query RERA.

Hsg Soc. Redevelopment is going on since 2013 Yet builder has not completed project.

Member expects we should bring our Builder under RERA. i e he has to compel to Reg our project under RERA.

Pl. reply whether this contention is correct or not.

=====

Ans by Housing Guru Prabhu Ramesh

All the ongoing projects which have not received Occupation certificate whether redevelopment or development which has even one flats for sale or already sold are required to be registered by 31st July 2017 (within 3 months of commencement of RERA which is 1st May 2017).

Thus in your case builder will be having few flats for sale or already sold and OC has not come, therefore, required to be registered. You may send a legal notice to the builder to register under RERA by 31st July 2017 otherwise, he will be answerable to RERA as you will be filing a complaint about non registration. If builder does not register by 31st July which you will know by visiting website of www.maharera.mahaonline.gov.in, pls file a complaint with RERA and RERA will compel the builder to register under RERA otherwise, the builder may have to pay heavy

penalty which will be upto 10% estimated cost of the project as determined by the Authority. So builder will not take your notice or law of the land lightly.

Question 3: MahaSeWA/FAQ/03/10.05.2017

Query RERA: In case of existing project, Sale already done but amount collected less than 10%, agreement not registered. Next Instalment of 20% due in next week.

Now since as per RERA developers cannot accept more than 10% unless ATS done.

Request your views whether the Instalment of 20% can be accepted without ATS or not?

=====

Ans by Housing Guru Prabhu Ramesh (Chairman, MahSeWA):

All the sections of RERA, 2016 has commenced from 1st May 2017.

Section 3 provides a period of 3 months for the promoter to register on going projects. Accordingly, the provisions related to registration (section 3) till revocation and obligations of Authority on revocation or lapse (section 8) may be compiled till 31st July 2017.

All other sections are applicant from 1st May 2017.

Maharashtra Real Estate (Regulation and Development) (registration of Real Estate project registration of real estate agents, rate of interest and disclosures on website) Rules 2017.

As per Chapter III which

FUNCTIONS AND DUTIES OF PROMOTER is as under;

As per section 13, No deposit or advance to be taken by promoter without first entering into agreement of sale

A promoter shall not accept a sum more than ten per cent. 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 for sale with such person

The agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed.

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Since Rules are published and agreement formats are also prescribed, I am of the view that, the agreements from 1st May should be as per RERA compliances only..

Question 4: MahaSeWA/ RERA/04/11.05.2017

Hello Sir. Pl. answer my query :

In a redeveloped project, bldg construction is over, OC still not received, possession not given. Can a person purchase a flat from original member of the society under RERA? What are the risks to the buyer?

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Ans by Housing Guru Prabhu Ramesh

Since OC has not come, it is considered as " on going projects "and hence the promoter is required to register thus project under RERA.

Every person whom the promoter allots the flat in exchange of old flat or on account of sale of free area both are considered as Allottees undee RERA.

Allottees is defined under section 2 (d) as under :

"allottee" in relation to a real estate project, means the person to whom aplot, apartment or buildings, as the case may be, has been allotted, sold 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 the case may be, is given on rent;"

Real Estate projects include redevelopment of housing society building in which some flats are made available for sale.

Therefore, in the given case, if the original member has transfered or sold the allotted flats on resale to another person during under construction , such new purchaser is deemed to be Allottees. Thus the promoter is liable for all the obligations of promoter to new Allottees also.

Thus new purchaser is fully protected under RERA.

Question 5: MahaSeWA/RERA/05/13.05.2017

If ongoing projects complete the project before 31/07 whether registration under RERA would be required

If builder stops selling and advertising but receives Debtors only

=====

Ans by Housing Guru Prabhu Ramesh

The RERA is effective as on 1st May 2017 and accordingly all the projects which have not received Occupation certificate as on 1st May 2017, need to get their projects registered. Even if OC is

received between 1st May to 31st July, 2017, such projects required to be registered on or before 31st July 2017.

Regarding the sale or receiving the amount of on going projects toll 31st July 2017 is not an issue. But certainly after 31st July 2017, no new sales can be done or agreement can be registered.

Question 6: MahaSeWA/RERA/06/17.05.2017

Q. 6 (1) Can a rera registered broker sale flats of rera registered builder but the broker is is not empanelled with the Builder.

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Ans by Housing Guru Ramesh Prabhu:

Every broker registered with the regulatory Authority is allowed to market or sell the Apartments in the project , only if such brokers also are listed as authorised broker by the promoter. In other words, without getting listed as authorised broker for a project, the broker cannot facilitate the transaction in that project.

Q.6(2) Secondly resale of investors flat thru unregistered broker in RERA regd project or unregistered project or old buildings will be permissible without any consequences under rera.

I will be authorised to market investors flat.

=====

Ans by Housing Guru Ramesh Prabhu

The brokers need not be registered for resale flats. In the case of investor flats, which are already registered in the name of investor, they become resale flats. Here promoter is not involved in the resale. In other words resale and resale brokers are not covered under RERA.

In case , investor had not registered the agreement in his name and through builder, it us sold as first sale , in such situation brokers need to be registered with RERA and listed with particular project as broker.

Question 7: MahaSeWA/RERA/07/19.05.2017

I have some queries in respect of RERA; if anybody can help me in understand in the same. Which are as under?

Q7(1) . If builder has land which has no value in books then how to do valuation of the same to include the value of land in project cost.

Ans by Housing Guru Ramesh Prabhu

In order to estimate the cost of project, ASR (Annual Stamp Duty Rate) or Ready Recknor Rate. However, the same ready Recknor value will not be considered as cost incurred on the project for the purpose of withdrawal from the separate 70% of sale proceeds Account. For withdrawal from such separate Account CA has to certify considering the cost INCURRED. So original purchase cost shall be considered.

Q 7(2) 2. Suppose builder has spent 50 of the project cost and flat sale is very less like project cost is 100 crore and builder has spent 50 crore. If he sales flat worth 10 crore then how much he can withdraw from the bank account.

Ans by Housing Guru Ramesh Prabhu

In the given case, Let us assume, land cost is Rs. 40 crores and construction and all approval cost spent is Rs.10 crores. Thus total cost INCURRED so far is Rs.50 crores. Now as per section 11(4)(I)(D) of RERA, in order to withdraw the funds, the promoter has to obtain, certificate from the project Architect in practice, the percentage of construction work completed.

In the present case as against Rs.60 crores required for completing the project in addition to land cost of Rs.40 crores, the architect may certify that 15% of the project is completed as far as construction is concerned after carrying out the inspection and issues his certificate as per form No.1 of the Maharashtra real estate regulatory Authority (General) regulation 2017.

Then engineer may estimate that only Rs.8 crores as the cost INCURRED on the project so far and issues certificate in Form 2 as per MahaRERA regulation, 2017.

Then CA shall verify the books of account and comes to conclusion that Rs.10 crores is the cost INCURRED for the project so far and prepares a certificate in Form 3 of MahaRERA regulations 2017. which in the given case study will be as under :

Land cost Rs. 40 Crores

Construction cost as Engineer Rs 8crore or

as per books Rs.10crore

whichever is less.....Rs.8 crore

Total Project cost Rs.48 cr.

Percentage of cost incurred to percentage of

Estimated cost $48/100$i.e. 48%

Therefore funds that is allowed withdrawal is 48% of the Estimated cost which is. 48% of Rs.100 cr. I.e Rs.48 cr.

Now. the promoter can go on withdrawing the money deposited in the separate 70% sale proceeds account till he reaches Rs.48 cr.

