

Frequently Asked Questions (FAQs)

ON

REAL ESTATE (REGULATION & DEVELOPMENT) ACT, 2016

July 2016



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Message from the President – CREDAI Pune Metro

Dear CREDAI Members,

Real Estate (Development and Regulation) Act, 2016 (“RERA”) has come into force from 1st May 2016 as the Central Government has notified the commencement date of several sections of the Act. The sections which have been notified have given both authority and responsibility to the State Governments to draft Rules under the Act and set up Real Estate Regulatory Authority and Appellate Tribunal in their respective State.

From the day RERA was passed in Lok Sabha on 15th March 2016, Government has moved rapidly to ensure that the implementation of the Act is put on a fast track. The Central Government has already published draft rules under RERA for Union Territories on 24th June 2016 and asked for public comments till 8th July. CREAI-Pune Metro is actively working with CREDAI National for giving comments and suggestions for the same to the Central Government.

At CREDAI our aim has always been to ensure that our members are ready to adopt the new framework of doing business under RERA. CREDAI Pune Metro was the first chapter in the country to conduct an exhaustive RERA Seminar for members and followed it up with Member Assistance meetings. The Study Group has drafted and circulated a detailed presentation on all key points of RERA which has been appreciated by CREDAI National and circulated to CREDAI chapters across the country. We have also replied several queries from members on RERA from across the country which we received in response to the presentation.

Today, on the occasion of the inauguration of our new auditorium of CREDAI Pune Metro, we are glad to release this Booklet of “Frequently Asked Questions (FAQs) on RERA” at the hands of President – CREDAI National, Shri Geetamber Anand. We hope that these questions will address the practical issues in the minds of the developers and help them and their teams to understand the key provisions of RERA affecting their business. We invite members to send their queries and suggestions to the contact details of the RERA Study Group mentioned in this Booklet.

Wishing you all continued success and prosperity in business!

Yours in Service
President CREDAI - Pune Metro &
Members, RERA Study Group



Section A: RERA Applicability

1. What is the status of applicability of RERA as on 30th June?

RERA has completed all the necessary legal formalities for becoming an Act.

- a) Passed by the Rajya Sabha: 10th March 2016
- b) Passed by Lok Sabha: 15th March 2016
- c) Received assent of the Hon. President of India: 26th March 2016
- d) Date of commencement for certain sections of the Act (those primarily that enable the states to commence the process of setting up the regulator and preparation of the rules etc.) as 1st May 2016 notified by Central Government of India: 26th April

However, the sections which have been notified as on date do not include the Section 3 which deals with Registration of new and ongoing projects. Hence the registration of the Projects will commence after Sec 3 is notified.

2. When is RERA likely to come fully applicable?

RERA is likely to be operational for Developers by September/October 2016. The activities to be done for this purpose by the Government are:

- a) State Government has to first issue the Rules for suggestions from Public (based on statements in the media, it is expected that this will happen around mid to end July, 2016) and then notify the Rules
- b) State Government has to appoint the Real Estate Regulatory Authority
- c) After its appointment, RERA Authority has to draft Regulations which will contain among other things form and manner of making application for registration of the Project.
- d) State Government has to appoint the Appellate Tribunal
- e) Central Government has to notify the date of commencement of the other sections of the Act after the above are done by the State Governments (the central government may notify the date of commencement of other sections on a state by state basis – this means those states which are ready sooner may get RERA implemented sooner)

3. What are the timeline prescribed by the Act for entire RERA provisions to be effective?

The outer time limits imposed by the Act are as follows:

- a. State Governments must issue Rules within 6 months (Sec 84): 31st October 2016



- b. State Governments to appoint Real Estate Regulatory Authority (“Authority”) within 1 year: 30th April 2017
- c. Authority shall make regulations within 3 months of its formation by State Government: 30th July 2017
- d. State Government to appoint Real Estate Regulatory Tribunal (“Authority”) within 1 year: 30th April 2017
- e. Authority shall prepare the website & start the registration process within 6 to 12 months

On 24th June, Central Government has already issued Draft Rules under RERA for Union Territories and called for suggestions from public till 8th July.