In this case, Amount received on sale is Rs.10 cr, out of which Rs.7 cr. deposited in separate account, so all Rs.7 cr. can be withdrawal from the Account. Till the withdrawal reaches Rs.48 cr..All above certificates need not be submitted to the bank. In other words, above certificates give to separate account a drawing power like a Cash credit account based on the cost INCURRED in the form of reimbursement

In due course, the promoter incurs additional expenses of say Rs.20 cr. on the project. He can obtain a new certificate from CA for fresh drawing power up to Rs 68 crores...if already drawn is Rs.42 cr, balance available for drawing will be Rs.26 cr.

Q. 6 (3). In case where builder has developed the building and possession has been given and people are living there and society has been formed. Builder has no flat to sale in that building but OC or completion certificate has not been received till date. In this situation this building is required to be registered under RERA or not.

Ans by Housing Guru Ramesh Prabhu

Since OC is not provided, as per section 3 of RERA, 2016, it is considered as on going project and need to be registered. In case , any allottees complain against such builder, MahaRERA will consider it as source information and will issue show cause notice including levy of penalty under section 59(1) of the Act which may extend up to 10% of Estimated cost of the project as determined by the Authority. Therefore, in all legal advise, we need to guide the promoter to register the project and give an affidavit in Form B within which period the OC will be obtained and cost to be incurred. There is wrong notion that only if the sales have to be done of ongoing project I, it requires registration

Let me reproduce section of the Act which is as under and only test is whether the project as OC as on 1st May 2017 or not. If No OCCUPATION Certificate, it needs to be registered by 31st July irrespective whether all sales are done or possession is given, society is formed etc.

"Chapter II

REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

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

No promoter shall book, sell or offer for sale, 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, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act 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 three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from the stage of registration.

Notwithstanding anything contained in sub-section(1), no registration of the real estate project shall be required-

where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all the phases:

Provided that, if the appropriate Government considers it necessary, it may reduce the threshold below five hundred square meters or eight apartments, as the case may be inclusive of all phases, for exemption from registration under this Act:

Where the promoter has received completion certificate for real estate project prior to commencement of this Act;

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;

Explanation - For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

Q 7(4) Suppose builder is developing a SRA building and in consideration of the same he will receive TDR which he will sale in the market. In this condition whether builder is required to take registration under RERA for selling the TDR.

Ans by Housing GURU RAMESH PRABHU.

Real Estate project is defined under section 2(zn) under :

"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of a colony into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings and includes the development works thereof;

The word allottee is defined under section 2(d) of the Act as under.

'allottee" in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold 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 the case may be, is given on rent;

In SRA the promoter allots Apartment to existing slum dwellers and need to be protected.

Further TDR is also generated as right over the property or plot development, instead of selling the physical plot, the rights (TDR) generated from the developed plots are being sold by proving allotment of apartment to the slum persons. It involves the sale of rights generated from the development of the real estate project. However, there is nothing to be done to TDR once it is developed and it is being certified by the Competent Authority. Therefore, though it is generated out of development of Real Estate Projects, it will not be covered under RERA.

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For more details visit: mswahousing.org or message / contact Housing Guru Ramesh Prabhu on : 09820106766 or send email on: rsprabhu13@gmail.com

Question 8: MahaSeWA/RERA/08/19.05.2017

In a case where a Builder has received completion certificate or occupancy certificate and there are out of 20 units 9 unsold will he be required to register under Rera

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Ans by Housing Guru Ramesh Prabhu

Since the OC has come before 30th April 2017, as on the date of commencement of the Act on 1st May 2017, it is a completed project and therefore, does not require registration under RERA...However, any agreement for sale need to be effected after 1st May need to be executed as per RERA Rules only.. as the RERA is effective with all Rules in place as on 1st May 2017.

Registration exempted under RERA under section 3 does not mean, the other sections of RERA are not applicable to the promoters who do sale after 1st May 2017.

Question 9: MahaSeWA/RERA/09/22.05.2017

Ramesh sir, I am Ca. Kumar Jain. I wanted to know..builder has started the process of vacating the residents and want to start the demolition works. He has not yet done the RERA registration. Can he do?

What tenants should do.

Builder is taking help of mhadA in vacating only for 30 tenants out of 102. 72 already vacated and balance has received the 95A notice

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Ans by Housing Guru Ramesh Prabhu

Registration with RERA required. If builder wants to market, advertise or sell the redevelopment plot. Till he decides to market flat, he may post pone the registration

Question No. 10 MahaSeWA/RERA/10/27.05.2017

Good evening. One query regarding RERA...what hi understand that it is about registration of project by 31st July. ..when the project is to be registered? Immediately on getting the development rights or when the builder wants to market ir? So can he postpone registration beyond 31st July as iod cc is pending?

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Ans: By Housing Guru Ramesh Prabhu

So long as the developer does not want to advertise or market or sell the Apartments, he may post pone the registration. In other words, the project is required to be registered with MahaRERA, before the Apartments are offered for sale or advertised in the market.

Question 11 MahaSeWA/RERA/11/28.05.2017

Respected Ramesh Prabhuji

Many thanks for today Lecture in RERA

1. One point Imerge that RERA apply to sale portion

2. Further RERA Registration if builder want to advertize and sale flat. So builder view in case of redevelopment project is that he does not want to advertize and sale any project till OC. He will sale saleable flat after OC. So registration does not require at present?

In such case how interest of old member in redevelopment project is protested? Request to enlighten

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Ans by Housing Guru Ramesh Prabhu.

RERA provides that before sale a single flat, developer has to register the project. On your case, if no flats are sold or offered for sale, the developer may post pone the registration. Regarding existing flat owners will be considered as allottees and all the benefits available to other flat owners are available except the RERA registration.

Question 12 : MahaSeWA/RERA/12/29.05.2017

Query: RERA applies for plotted development scheme without any construction of

building but only sale of NA plots.

What will be the "occupation/completion certificate" provision in such plotted schemes?

No such occupation or completion certificate is issued for plotted developments.

=====

Ans Housing Guru Ramesh Prabhu.

The plotting is approved by the town planning or the collector of the district as per the delegation of power given under Maharashtra Regional Town Planning Act, 1966.

When a plotting is approved, certain common amenities are shown or agreed to be provided by the developer in the agreement for sale such as common road, garden, swimming pool, water connection, electric connection for common area and individual plot, gym, club facilities, compound etc. As I understand when you do any such area built, you do get a completion certificate from local authority. For e.g. Gym or Club house OC. If that is not provided, internal road completion certificate or electric supply connection, water connection provided... Also as I understand, town planning authority gives initial approval with few conditions and then final approval of layout after the facilities are constructed and inform to the town planning authority.

At least, the developer should complete the common facilities and individual facilities as per agreement for sale and as per the details provided at the time of registration of real estate project and submit the Architect certificate as per form 4 given in Maharashtra Real Estate Regulatory Authority (General) Regulations 2017.

In this certificate of architect, the completion of facilities provided by respective authorities to be incorporated and issue certificate... Then submit to town planning authority and then upload that to RERA website as project completion..

The architects in this group or town planners may give their input and I may be corrected....

Question 13 : MahaSeWA/RERA/13/29.07.2017

If the Promoter commits any breach after receipt of OC, can he be tried under RERA? If not, what is the remedy for a flat buyer who is otherwise covered under MOFA? There might be umpteen number of such cases where gullible buyers suffer due to various breaches committed by developers in redeveloped buildings where OC is already provided.

=====

Ans by Housing Guru Ramesh Prabhu

They have to file case in appropriate courts under the provisions of MOFA only...as building received OC prior to 1st May 2017 are considered as completed project under RERA. RERA is applicable prospectively with an exception of ongoing projects where there is no OC

Question 14:: MahaSeWA/RERA-GST/14/29.09.2017

Hi sir,

Requesting you to please guide us on GST chargeable to buyers , what % to be charged and can we take input / cenvat credit from the same

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Ans By Housing Guru Ramesh Prabhu.

You have to charge 12% to the customer or buyer on the entire cost of flat including land cost as work contractor.

All input credit on GST paid on cement, steel, professionals etc., even if they are more than 12% , say 18% paid , will be available as input credit..

Question 15: MahaSeWA/RERA-GST/15/29.09.2017

In GST regime can we make two agreements for same flat one for proportionate land (because on sale of land there is no GST) and other for construction services for which all abatements are there??

=====

Ans By Housing Guru Ramesh Prabhu.

May not be possible under RERA...Regime.

If we have to do so,; the real estate project need to be registered as plot first and then for each flat separate contractor to be appointed. This is not practical... This may be done in plotted development...if you do not insist that the plot is sold with construction. to be done by your sister concern..

Question 16 : MahaSeWA/RERA/16/29.05.2017

Query: Whether RERA authority wud be able to adjudicate matters with disputes arising under MOFA Sale agreements registered prior to 1st May 2017?

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Ans by Housing Guru Ramesh Prabhu

RERA has come into effect as on 1st May 2017. Therefore, all real estate transactions done for new projects and for on going projects where OC has not been obtained will be covered under RERA.

Therefore , the authority may not be able to decide on disputes arising from MOFA Sale agreements registered prior to 1st may 2017 where OC is received prior to 1st May 2017.. In case of no OC such projects wud need to be registered under RERA Act and the Promoter cud be tried for breaches against the affidavit and commitments provided b4 RERA authority under RERA

provisions. Thus if the MOFA agreements are registered prior to 1st May 2017 and OC is not received, in that case , all provision of RERA will be applicable and such buyer also can get the interest, damages etc adjudicated as per RERA effective from 2st May 2017

Question 17 : MahaSeWA/RERA-GST/17/29.05.2017

Q1) In case OC of our Project is received before registration of the said Phase / Project with RERA or within 90 days of the commencement of the Act, whichever is earlier, whether we are liable to get registered under RERA ?

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Ans By Housing Guru Ramesh Prabhu.

If OC is received prior to 1st May 2017 then your project/ phase wud be exempted from RERA Act.

Section 3 of RERA, provides, for the registration of all projects before offering for sale from the commencement of the Act(which is from 1st May 2017)

When a prospective law is enacted for any regulation, the provision is done for transitory period. In fact, from 1st May 2016 it was known that section 3 will be effective from 1st May 2017.

In Spite of such a provision , there will be certain projects not having Completion certificate as on the commencement of the Act and the section 3 has made it clear that such on going projects need to be completed.

As far as MahaRERA Rules are concerned, OC is considered as completion certificate for the purpose of section 3.

Thus, if OC is obtained in ur project/ phase on or after 1st May 2017 then your project/phase needs to be registered with RERA authorities.

Question 18: MahaSeWA/RERA-GST/18/29.05.2017

Q2) Our project got oc upto 3rd floor in 2004. Later on 2 more floors were built by buying TDR against FSI in 2012. Everything was made according to norms but some of the occupants went ahead had taken fire escape inside . Because of that OC was denied but not in writing . Do we have to register under rera?what steps should be taken to get oc.

=====

Ans By Housing Guru Ramesh Prabhu.

Since there is no OC in your project for 4th and 5th floor built by using TDR as on the commencement of the Act, (that is 1st May 2017) that phase need to be registered with the advent of RERA with effect frm 1st May 2017,

The phase which do not have OC need to register with RERA authorities.

The reasons behind denying OC should be rectified by appointing an Architect/ Licensed Surveyor and then after such rectification you should apply for OC thru an Architect/ Licensed Surveyor.

If It is not registered before 31st July 2017, if some flat owners complain it RERA, you will be receiving a show cause notice and may levy u the penalty upto 10% of cost of project as determined by the authority.

Question 19: MahaSeWA/RERA-GST/19/29.09.2017

Q3) Considering a scenario where a real estate project where there 2 phases. Full Occupation Certificate is already obtained for building constructed in phase 1. Building Plans are yet to be approved for Phase 2. When should such a project be registered with the authorities?

Is it required to register or disclose such project under RERA immediately or only after approval of Phase 2 or only when developer intends to market/sell units in this phase 2?

=====

Ans By Housing Guru Ramesh Prabhu.

Since phase 1 is completed with OC prior to 1st May 2017 (before commencement of Act) so the phase 1 is not required to be registered with. RERA authorities.

Only the phase 2 where the building plan is under process for approval can be registered with RERA authorities only after getting the sanction of the plan for phase 2.

Since the phase 2 wud be required to be registered only when the promoter wants to market or sell the flats. So long as you do not want to advertise or market or offer for sale any units in phase 2, you need to register with RERA.

Thus, The minimum eligibility to register ur phase 2 project is approved plan and it requires to be registered only when the promoter wants to market phase 2 flats

Question 20 : MahaSeWA/RERA-GST/20/29.05.2017

Q4) Extension:- Incase of ongoing projects where we enter in Rera from 1st May - and dated of Completion will be treated from this date or as mentioned earlier in MOFA ?

=====

Ans By Housing Guru Ramesh Prabhu.

Since Ongoing projects would come under RERA with effect from 1 st May, 2017 .

The date of completion would be treated as the date mentioned under MOFA sale agreement. However, if the developer wants to have the new date, the same may be done by the promoter by filling an Affidavit in Form B as per MahaRERA Rules.

In case of any delay in the project completion or no OC received would be dealt under RERA Act only from the date declared to RERA in Form no. B.

Detailed information of the project should be disclosed as per section 4 and an affidavit is affirmed detailing the whole project and timelines.

Any delay to complete the project as per the new timeline as declared to RERA will attract all penal actions as per section 7 and 8 of the Act including handing over of the Project to the association of allottees or any other way to complete the project.

However, if the existing flat owners, are not willing to accept new dates of possession, may withdraw from the project and claim for refund as per section 18 of the Act including claim of interest and compensation..

Question 21: MahaSeWA/RERA-GST/21/29.05.2017

Q5) In one of our project, there are only a few tenements left to be sold as on 01/05/2017. We have already sold and registered 90% of the inventory before advent of RERA and also received entire consideration with respect to these flats. We are planning to obtain Occupation Certificate by December 2017. We are also planning to market and sell the remainder of the inventory (10%) only after receiving the said occupation certificate.

Under Rule 4 of Maharashtra Govt., it appears that even in this case the project needs to be registered simply because the "Completion Certificate" is not obtained and it is an on-going project. However, there is ambiguity as Clause 3 of the Central Act clearly states "No promoter shall advertise, market, book, sell.... without registering the real estate project...." which seems to imply that as long as we don't intend to market/sell/advertise, it is not required to register our project. Thus, our query is that in such a case where Developer intends to only advertise/market/sell and create third party rights in his on-going project after receiving the Occupation Certificate AND not before then, is it still required to register the project under RERA ?

=====

Ans By Housing Guru Ramesh Prabhu.

RERA act says that ongoing projects which do not have Completion Certificate (OC) prior to 1st May, 2017 should get registered with RERA authorities. Ongoing projects can advertise in market on sale till 31st July, 2017. However, after this ongoing projects need to get registered.