Section B: Project Registration

4. Are there any exemptions from registration with Authority?

Yes. A project is exempted from registration under RERA if:

- Land proposed to be developed is less than 500 sq.mt. (inclusive of all phases), or
- No. of apartments less than 8 (inclusive of all phases), or
- Received Completion Certificate from the Competent authority i.e. plan sanctioning authority prior to the commencement of the Act, or
- For the purposes of renovation or repair or re-development 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

5. What is the time limit for ongoing projects to be registered under RERA?

For Ongoing projects (Projects that have not received the Completion Certificate on the date of commencement of the Act), Promoters should make an application to the Authority within 3 months from the date of commencement of the Act.

6. Will ongoing Project have to stop sales or construction till receiving the Registration?

The Act does not have any provision stating that ongoing Projects have to stop sales or construction till getting the registration. The responsibility of the Promoter of ongoing project is to apply for registration within three months. The rules may clarify the same, however, we advise caution in this regard.



7. What is the period of Registration?

The period of the Registration will be the period as declared by the Promoter for the completion of the Project in the Affidavit submitted along with the Application for Registration to the Authority.

It has been made compulsory for the Authority to grant Registration to the Promoter for the period declared by him and Authority.

8. If an ongoing project is registered under RERA, then will the Act be applicable for the entire project or will it be applicable only units sold after registration?

Registration is the of the Project/Phase and hence the provisions of the Act are likely to be applicable to all units of the Project/Phase. The rules are likely to clarify the same.

9. Is it compulsory for the Promoter to register the Project immediately after he gets sanction / commencement certificate?

No. Promoter has to register the Project before he starts any form of advertising or selling the units and not after getting the building plan sanctioned / commencement certificate.

Hence a promoter can start his construction, complete his show flat, excavation and any other construction he desires and then register the project under RERA.

10. What about the terms of agreement executed before a project is registered with the Authority?

RERA empowers any aggrieved person to file a complaint with the Authority, which will include a person who has an agreement executed before the project is registered with the Authority. Hence yes, such allottees / persons can approach RERA Authority for redressal for grievances or compensation. The terms of such agreements shall be in force and may be invoked for claiming compensation or any other relief before the Authority.

11. Can the developer revise the completion date after registration of Project with Authority?

In normal circumstances there the Promoter cannot revise the registration date.

A promoter can approach the Authority & apply for extension of the date of completion of the project, under *FORCE MAJUERE* as explained under RERA.

Also the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it



considers necessary. However, in aggregate this shall not exceed a period of one year.

12. Who can file a complaint for revocation of Registration of the Project?

The complaint for revocation of registration can be filed by:

- a) Any person
- b) Recommendation of the Competent Authority (Local Government / Planning Authority etc.)

The Authority can also revoke the registration suo-moto.

13. Under what conditions can registration be revoked?

Registration can be revoked by the Authority after being satisfied of:

- Default in respect of any obligation under the rule, regulation or any provision of the Act
- Violation of any of the terms or conditions of the approval given by the competent authority
- Involvement in unfair practice or irregularities (See next Question for meaning)
- Indulging in fraudulent practices

14. What is included under “unfair practices” for the purpose of revocation of registration of the project?

- The practice of making any statement, whether in writing or the visible representation which
 - falsely represents that the services are of a particular standard or grade
 - represents that the promoter has approval or affiliation which such promoter does not have
 - makes a false or misleading representation concerning the services
- The promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered
- The promoter indulges in any fraudulent practice

15. What happens if the Authority revokes the registration of a project?

- The Authority shall bar the promoter from accessing its website
- It will specify the promoter’s name and photograph in the defaulters list
- Inform the Authorities in other states and union territories about such revocation
- Freeze the separate bank account where 70% amount is deposited



- On consulting with the State Government, the Authority may ask the association of allottees or the competent Authority or any other promoter to complete the remaining work in the said project
- May pass any other orders it deems fit

16. RERA mentions that a promoter can register a phase as one independent project. But then promoter has to submit approvals & commencement certificate for each of such phase. Is it practical? What is the way out?

Presently the layout or building plans sanctioned by the competent authorities like PMC, PCMC or PMRDA do not mention individual phases. Phases are decided by the developer himself. Therefore the developer can define the phases. Please note that the phases should be clearly defined along with all necessary infrastructure as well as amenities to be provided with that phase. In case a developer shows amenities of the full project with the first phase, all the amenities will necessarily need to be completed as promised within the time. In this situation it will be necessary to state in the documentation that the amenities provided include the rights for future phases to also use the same amenities.