There is no ambiguity whatsoever about ongoing projects defined under law and an exception

(provided that) under clause 3 needs to be read with the principal provision. Alone the exception (provided that) cannot survive. The exception "No Promoter shall advertise, market, book, sell without registering the real estate project.." is for new fresh projects post 1st may 2017 and not for ongoing projects.

Please take a note an exception (provided that) has to be read with the principle provision.

Question 22: MahaSeWA/RERA/22/30.05.2017

Hello sir I have a query can a cooperative hsg society who has entered in DA with a builder get registered by making an application under RERA.

If builder is not registering the project after taking over the possession of the property, what members and society can do?

It's a project having more then 8 flats for sale component

=====

Ans by Housing Guru Ramesh Prabhu

As per section 3 of the Act, the promoters are required to register the project with RERA, before offering any apartments for sale and registration with RERA may be done only after obtaining necessary sanction i.e (at least IOD).

The society will not be able to register with RERA, as the society is not going to sell a single flat. It is the promoter / developer who will be entering into sale agreement , receive consideration from purchasers etc...So only developer has to register with RERA.

If the developer has started to market project without RERA registration, members of the society or any person may complain to RERA who shall take necessary action against such developer including levy of penalty up to 10% of cost of the project as determined by the Authority.

Question 23 MahaSeWA/RERA/23/30.05.2017

Q: whether per se disputes between promoter and co promoter could be adjudicated by RERA authority when disputes arise in revenue sharing or profit sharing or area sharing??

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Ans by Housing Guru Ramesh Prabhu.

RERA is a special and specific Act to deal with the regulation and development of real estate business.

Any dispute between the promoter and co promoter will have to be resolved through the civil proceedings and cannot be taken before the Real Estate Regulatory Authority.

In case, because of the dispute between promoter and co promoter, the allottees or the flat purchasers are affected or possession is delayed, the section 7 of RERA comes into effect which is the cancellation or revocation of registration.

If the registration of the project is revoked, the Authority shall take necessary measures to complete the project as per section 8 of the Act. It is the obligation of the Authority on revocation or cancellation or lapse of registration to take over the project and hand over to the association of allottees or to competent Authority or in any other manner to complete the project.

Post RERA, promoter and co promoter continue to dispute , both may loose the project. Therefore, they will have to compromise and settle the dispute before it is too late.

Thus dispute between them does not come in the jurisdiction of RERA.

Question 24: : MahaSeWA/RERA/24/30.05.2017

Q. Query. Project passed under SRA. Name of Project Central Chembur. No flats till date constructed. Booking started in full swing. No permission taken from RERA Authorities.

Questions. 1.

Can a project under SRA be allowed to sell flats when the promised flats are not handed over to SRA?

=====

Ans by Housing Guru Ramesh Prabhu

Under MOFA, 1963 , unless and until, commencement certificate is received for a project / building, flats cannot be sold.

Further under SRA, commencement certificate for sale building is granted in proportion to the construction of Rehab building is done by the developer. In other words, if two floors of Rehab building is constructed say about 1000 Sq. Meters constructed for slum dwellers , the Developer also will be granted commencement certificate to construct 1000 sq. meters or equivalent incentive FSI for constructing the sale building to finance the SRA scheme.. In the present case, both the provision of MOFA and SRA are violated by the developer.

Under RERA, unless the plan for the sale building is approved by SRA, the real estate project cannot be registered and thus sales cannot be effected.

Under the given circumstances, the aggrieved party may file a complaint before the RERA authority and Authority may initiate necessary action for such violation including filing a criminal case against the promoter.

Question : MahaSeWA/RERA/25/30.05.2017

Project is at Ramabai Nagar Ghatkopar East, N Ward and is being sold with a name Chembur Central as if it is in the heart of Chembur which is in M Ward. Is it not misrepresentation?

Why are RERA Authorities and other authorities remaining silent spectators to such wrongful acts when full paper advertisements are being issued in reputed newspapers like Times of India? Is RERA likely to be one more manageable table for the builders?

I ask my professional friends and persons in the know of things to share their knowledge related to Criminal Laws, SRA and RERA Laws on the above subject as to what can be the penalty on such builders and the risk of flat purchasers purchasing flats in above project. Are they likely to get the possession before SRA gets its share of Flats?

Sadly government gives various concessions for Affordable Housing but there is no cap on pricing in Affordable Housing. This is also an appeal to authorities to have a cap on Affordable Housing? Your Association Co-operative Societies Residents, Users & Welfare Association (CSRUWA) has already written to the Government Authorities Complaint for such type of Alleged Unethical Practice. Please suggest what all should be highlighted to protect innocent flat purchasers?

For CSRUWA VINOD SAMPAT
=====

Ans by Housing Guru Ramesh Prabhu,

I appreciate your concern and then for taking a proactive step of informing the Authorities of such misrepresentation and violation of all provisions of law. Let us hope, RERA shall take all required positive steps. The complaint season before RERA is expected to begin after 1st August. 2017. Let us strengthen the hands of regulator in bring required changes in this sector..

Question 26 : MahaSeWA/RERA/26/30.05.2017

Query: During the interim period of 3 months, the promoter is permitted to receive sale consideration. Since, the Promoter is required to file a declaration at the time of registration of the project, undertaking to deposit 70% of the amounts realised from the Allottees in the Designated Bank Account, could it be inferred that until the time of making of such declaration, the Promoter can deposit the entire sale consideration received in its normal bank account?

=====

Ans by Housing Guru Ramesh Prabhu

Yes..You are correct. As per sub clause (D) Clause (1) of sub section (2) of section 4 of Real Estate (Regulation and development) Act 2016. at the time of registration, in Form B, the promoter has

to give declaration. Till such time, the promoter need not open designate account. So he may deposit in regular account till he registers the project

Question 27: MahaSeWa/RERA/27/30.05.2017

Q. During the registration we put possession date as 2022 December to be on safe side. Similarly, in RERA agreement for sale we put actual completion date with a buffer period lets say December 2019. Firstly is it acceptable? Secondly, the 1 year grace period as mentioned in the act is on the registration date or the agreement date?

=====

Ans by Housing Guru Ramesh Prabhu

The disclosure made before the RERA at the time of registration of real estate project and in the agreement for sale executed with the buyers cannot be different.

Flat agreements under RERA should disclose the completion date of the project and date of the possession of the flat. It has to be executed as per RERA Rules model form. of agreement and What has been given in affidavit in Form B.

There is no grace period of 1 year provided in the Act for delay in possession.

Section 6 provides that Authority may on application made by the promoter for extension of registration maximum for period of 1 year. This is completely at the discretion of the Authority.

Question 28 : MahaSewa/RERA/28/30.05.2017

Q: If a promoter builds godowns to give to individual purchaser on long term lease basis for say 30-99 years, then will it come under RERA?

=====

Ans by Housing Guru Ramesh Prabhu

In order to answer the question let us study the definition given in the section 2(d) of the Act which is as under:

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or buildings, 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 the case may be, is given on rent;"

Thus, if a promoter develops a real estate project and sells or allots or transfers the apartment on leasehold basis or If the promoter enters into a long term lease for godowns and a consideration

/ lumpsum lease premium is involved to create a leasehold interest in favour of the Lessee then RERA would be applicable.

The leasehold interest created is also a transfer of property and RERA would be applicable.

However, apartment is fully ready and gives on leave and license basis , RERA is not applicable.

Law on MHADA::

The objective for the payment of lease premium during such lease is to acquire of leasehold rights. Hence it is implicit to enter into lease to acquire such leasehold rights. That leasehold rights which comprises of bundle of rights including but not limited to right of possession, right of long term enjoyment, but also right of transfer and succession.

Thus, by implication transferror would forego all such rights in favour of transferee for a term only if such lease deed is executed.