This issue needs to be taken up with the competent authorities as & when it frames the regulations in this regard. The Regulations that shall be framed by the Authority will provide clarity on this.

17. What are the details or documents required to be provided for public viewing on the webpage of the promoter on the website of the Authority?

Promoter on receiving Login ID and password is required to create his webpage and enter all the details of the project including –

- Registration details
- Quarterly up-to-date list of number and types of apartments or plots and garages booked
- Quarterly up-to-date list of approvals taken and pending subsequent to commencement certificate
- Quarterly up-to-date status of project
- Such other information and documents as may be specified by the regulations made by the Authority



Section C: Advertisements Booking and Agreement for Sale

18. What are the consequences of incorrect or false advertisement?

- a) If Allottee *retains* the apartment – he can claim compensation from the Promoter *if he has suffered loss or damage*
- b) If Allottee *cancels*– refund entire investment plus interest and compensation
(Note: It seems for cancellation, showing allottee suffered loss is not required)

19. Does an advertisement of the Company and not project also require registration?

In our view, only advertisements of the Project require prior registration of the project. Advertisement of the promoter which do not mention the project do not seem to require registration.

20. How will the RERA affect advertisement projects with many phases?

Advertisement of large projects which will have many phases should be done with utmost care. As per the strict interpretation of the Act, Developers will find it difficult to show the full layout if it is not registered. E.g. out of 10 buildings if only 4 are registered, technically it will be a default to “advertise” the balance 6 buildings. This will need clarity from Government in the Rules as some practical guidelines will have to be framed for advertisements.

21. What is the information which needs to be made available to the allottee at the time of booking?

The Promoter is required to make available the following information at the time of booking and issue of allotment letter:

- Sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority
- Stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity

22. Is it mandatory to enter into agreement for sale with every allottee? If yes, what is the maximum amount that can be taken without entering into agreement for sale?

The promoter cannot accept any sum more than ten percent of the cost of the apartment or 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 agreement for sale under any law for the time being in force.



23. Is the form of agreement for sale specified by RERA?

Yes, the agreement for sale has to be in such form as prescribed and shall specify the particulars of development of the project and includes the specifications of the developments works, payment modes, date of possession etc.

24. How will RERA affect the content of the Agreement to sale? What other legal safeguards do the promoters need to include in such agreements?

- Carpet area to be mentioned. Carpet area as defined by RERA.
- Rate of interest to be paid by the promoter or allottee in case of defaults
- Date of possession (with due regard to contingencies)
- Change in defect liability clause
- Stage wise completion of project including provisions to be made by promoter
- Formation of Society / Association of Allottees and Conveyance

25. Is it permissible to sale parking to allottees?

This is not clarified in the Act. However, we think that as per RERA the Promoter can probably sell only 'garage' which is clearly defined to state an area that is used for parking and has walls on three sides. It is noted that "Open Parking" and "Common basements" have been included in definition of Common Areas. Common Areas have to be handed over the Association of Allottees e.g. Society.

26. How should the promoter go about using the services of a Real Estate Agent?

Communication to a customer by an authorised agent can be treated as an advertisement, which is binding on the promoter. Hence we need to execute an agreement with the agent specifying all the details of project with a condition that the agent shall not communicate / commit anything not mentioned in such agreement. Also the agent can be asked to join the agreement as a Confirming Party.



Section D: Project Plan & Technical Details

27. Can the promoter change the plans of subsequent phases after registration of the 1st phase?

RERA puts an obligation on a promoter to obtain consent of each allottee, if he wants to change the building plans for the phase that is registered. If a subsequent phase is not put up for sale, it need not be registered and hence the promoter can change the plans of the subsequent phases without obtaining consent of the allottees from current / ongoing phases.

28. If the promoter needs to change the plans post registration, will he need the consent of the pre - registration purchasers?

RERA protects the interest of all the Allottees; including those who have executed an agreement before the project is registered under its provisions. Hence if the promoter wants to change the building plans post registration, then consent of all pre-registration allottees shall be required as well.

29. Changes to layouts and plans will require consent of two-thirds allottees which will create difficulties for promoters of large townships. E.g. Entry – Exit, common infrastructure amenities that are common to entire Township. How do we handle this?

Changes to larger townships will be of two types:

- a) Change in Plans, Layouts etc. of the Phase / s which have been registered will need permission of 2/3rd allottees of each Phase.
- b) Change in plans, layouts etc. of phases that are not registered will not require consent of allottees of Phases that are registered if such change is not affecting the Plans of the registered Phases. E.g. if Change in layout of Phase 2 leads to change in common areas, road etc. of Phase 1 then consent of allottees of Phase 1 will also be required

30. Phase 2 not registered but plan sanction obtained. But market condition necessitates change. How to handle?

In our view, changes to Phase 2 which is not registered will not require consent of allottees of Phase 1 if the layout of the entire project submitted at the time of registration of Phase 1.

31. The developer can hand over the common amenities only after completing subsequent phases. What should he commit to the customer for the first phase?

A promoter should meticulously plan the first phase & common areas and then declare the individual date of handing over possession of the first phase &



common areas. RERA does not restrict declaration of separate dates for the phases & common areas. However, each phase along with the development works shall have to be completed and handed over to the allottee within the time frame defined by the promoter for that project.

32. What is Carpet Area? Does it include enclosed balconies?

Carpet area is basically now the net usable area of an apartment including area under internal walls.

It does not include the area under the external walls, areas under service shafts, exclusive balcony, verandah or an exclusive (attached or overhead) open terrace. However, the carpet area will include area under the internal partition walls.

Section E: Finance and Costing

33. What is the “estimated cost of the project”? What implications it will have?

The estimated cost of a real estate project means the total cost involved in developing the project and includes land cost, taxes, cess, construction and development cost. The promoter is under obligation after required certification to withdraw amount from the separate account in proportion to percentage of the completion of the project.

RERA has a power to impose penalties on the promoter for various violations of any provision of the act, rules or regulations. This penalty is directly based on the “estimated cost of the project”.

34. What is the defect liability period also known as warranty or indemnity period?

The Promoter has to rectify the following defects which are brought to his notice within five years of handing over the possession to the allottee:

- a) Structural
- b) Any other defect in workmanship
- c) Defect in quality or provision of services
- d) Defect in any other obligations of the promoter as per Agreement for Sale

This period of 5 years shall continue even after conveyance of the project.

The promoter has to rectify the defect without any charge with thirty days after they are brought to his notice. If the promoter does not rectify the defect the allottee will be entitled to compensation.

35. Is insurance of the project compulsory under RERA? What are the provisions regarding Insurance?



Promoter has to obtain all such insurance as notified by the State Government. So insurance will be compulsory only after the Notification is issued by the State Government. The Act says that the State Government can prescribe various types of insurance including but not limited to

- a) title of the land and building as a part of the real estate project; and
- b) construction of the real estate project.

The promoter is liable to pay the insurance premium before transferring the same to the allottee / association of allottees. The documents related to insurance will have to be handed over to the association of allottees when the same is formed.

- 36. RERA makes it compulsory to a promoter to provide a declaration that 70% of the amount received from the allottees shall be kept in a separate account in a scheduled bank to cover the cost of construction & the land cost. Also the promoter has to withdraw the amount only after it is certified by an engineer, an architect & a chartered accountant. What if these three have different opinion about the amount to be withdrawn?**

In our view, the State Government will have to clarify this in the Rules.

Section F: Legal & Conveyance

- 37. When does the promoter need to form society, association etc.?**

In the absence of any local laws, the Promoter has to ensure that an association of allottees is formed within three months of majority of allottees having booked their apartment in the project.

In Maharashtra, since some of the provisions of Maharashtra Ownership Flats Act, 1963 (MOFA) in this regards still prevails the provisions of MOFA would be applicable here.

- 38. When does the Promoter have to do Conveyance Deed in favor of the association of allottees i.e. Society etc.?**

In the absence of any local laws, the Promoter has to enter into a registered conveyance deed in favor of the association of allottees within three months of date of issue of the occupancy certificate.



In Maharashtra, since some of the provisions of Maharashtra Ownership Flats Act, 1963 (MOFA) in this regards still prevails the provisions of MOFA would be applicable here.

39. What is the concept of force majeure? What is its impact on the project?

The period of registration granted by the Authority can be extended in case of force majeure i.e. events beyond the control of the promoter.

Force majeure explained in RERA is a case of:

- a) war,
- b) flood
- c) drought
- d) fire
- e) cyclone
- f) earthquake or
- g) any other calamity caused by nature affecting the regular development of the real estate project.