Thus even Mhada sells plot on lease basis, RERA is applicable.

Question 29: MahaSeWA/RERA/29/31.05.2017

Good morning

Query : Builder given Allotment letter way back in 1999 Building ready with OC since about 10 years Agreement for Sale not yet executed till day neither Possession given to buyers (About 30 of them) Entire payment made to Developer as per Allotment letters.

Matter in High Court, Consumer Court, Criminal court & orders passed by Courts to hand over possession & Agreement for sale.

Main reasons for not giving Poss & Agreement for Sale , Developers (Partners) fighting among themselves & there is some TDR which can be loaded on the said plot & a bld can easily come up on the same.

Is RERA applicable to the Developer

- 1) Since NO Agt for Sale
- 2) NO Possession
- 3) Only OC in place
- 4) Unsold inventory of about 70% in the bld.

=====

Ans by Housing Guru Ramesh Prabhu

Since Occupation certificate is received prior to 1st May 2017 and according to definition given

for completion certificate includes OC or any other name which allows builders to hand over the possession, this case does not fall or covered under RERA.

Question 30 : MahaSeWA/MahaRERA/30/31.05.2017

Is rera applicable to the hsg. Society who themselves appointed the developer to build flats for the members. And land has already been get transferred in the name of hsg. Society. Construction of building and allotment of flats not yet started.

=====

Ans by Housing Guru Ramesh Prabhu

Since the society has appointed a developer. it is the duty of the developer to register the project before RERA, before selling or marketing a single flat.

Society need not register with RERA as a co promoter as the society is not selling a single flat.

The developer can register before RERA only after getting the plans sanction and on receiving. IOD

Question 31: MahaSeWA/MahaRERA/31/31.05.2017

Before we register for RERA and within this 90 days timeline Are we supposed to register sale agreements as per MOFA or as per RERA ?

=====

Ans by Housing Guru Ramesh Prabhu

All sections of RERA,2016 is effective from 1st May 2017.. Only section 3 to 8 regarding registration of real estate project concession is given up to 31st July 2017 (3 months from the date of commencement of the Act).

All other sections for all projects new and on going projects are applicable.

Section 13 provides for registration of agreement which is reproduced hereunder:

“Chapter III- FUNCTIONS AND DUTIES OF PROMOTER

13. No deposit or advance to be taken by promoter without first entering into agreement of sale

A promoter shall not accept a sum more than ten per cent. 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 for sale with such person

The agreement referred to in sub-section (1) shall be in such form as may be prescribed and specify the particulars of development of the project including the construction of building and

apartments, along with specifications and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the likely date on which the possession of the apartment, plot, or building is to be handed over and such other particulars, as may be prescribed"

As may be prescribed means as per MahaRERA Rules, which is also notified..

Section 89. provides for overriding effect over all law from the date of commencement

"Chapter X - MISCELLANEOUS

89. Act to have overriding effect

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force"

Therefore agreement for sale has to be as per RERA from 1st May 2017. Regarding rera registration no, it may be mentioned that , the same is not applicable as on date or shall be provided when obtained..

Question 32: MahaSeWA/MahaRERA/32/31.05.2017

Hello sir,

Please address the following query:

In the event the actual Land and Development/Construction Cost for the project incurred exceeds the estimated cost of the project as declared at the time of registration of project, is there any provision which allows the promoter to withdraw the excess amount?

=====

Ans by Housing Guru Ramesh Prabhu,
(09820106766/rsprabhu13@gmail.com)

As per the CA certificate to be issued indicated the percentage of the Estimated cost that can be withdrawn from the project.

For e.g estimated cost of the project is Rs.200 crores and as per books and engineer certificate shows , the expenses INCURRED on the project is Rs.250 crores. This means percentage of cost INCURRED to estimated cost is 125% (I.e $250/200 \times 100 = 125\%$). Now what can be withdrawn is 125% of Estimated cost which means 125% of Rs 200 crores. That is Rs. 250/= . Thus whatever is spent on the project can be withdrawn from the separate account.

Thus the CA certificate is like a drawing power given to separate account and thus amount spent on the project..after incurring the same can be withdrawn as a reimbursement.

Question 33: MahaSeWA/MahaRERA/33/31.05.2017

Sir if 50.flats are executed prior to 1 st may 2017 as per mofa flat agreement and 25 remaining flats r not being executed even with the advent of RERA as on 1 st may 2017 balance agreements needs to be executed as per RERA.. is it correct ? Whether we need to execute supplementary agreement for the other flat owners.?

=====

Ans by Housing Guru Ramesh Prabhu
(09820106766/rsprabhu13@gmail.com.)

You are right. All new agreements shall be as per RERA from 1st May 2017. If the date of completion of the project is stated in the MOFA agreements differs than what is disclosed in the website, it is advisable to rectify the agreement otherwise, in due course, the customers may file a case for compensation and interest as provided under section 18 of the Act. All new agreements need to mention the possession date as per the RERA website.

In fact the developer get a chance to declare new possession date post RERA.

Question 34: : MahaSeWA/MahaRERA/34/01.06.2017

Good morning

This query was discuss when I was sitting with the develaoper the developer is saying is going to acquire a very prime plot and will only make 10 apartments and for the same he has got 10 purchases and he will do the Constructions and give them the position of the apartments without going into an RERA. Is it possible. He says all the buyers of the plot will give me a contract in a way he is making all the purchases of the apartment first the purchaser of the land and taking a contract to build at a cost. I would like to know is this method will go in rera or can be done without RERA as per the developer he says anybody can also build is personal house so where RERA is not applicable.

=====

Ans by Housing Guru Ramesh Prabhu
(09820106766/rsprabhu13@gmail.com)

Any building construction needs land and necessary approval from local Authority. In the given case, who will be owner of the land. Let us assume all ten persons come together and form an association which need to be registered for opening a bank account. If it is not registered, all ten will become a join owner and purchase land jointly and pay to the land owner. Now application to be made to local authority for plan approval .All ten will apply...

Contractor will be appointed jointly etc

First of all it is not practical. Good for a hypothetical case and for debate and discussion.

If you study the definition of promoter , an association of persons registered or otherwise are considered as promoters and require to register. A primary coop housing society is a promoter.

Even if you do this way, getting home loan is difficult.. How many such projects one can do. Does it be called as a business..

If any one if your group complaints to RERA, all calculation and way out shall fail and the person responsible in the group for initiating the project will be held responsible for violating the RERA provision.

I request the builders who want to do the Real Estate business to explore. how RERA can be better used to expand and promote their business. How they can develop a process and procedure to be more RERA compliant then run away from RERA. If RERA is a rule of real estate business game, it should be followed by in spirit and letter by all the stakeholders, players in this game like builder, architect, advocate, engineer, CAs, agents, contractors and above all home buyers.

Question 35 : MahaSeWA/MahaRERA/35/02.06.2017

**Hello Rameshji. I have a query. Whether RERA registration is per project or builder?
I mean, besides registration for each project, does a builder also have to register separately as a builder (just as agents are registered)**

=====

Ans by Housing Guru Ramesh Prabhu (09820106766/rsprabhu13@gmail.com)

As per section 3 of RERA, 2016, each real estate project need to be registered separately.
As per section 4(2)(I)(D), Open a separate designate Account in a scheduled bank and also have it audited within 6 months from a practicing chartered Accountant.

Section 4(2) provides for the various information to be provided for registration of real estate projects including the person or company or firm who develops it.

Therefore , the online registration of real estate project done in MahaRERA, provides for registration of the profile of promoter and thereafter each project developed by such promoter is registered as separate project.