40. Can the Authority extend the period of registration even when there is no force majeure?

Yes, the Authority can extend the period of registration by upto 1 year in all for a Project if:

- a) it satisfied that there are reasonable circumstances for the extension based on facts of each case
- b) there has been no default on the part of the promoter
- c) it has to record the reasons for extension in writing

If the Authority has to grant multiple extensions, the total period of all such extensions cannot exceed one year.

41. Can a Promoter sale, transfer or assign the project to another promoter after getting it registered?



Yes. The Promoter can transfer or assign the project to a third party. However, if he is transferring his majority rights and obligations in the project it is subject to following conditions:

- a) Prior written consent of two-thirds of the allottees excluding the promoter
- b) Prior written consent of the Authority

Such transfer shall not affect the allotment or sale by the erstwhile promoter

The new promoter will have to independently comply with all the conditions of the Act, Rules and the obligations under the Agreements for Sale entered into by the erstwhile Promoter.

The period of registration of the project will not be extended due to such transfer and the new promoter will be responsible for consequences due to breach of the Act, Rules or Agreement for sale or delay in the project.

42. What is the responsibility and liability of the promoter with reference to title of the land? Is the promoter responsible for a claim which comes after the project in completed and handed over?

Ensuring perpetual clear title of land even after handover without any time barring is one of the stringent provision of RERA. Developers will have to take due care at the time of buying the land of title search and due diligence to avoid / minimize such claims in the future.

Also we expect that Title Insurance should be available in the time to come as the Government will have to take some action on that front due to provision in RERA.

Section G: Offences, Penalties and Prosecution

43. What is the difference between penalty & compensation?

Compensation is an amount adjudged by the Adjudicating Officer in case of a complaint filed by an allottee / purchaser. This amount has to be paid to the allottee / purchaser.

Penalty is an amount decided by the Authority or Appellate Tribunal in case of violation of any of the provisions of the act, rule or regulation under RERA. This amount is to be paid to the Authority or the Tribunal.

44. Can a promoter claim compensation from the allottee? What is the process?

It seems that the Promoter cannot claim compensation from the allottee since the provisions related to Duties of the Allottee mention payment of only interest in case of delay and default.

However the Promoter can file an application with the Authority for the default by the allottee and Authority can levy a penalty if it finds that there is a default of the Act, Rules or regulations e.g. not participating in formation of society, not taking possession within two months of obtaining of occupancy certificate etc are obligations cast by the Act on the allottee and their contravention can invite a penalty upto five percent of the cost of the apartment and a further penalty and even imprisonment in case of continued default.

45. Can the Authority *suo motu* call upon any promoter and demand any information?

Yes. The Authority has a power to call for any information about any issue falling under its scope. The Authority can even appoint an officer to conduct an inquiry & submit a report in such a case.

46. Is the Authority under RERA empowered to influence / expedite the approval process with the Planning / Local Authority?

RERA does not impart any powers to the Authority to influence the project approval process. However, the RERA Authority can recommend to the state government about the single window clearance system or establishment of a robust grievance redressal mechanism.

47. Can the promoter file an appeal against any order by the Authority or the Adjudication Officer? In how many days?

Yes. Any person, who is aggrieved by any order of the Authority or the adjudicating officer, can prefer an appeal with the Appellate Tribunal, within 60 days from the date of receipt of such order.

48. Can the promoter file an appeal against the order issued by the Tribunal? In how many days?

Yes. Any person aggrieved by any order or direction of the Tribunal can make an appeal before the High Court within 60 days from the date of receipt of such order.

49. Can the promoter go to any other civil court against any order issued by RERA or the Appellate Tribunal?

No. RERA bars any civil court to hear & try any matter or issue any STAY order, in respect of any matter for which powers are vested with the RERA Authority or the Tribunal. However, one can always approach the High Court with a Writ Petition under article 226 of the Indian Constitution, since the High Court is not a civil court but a constitutional court.

50. If the promoter does not pay the interest or penalty or compensation imposed by the authority or tribunal, how can the Authority recover the same?

The Authority can recover such an amount in a manner prescribed as an arrears of land revenue.

51. Who is the Adjudicating Officer under RERA? What is the role of an Adjudicating Officer?

- a) The Authority has power to appoint in consultation with the State Government a Judicial Officer who is or has been a District Judge to be an Adjudicating Officer for the
- b) The role of the Adjudicating Officer is to adjudge compensation under following sections:
 - a. Sec 12: Obligations of the Promoter regarding veracity of advertisement or prospectus.
 - b. Sec 14: Adherence to sanctioned plans and project specifications by the promoter
 - c. Sec 18: Return of amount and compensation
 - d. Sec 19: Rights and duties of allottees
- c) The Adjudicating Officer has to hold an enquiry as prescribed by the Rules by giving any person concerned a reasonable opportunity of being heard
- d) The Adjudicating officer has to dispose of the application expeditiously and dispose off the same within sixty days. If it is not disposed off, then he has to record the reasons for the delay in writing.
- e) Adjudicating Officer has to the power to summon and enforce attendance of any person who knows the facts of the case to give evidence or produce documents which in his opinion may be useful for the case
- f) After such enquiry if the Adjudicating Officer is satisfied that that the person has failed to comply with the provisions of sections mentioned in (b) above he may direct such person to pay such compensation or interest as he thinks fit according to provisions of those sections.

52. When can the Authority issue an interim order and can he do so ex-parte?

The Authority can issue an interim order restraining the promoter from carrying on certain act if it is satisfied during an enquiry that an act which contravenes the provisions of the Act, Rules or Regulations:

- a) has been committed and continues to be committed
- b) is about to be committed

The Authority can pass an order without notice to the promoter restraining the promoter from carrying on such an act until the conclusion of the enquiry or until such further orders by the Authority.



It is to be noted that such interim orders need not pertain to just “Stop Work” but any other restraining order also e.g. stopping sale of apartments, creating encumbrance of the property etc.

Also such interim orders can be passed against the promoter, allottee or real estate agent.

53. What is meant by compounding of offences and what the provisions in RERA regarding the same?

Compounding of offences means the power given to the Court to levy a penalty in the form of a compounding fee instead of sentencing the person to imprisonment.

As per RERA, compounding can be done after punishment with imprisonment is pronounced under the Act the person can before or after prosecution is instituted be compounded by the court.

As per RERA, the sum that the court can levy as compounding fee should not exceed the maximum amount of penalty for the offence so compounded.

Example: If the offence is selling the project without registering the same with Authority, the maximum penalty that can be imposed is 10% of estimated cost of the project. The compounding fee cannot exceed this sum.

54. Will the allottee be able to file complaints only with the RERA Authority or will other courts and forums be open?

As per RERA no Civil Court shall have jurisdiction to entertain any suit or proceedings for which the powers have been given to the Authority or Adjudicating Officer or Appellate Authority.

However, the following forums are open for filing of complaints:

- a) Criminal Court
- b) Consumer Court

55. What will happen to existing complaints pending in Consumer Court?

A person whose case is pending with the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.



56. Whether Maharashtra Ownership of Flats Act will remain in force? To what extent?

Some of the provisions of MOFA are currently in force. We have requested the State Government to bring the provisions of MOFA in line with RERA.

In case of conflict between RERA and MOFA the provisions which are stringent of the two should be followed as adequate provision.

Section H: RERA Business Impact:

57. What shall be the cost implications of RERA?

RERA is likely to impact the cost as follows:

- Cost of capital required for the project due to ban on prelaunch sale
- Withdrawal from the separate account now has to be in proportion to percentage of completion of the project. Hence swapping of amount between different projects will not be possible.
- Registration fees
- Insurance covering land cost & construction cost
- Defect Liability Period
- Interest & compensation that may be required to be paid to the purchaser
- Penalty that may be charged by the Authority
- Increased documentation with the purchasers, estate agents etc.
- Increased manpower for various compliances under RERA

58. Does advent of RERA curb unauthorised construction?

RERA can be very effectively used to curb unauthorised construction. Although RERA does not directly prohibit a developer from constructing an unauthorised building, it certainly prohibits “sale” of such unauthorised units. Projects with unauthorised construction cannot obtain registration under RERA and hence if a promoter wants to sell his unauthorised flats. Any person (including a promoter) can complain to the Authority about such sale and the Authority can impose heavy penalty and imprisonment to the concerned developer.