Thus indirectly promoter is first registered and then under that promoter whatever projects are developed are registered.

Question 35A MahaSeWA/MahaRERA/35A/02.06.2017

**Hello Rameshji. I have a query. Whether RERA registration is per project or builder?
I mean, besides registration for each project, does a builder also have to register**

separately as a builder (just as agents are registered)

=====

Ans by Housing Guru Ramesh Prabhu
(09820106766/rsprabhu13@gmail.com)

As per section 3 of RERA, 2016, each real estate project need to be registered separately.

As per section 4(2)(I)(D), Open a separate designate Account in a scheduled bank and also have it audited within 6 months from a practicing chartered Accountant.

Section 4(2) provides for the various information to be provided for registration of real estate projects including the person or company or firm who develops it.

Therefore , the online registration of real estate project done in MahaRERA, provides for registration of the profile of promoter and thereafter each project developed by such promoter is registered as separate project.

Thus indirectly promoter is first registered and then under that promoter whatever projects are developed are registered.

Question 36 : MahaSeWA/MahaRERA/36/02.06.2017

Q. Whether carpet area mentioned in RERA Act can be challenged as it involves thickness of walls (internal walls)? Since this wil increase the stamp duty liability on flat purchasers. The carpet area defined is not as per DC regulations, and National Building Code.

=====

Ans: by Housing Guru Ramesh Prabhu (09820106766/rsprabhu13@gmail.com)

Real Estate is governed by many central and state laws. Any provision in other laws which are not inconsistent with RERA shall continue to operate as per section 88 of the RERA, 2016. and if there are any contrary provision or in consistent provision? the provision us RERA will be applicable.

This is provided as a over riding effect of other laws in section 89 of RERA, which is reproduced here under;

Chapter X - MISCELLANEOUS

89.Act to have overriding effect, The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

There will be marginal effect or increase in the levy of stamp duty as the definition of carpet

area does not include partition walls as per Development control rules. Now when the new plans are submitted for approval, carpet area by including partition walls need to provided. The partition walls certainly does not include the beam and column inside the flats as they are of structural nature..

Question 37: MahaSeWA/MahaRERA/37/04.06.2017

I beg to differ on the new plans submitted for approval part of the answer which is given here under under reference

MahaSeWA/MahaRERA/36/02.06.2017.

As professionals, I shall only submit plans in conformity with dcr. For rera purpose, if requested by clients, I shall issue a certificate clearly stating that the carpet area is as per rera and for the purpose of rera registration only.

Regds Suyog Seth

"MahaSeWA/MahaRERA/36/02.06.2017

Q. Whether carpet area mentioned in RERA Act can be challenged as it involves thickness of walls (internal walls)? Since this wil increase the stamp duty liability on flat purchasers. The carpet area defined is not as per DC regulations, and National Building Code.

=====

**Ans: by Housing Guru Ramesh Prabhu
(09820106766/rsprabhu13@gmail.com)**

Real Estate is governed by many central and state laws. Any provision in other laws which are not inconsistent with RERA shall continue to operate as per section 88 of the RERA, 2016. and if there are any contrary provision or in consistent provision the provision is RERA will be applicable.

This is provided as a over riding effect of other laws in section 89 of RERA, which is reproduced here under;

Chapter X - MISCELLANEOUS

89. Act to have overriding effect

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

There will be marginal effect or increase in the levy of stamp duty as the definition of carpet area does not include partition walls as per Development control rules. Now when the new plans

are submitted for approval, carpet area by including partition walls need to provided. The partition walls certainly does not include the beam and column inside the flats as they are of structural nature..

=====

In continuation of the same another question is:

Q. Since section 89 of Central Act RERA has overriding effect then carpet area definition under DC regulations is inconsistent with RERA and thus RERA act shall prevail upon such inconsistencies, so dnt u think it is critical to make an amendment under DCR as per RERA Act to avoid disputes???

=====

Ans: by Housing Guru Ramesh Prabhu.

I agree with views of Architect Shri Suyog Seth. As per section 88 of the RERA, the existing law and provisions shall continue to operate as they are.. The section 88 is as under:

"

Chapter X - MISCELLANEOUS

88.Application of other laws not barred

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

Thus the approval of plan as per the prevailing development control Rules issued under Maharashtra Regional Town Planning Act,1966 shall continue to operate so far as approval of plans are concerned. The Stamp duty shall be collected as per the built up area worked out by adding valuation factor of 20% to the carpet area mentioned in the agreement for sale executed as per RERA. Now in this agreement , the promoter need to mention the carpet area as per RERA irrespective of the fact, it may marginally increase the stamp duty amount as internal walls are included in the carpet area as per RERA. And to this extent RERA shall prevail.

My submission is that, it is advisable for every promoter to mention on the plans to be submitted to local authorities for sanction, both carpet area as per DCR and carpet area as per RERA, so that, a complete transparency is mentioned in the approved plan also. As we know, at the time agreement and registration of real estste project before RERA, we need to work out the Carpet area as per RERA and the same to have better authenticity to mention in the plan at the time of approval itself.

We at MahaSeWA, shall certainly make a representation to urban development dept and Revenue department to consider the approval of plans , levy of premium and collecton of stamp duty etc as per the Carpet area mentioned under RERA. We shall also work towards bring ing uniformity of carpet area across other affecting legislation related to real estate across India in view of regulatory provisions of RERA.

Question 38: MahaSeWA/MahaRERA/ 38/05.06.2017

Q. Is it mandatory for Architect to enter into an agreement before sale of flat as per RERA with effect from 1st May 2017?

Is this copy of the agreement with Architect to be disclosed before RERA authority at the time of registration with RERA?

=====

Ans By Housing Guru Ramesh Prabhu.

As per the model agreement as per Annexure A prescribed by MahaRERA 2017, read with Rule No 10 and section 13 of RERA,2016, the promoter need to execute the standard agreement with the architect as per the provision made by council of architecture.

As per section 4 and Rule 3 of MahaRERA, the promoter has to upload the names of all professionals including the Architect. The agreement executed by the promoter will have to be verified by the RERA auditor appointed by the promoter as per the declaration submitted to RERA in form B in reference to section 4(2)(1)(D) of the Act.

Question : 38A: MahaSeWA/MahaRERA/38A/05.06.2017

Q. Is it mandatory for Architect to enter into an agreement before sale of flat as per RERA with effect from 1st May 2017?

Is this copy of the agreement with Architect to be disclosed before RERA authority at the time of registration with RERA?

=====

Ans: By Housing Guru Ramesh Prabhu.

As per the model agreement as per Annexure A prescribed by MahaRERA 2017, read with Rule No 10 and section 13 of RERA,2016, the promoter need to execute the standard agreement with the architect as per the provision made by council of architecture.

As per section 4 and Rule 3 of MahaRERA, the promoter has to upload the names of all professionals including the Architect. The agreement executed by the promoter will have to be verified by the RERA auditor appointed by the promoter as per the declaration submitted to RERA in form B in reference to section 4(2)(1)(D) of the Act.

The agreement may not be uploaded on the website. However, in due course, the regulator may issue regulations to this effect. Presently such agreement need not be uploaded on website but

certainly the auditor need to verify the same. If there are any discrepancies, the same need to be reported in the audit report which will be uploaded on the website as per MahaRERA regulations dared 24th Apr 2017

Question 39: MahaSeWA/MahaRERA/ 39/05.06.2017

Q. The Promoters feels that since their projects r ongoing projects en if they bring OC within 90 days(1st May to 31 st July 2017) then they are totally exempted from the entire provisions of RERA and also they do not hav to register before RERA; could they escape other liabilities post OC?