59. What kind of impact RERA will have on the real estate industry?

RERA will have a positive impact on the real estate industry for the following reasons:

- Any business which is governed by an industry-specific law always gets the status and branding in the eyes of all stakeholders: Government, Customers, Suppliers, Financial Institutions, Media and public at large



- There will be a natural entry barrier in the Industry due to the condition of Registration of the Project and only serious long term players will work in the Industry Restoration of the customer's confidence about the completion of the project
- Increased confidence of the customer due to full disclosure of information about the project
- Corporate & industrial houses shall now be more keen to join hands with real estate developers
- Banks funding will now increase due to reduction in risks associated with the real estate projects
- Reduction in competition from the unauthorised constructions and unscrupulous developers
- Attracting good quality manpower will become easier due to transparency and regulation
- Professionals like CA, Engineer and Architect will be tracking the project regularly as a statutory obligation. Their reports will be helpful to Promoter to monitor and control their projects and teams.

Section I: Rules under RERA

60. Central Government has draft Rules under RERA for Union Territories for suggestions from public. What are the key features of the Rules?

Under RERA the Central Government is empowered to make Rules for the Union Territories without Legislature and has accordingly circulated the draft Rules for public consultation and suggestions till 8th July.

Although the Rules do not apply to States it will be pertinent to study their key provisions since they have been issued by the Central Government and the State Government may adopt part or whole of the Rules.

The key provisions of the Rules are:

- a) Registration of Projects: No special concession to ongoing projects
- b) Basis of Area for ongoing projects: Agreements entered into before registration of the project can be on basis other than carpet area e.g. saleable area, super built-up area etc.
- c) Information to be submitted: Includes Balance Sheet and Income Tax Returns
- d) Registration Fee:
 - a. Residential Projects: Rs 10 per sq. mtr where land area upto 1000 sq. mtrs and Rs 20 per sq. mtrs if it exceeds
 - b. Commercial or Other Projects: Rs 50 per sq. mtr where land area upto 1000 sq. mtrs and Rs 100 per sq. mtrs if it exceeds

- e) Withdrawal of Registration: Ten percent of amount will be deducted if the Promoter wishes to withdraw the application for registration within the 30 days of application
- f) Extension of Registration: Promoter has to pay twice the fee applicable for registration
- g) Land cost: Defined as cost incurred by the promoter i.e. historical cost of acquisition
- h) Construction cost: Defined as cost incurred for onsite expenditure for physical development of the project
- i) Agreement for Sale: Format will be given in the Rules
- j) Rate of interest payable in case of delay or default: 2 percent above the Prime Lending Rate of State Bank of India
- k) Timeline for refund along with interest and compensation: Forty-Five Days from the day it becomes due (No timeline prescribed for payment by allottee)
- l) Recovery of amounts: Any amounts due under the Act will be recovered as arrears of land revenue
- m) Additional Powers of the Authority:
 - a. Call consultants from respective fields to assist in enquiry proceedings
 - b. Review the documents submitted for registration and enquire into any matters including:
 - i. the nature of rights and interest of the promoter to the land which is proposed to be developed;
 - ii. extent and location of area of land proposed to be developed;
 - iii. layout plan of the project;
 - iv. financial, technical and managerial capacity of the promoter to develop the project;
 - v. plan regarding the development works to be executed in the project; and
 - vi. conformity of development of the project with neighboring areas.
- n) Details to be published on the Website:
 - a. Details of the promoter: parent company, past and ongoing projects, background of promoter, educational qualifications and experience, track record of completion of projects, litigations in the project under registration, link of website of project and promoter, details of the
 - b. Details of the Project: Authenticated Copy of approvals, commencement certificate, registration granted by the authority, details of apartments, plots or buildings – number, type, carpet area, details of registered agents, location details, plan of development including amenities, Gann Chart and Project Schedule



- c. Financials of the Promoter: PAN Card, Balance Sheet copy for preceding financial year, Income Tax Returns for 3 years
- o) Quarterly Updates by promoter within 7 days of end of quarter: number of apartments sold, garages booked, status of the project, status of approvals
- p) Downloads to be made available on the website:
 - a. Almost all documents related to approvals and sanctioned plans of the project
 - b. Where promoter is not owner of land, Development Agreement or other applicable agreement
 - c. Legal documents: proforma of application form, allotment letter, agreement for sale, conveyance deed
 - d. Title search report of land
 - e. Details of encumbrances
 - f. Sanction letters from Banks for home loans and construction finance
 - g. Contact of promoter and other officials handling the project
- q) Fees for filing complaints to Authority: Rs One Thousand
- r) Compounding of Offences: Fee for compounding will be 10% of the estimated cost of the project



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