=====

Ans.: By Housing Guru Ramesh Prabhu.

As per section 3 of RERA, all the on going projects for which completion certificate(under MahaRERA Occupation certificate or completion certificate as the case may be) is not received as on the date of commencement of the Act, which is on 1st May 2017 requires to be registered by 31st July 2017.

However, many developers have got views that, if OC is received before 31st July 2017, they are not required to register the project. I humbly disagree with this view as the said project is not having OC as on 1st May 2017.

However, even if such projects or any projects exempted from registration under section 3 of the RERA, 2016, still all the other provisions of RERA shall be applicable to all the prmoters.. What is exempted is the compliance required to be done for registration like opening a separate account, carrying audit etc provided under section 4 of the Act.

Question 40: MahaSeWA/MahaRERA/05.06.2017

Sir , we are tenants of a building in South Mumbai , the said plot is under redevelopment scheme 33 (7). And said plot reservation under HD and MSQ. After long 2005 to 2015 litigation in high court we have sign consent term with developer and soc. On11. 3.15.

As we vacate the premises after signing PAAA PDC chaques of compensation will be for Alternative accommodation. and membership of soc.inspites of that undertaking given on direction of Developer BMC forcefully vacated the our premises with help of police protection on 14 may 2015.without signing PAAA .only pdc given till upto 2017 and same is stop from may 2017 onwords. my quary is

1 .can we are protected under RERA.?

2 can we file a compliant ?

If it is possible .Sir we request you to pl guide us .

=====

Ans by Housing Guru Ramesh Prabhu (09820106766/rsprabhu13@gmail.com)

Since you are allottees as per RERA, you are protected under RERA.

Yes. You may file a complaint under RERA. Your complaint may be taken as a source of information, RERA may initiate action against the developer.

Since DA is already executed, the developer must have sold some flats. The developer must have got IOD, therefore, the developer is required to register with RERA

Question 41 MahaSeWA/RERA/41/06-06-2017

Q1. What is real estate Project ?

Ans by Housing Guru Ramesh Prabhu

: As per section 2(zn) of Real Estate (Regulation and Development) Act, 2016, "real estate project" means the following :

- (i) the development of a building or
- (ii) a building consisting of apartments, or
- (iii) converting an existing building or a part thereof into apartments, or
- (iv) the development of land into plots or apartment, as the case may be,
- (v) for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and
- (vi) includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

Question 42 MahaSeWA/RERA/42/06-06-2017

When Real Estate Project has to be registered with the Real Estate Regulatory Authority (RERA) by the promoter?

Ans by Housing Guru Ramesh Prabhu

Considering the status of the project and the intention of the promoter, provision for Registration of real estate project with RERA has been made in section 3 of the Act. They can be classified into four situations as under:

- (1) New Projects : Launched after the commencement of the Act i.e after 1st May, 2017
- (2) On going Projects : Which have not received the Occupation or completion certificate from the competent Authority.
- (3) Projects outside the Planning area
- (4) Projects exempted from registration

(1) New Projects : As per section 3 (1) of Real Estate (Regulation and Development)Act, 2016, all the new real estate projects have to be registered, if the promoter wants to :

- (i) advertise,
- (ii) market,
- (iii) book,
- (iv) sell or
- (v) offer for sale, or
- (vi) invite persons to purchase
- (vii) in any manner any plot, apartment or building, as the case may be,
- (viii) in any real estate project or part of it,
- (ix) in any planning area.

(2) On going Projects :

As per 1st Proviso to section 3(1) of RERA, 2016, all the projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter has to make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act (i.e on or before 31st July 2017).

(3) Projects outside the Planning area: All the projects other than exempted projects developed in the planning area need to be registered. As per the notification issued under Maharashtra Regional Town Planning Act, 1966 (MRTP Act), entire Maharashtra including the rural areas are notified as planning area and therefore, all the projects other than exempted projects in Maharashtra required to be registered with the Authority.

As per section 3(1) of the Act, the projects which are developed outside the planning area are not required to be registered under the Act. However, 2nd proviso to section 3(1) of the Act, provides that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(4) Projects exempted from registration :

As per section 3(2) of the Act, no registration of the real estate project shall be required—

- (a) where the area of land proposed to be developed does not exceed five hundred square meters inclusive of all phases or
- (b) the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

As per first proviso to section 3(2) of the Act, provides that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under

this Act; Maharashtra government has not issued any notification to reduce the number of units or lesser area for registration of the real estate projects.

(c) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(d) 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.

Question 43 MahaSeWA/RERA/43/06-06-2017

What is phase wise development and when the phase wise projects required to be registered with the authority?

Ans by Housing Guru Ramesh Prabhu

Explanation to section 3 of the Act, provides that where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

As per Rule 2(p) of 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, provides that “Phase of a Real Estate Project” may consist of a building or a wing of the building in case of building with multiple wings or defined number of floors in a multi-storeyed building/wing.

As per section 3(2) of the Act, no registration of the real estate project shall be required—

(e) where the area of land proposed to be developed does not exceed five hundred square meters inclusive of all phases or

(f) the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

As per first proviso to section 3(2) of the Act, provides that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; Maharashtra government has not issued any notification to reduce the number of units or lesser area for registration of the real estate projects.

Thus if all phases together, exceeds 8 units or area exceeds 500 sq. meters of the land, each such phases need to be registered within three months, if they are ongoing projects and new projects before advertisement for sale of apartments, building or plots in the said real estate project after the commencement of the Act.

Question 44 MahaSeWA/RERA/44/06-06-2017

What happens, if the real estate project is not registered as required under the Act ?

=====

Ans by Housing Guru Ramesh Prabhu

(1) **Cannot Advertise, Market or sale the apartment/ Plot** : As per section 3 of the Act, the promoter cannot in any manner book, advertise, offer for sale or market or sell or Invite in any manner persons to purchase any unit or plot till grant of registration.

(2) **Levy of Penalty for non registration** : As per section 59(1) of the Act, If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(3) **Imprisonment for not complying with orders and decision of the Authority** : As per section 59(2) of the Act, If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

(4) **Compounding of Offence by paying additional penalty** : As per the table under Rule 5(1) of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017, the court may, for the purposes of compounding of any offence committed under section 59(2) read with section 70 regarding the compounding of offence, accept a sum of money of 5 percent which may extend upto 10 percent of such estimated cost.

Question 45 MahaSeWA/RERA/45/06-06-2017

How much time is taken by the Authority to register the project? When the project is deemed to be registered? What is given by the authority on registration or on deemed to have been registered of the project?

Ans by Housing Guru Ramesh Prabhu

On the receipt of the application the following things will be done by the authority:

(1) **Grant the registration within 30 days** : As per section 5(1) (a) of the Act, within 30 days of receipt of the application by the promoter, the Authority shall grant registration for the Project, if all the details as required for registrations are submitted, subject to the provisions of this Act and the rules and regulations made thereunder.

(2) **Provide the registration certificate, login and password:**

As per section 5(1)(a) of the Act read with Rules, on grant of registration, the authority need to provide to the promoter

(i) a registration number and Registration certificate in form C as per Rule 6(a) of

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

(ii) a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project as provided under section 4 and in the relevant rule 3 of Maharashtra Real Estate(Regulation and development) (Registration of real estate projects, registration of real estate agents, rate of interest and disclosures on website) Rules, 2017 and regulations 4 of Maharashtra Real Estate Regulatory Authority (General) Regulations 2017 or any other regulations as may be notified from time to time.

(3) Refuse the registration within 30 days: As per section 5(1) (b) of the Act, the authority may reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: The authority shall not reject the application without giving an opportunity to the promoter of being heard in the matter. This means before the expiry of the 30 days, period, the authority need to point out the compliances required to grant the registration and only after such compliances as pointed by the authority is complied thereafter, registration will be granted. All these need to be done within a period of 30 days or the regulatory authority may reject the application.

(4) Deemed to be registered after the expiry of 30 days: As per section 5(2) of the Act, If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1) of section 5 of the Act, the project shall be deemed to have been registered.

(5) On deemed registration, within 7 days to provide registration number, certificate, login and password : As per section 5(2) of the Act, on deemed registration, the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

Question 46 MahaSeWA/RERA/46/06-06-2017

Which projects need not be registered with the regulatory Authority or exempted from the registration?

=====

Ans by Housing Guru Ramesh Prabhu

As per section 3(2) of the Act, no registration of the real estate project shall be required—

(c) where the area of land proposed to be developed does not exceed five hundred square meters inclusive of all phases or

(d) the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

As per first proviso to section 3(2) of the Act, provides that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; Maharashtra government has not issued any notification to reduce the number of units

or lesser area for registration of the real estate projects.

(c) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(g) 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.

Question 47 MahaSeWA/RERA/47/06-06-2017

What is the period of registration Project? Or Who decides the period of registration of the project?

Ans by Housing Guru Ramesh Prabhu

As per section 4(2)(1), every promoter at the time of application for registration of the project is required to submit a declaration in the prescribed form. Rule 3(6) of Maharashtra Real Estate(Regulation and Development)(registration of real estate projects, registration of real estate agents, rate of interest and disclosures on website) Rules, 2017 has prescribed form B.

As per section 5(3) of the Act, the registration granted by the Authority under this section, shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

Thus , at the time of applying for registration, the promoter need to work out the complete project details as under in consultation with the professionals and the contractors to be involved in the project:

(a) Advocate having an experience of 10 years standing:

in consultation with the Architect, the development control rules under which the project will be developed, the approval or permissions required to be obtained before applying for registration of the project, the approvals or permissions or sanctions to be obtained after the registration of the project along with the statutory time within which the sanctions will be received, documents required for getting such sanction, different miles stones for the completion of the project, time and funds required to complete each milestones, quarterly fund flow statements,

APPENDIX – I
FORM 'A'
[see rule 6]
COMPLAINT TO THE AUTHORITY
(Complaint under section 31 of the Act)

For use of Authority(s) office:

Date of filing:

Date of receipt by post:

Complaint No.:

Signature:

Authorized Officer:

IN THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY OFFICE (Name of place)

Between

..... Complainant(s)

And

..... Respondent(s)

Details of claim:

1. Particulars of the complainant(s):
 - (i) Name of the complainant:
 - (ii) Address of the existing office/residence of the complainant:
 - (iii) Address for service of all notices:

2. Particulars of the respondents:
 - (i) Name(s) of respondent:
 - (ii) Office address of the respondent:
 - (iii) Address for service of all notices:

3. (a) Jurisdiction of the Authority:
The complainant declares that the subject matter of the claim falls within the jurisdiction of the Authority.
(b) Project Registration No.

4. Facts of the case:
[give a concise statement of facts and grounds for complaint]

5. Relief(s) sought:
In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s)

[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

6. Interim order, if prayed for :
Pending final decision on the complaint the complainant seeks issue of the following interim order: [Give here the nature of the interim order prayed for with reasons]

APPENDIX – II
FORM 'B'

APPLICATION TO ADJUDICATING OFFICER

(Claim for compensation under section 31 read with section 71 of the Act)
(see rule 7)

For use of Authority(s) office:

Date of filing:

Date of receipt by post:

Complaint No.:

Signature:

Authorized Officer:

Between

..... Applicant(s)

And

..... Respondent(s)

Details of claim:

1. Particulars of the applicant(s):
 - (i) Name of the applicant :
 - (ii) Address of the existing office / residence of the applicant :
 - (iii) Address for service of all notices :
 - (iv) Details of allottees apartment, plot or building

2. Particulars of the respondents :
 - (i) Name(s) of respondent:
 - (ii) Office address of the respondent :
 - (iii) Address for service of all notices :
 - (iv) Registration No. and address of project :

3. (a) Jurisdiction of the Adjudicating Officer:

The applicant declares that the subject matter of the claim falls within the jurisdiction of the adjudicating officer.

- (b) Project Registration No.

4. Facts of the case:

(give a concise statement of facts and grounds of claim against the respondent)

5. Compensation(s) sought:

In view of the facts mentioned in paragraph 4 above, the applicant prays for the following compensation(s)

[Specify below the compensation(s) claimed explaining the grounds of claim(s) and the legal provisions (if any) relied upon]

6. Claim not pending with any other court, etc. :

The applicant further declares that the matter regarding which this application has been made is not pending before any Court of Law or any other Authority or any other Tribunal(s).

7. Particulars of the fee in terms of sub-rule A (1) of rule 7 :

(i) Amount

(ii) Mode

8. List of enclosures:

(Specify the details of enclosures with the application)

Verification

I (name in full block letters) son /daughter of the applicant do hereby verify that the contents of paragraphs (1 to 8) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place :

Date :

Signature of the applicant(s)

APPENDIX - III
FORM 'C'
(see rule 9)
APPEAL TO APPELLATE TRIBUNAL
(under section 44)

For use of Appellate Tribunal's office :

Date of filing :

Date of receipt by post :

Registration No. :

Signature :

Authorized Officer :

IN THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL (Name of place)

Between

..... Appellant(s)

And

..... Respondent(s)

Details of appeal :

1. Particulars of the appellants :

(i) Name of the appellant :

(ii) Address of the existing office / residence of the appellant :

(iii) Address for service of all notices :

2. Particulars of the respondents :

(i) Name(s) of respondent :

(ii) Office address of the respondent :

(iii) Address for service of all notices :

3. (a) Jurisdiction of the Appellate Tribunal :

The appellant declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

(b) Project Registration No :

4. Limitation:

The appellant declares that the appeal is within the limitation specified in sub-section (2) of section 44

OR

If the appeal is filed after the expiry of the limitation period specified under sub-section (2) of section 44 specify reasons for delay

5. Facts of the case : give a concise statement of facts and grounds of appeal against the specific order of the Authority or the Adjudicating Officer, as the case may be passed under section(s) of the Act.

6. Grounds of Appeal :

7. Relief(s) sought : In view of the facts mentioned in paragraph 5 above, the appellant prays for the following relief(s) [Specify below the relief(s) sought explaining the grounds of relief(s) and the legal provisions (if any) relied upon]

8. Interim order, if prayed for : Pending final decision on the appeal, the appellant seeks issue of the following interim order :— (Give here the nature of the interim order prayed for with reasons)

9. Matter not pending with any other court, etc. : The appellant further declares that the matter regarding which this appeal has been made, is not pending before any court of law or any other Authority or any other Tribunal(s).

10. Particulars of the fee in terms of sub-rule A (1) of rule 9:

- (i) Amount
- (ii) Mode

11. List of enclosures:

- (i) An attested true copy of the order against which the appeal is filed
- (ii) Copies of the documents relied upon by the appellant and referred to in the appeal
- (iii) An index of the documents

Verification

I (name in full block letters) son/ daughter of the appellant do hereby verify that the contents of paragraphs (1 to 10) are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place :

Date

Signature of the appellant(s)

By order and in the name of the Governor of Maharashtra,
R. K. DHANAWADE, Deputy Secretary to Government.

-: AUTHORS :-



CA. Shailesh Ghedia



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