



THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 – FUNCTIONS AND DUTIES OF PROMOTER

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

REFRESHER COURSE ON GUJRERA PRACTICE &
PROFESSIONAL OPPORTUNITIES (VIRTUAL)

23rd AUGUST 2021

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OBJECTS OF THE ACT

The Real Estate (Regulation and Development) Act is intended to achieve the following objectives:

- ▶ ensure accountability towards allottees and protect their interest;
- ▶ infuse transparency, ensure fair-play and reduce frauds & delays;
- ▶ introduce professionalism and pan India standardization;
- ▶ establish symmetry of information between the promoter and allottee;
- ▶ imposing certain responsibilities on both promoter and allottees;
- ▶ establish regulatory oversight mechanism to enforce contracts;
- ▶ establish fast- track dispute resolution mechanism;
- ▶ promote good governance in the sector which in turn would create investor confidence.

IMPORTANT DEFINITIONS

SECTION 2(d) – ALLOTTEE

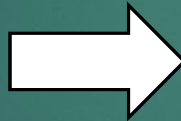
- ▶ "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

SECTION 2(k) - CARPET AREA

- ▶ "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;

▶ CORRECTIVE ACTION UNDER RERA

Saleable Area was a notional concept created by Developer to artificially increase the carpet Area by loading 40-65%. The Allotees were duped to pay excess price by this mechanism.



Corrective action under RERA -

“Carpet Area” is defined under RERA as “ the net usable floor area of the apartment, excluding the area covered by the external walls, areas under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment”.

Post RERA the Developers are strictly required to sale on “Carpet area basis only and no artificial/notional loading is permitted as all Developer would be selling on the basis of uniformly calculated Carpet Area. The Allottee would be in a position to compare rates and take informed decision.

IMPORTANT DEFINITIONS

SECTION 2(zk) – PROMOTER

- ▶ (zk) "promoter" means,—
 - ▶ a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
 - ▶ a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
 - ▶ any development authority or any other public body in respect of allottees of—
 - ▶ buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - ▶ plots owned by such authority or body or placed at their disposal by the Government,

(CONTINUED....)

IMPORTANT DEFINITIONS

SECTION 2(zk) – PROMOTER

(CONTINUED....)

- ▶ for the purpose of selling all or some of the apartments or plots; or
 - ▶ an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
 - ▶ any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
 - ▶ such other person who constructs any building or apartment for sale to the general public.
- ▶ *Explanation.*—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

IMPORTANT DEFINITIONS

SECTION 2(zn) – REAL ESTATE PROJECT

(zn) "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 land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

LEGAL DISCIPLINE

- Declaration giving all the project information.
- Affidavit to the effect that developer has a legal title or development rights including encumbrances, if any.
- Agreement to sale format is strictly adhered to as provided under the Applicable Rules framed under the RERA Act.
- Promoter cannot accept booking money which is more than 10% of the total consideration of the apartment/ plot unless Promoter executes registered Agreement to sale with Allottee.

FINANCIAL DISCIPLINE

- Promoter cannot accept booking money or cannot sale the flat unless the Real Estate Project is registered with RERA Authority.
- 70% booking money received from allottees need to be deposited in a separate bank account.
- This 70% booking money has to be utilized only for the purpose of Purchase/ development of land and Construction.
- Due Certification of utilization of money has to be obtained from Architect, Engineer & Chartered Accountant.
- Submit yearly statement of account duly audited by a Chartered Accountant within 6 months from the end of the financial year to confirm the financial discipline of the developer.

▶ CORRECTIVE ACTION UNDER RERA

Corrective action under RERA -

The curse on Real estate industry is funds mismanagement. The Developer blatantly uses booking money collection of one Project for investing in another Project or another business venture. Due to this the initial project commitments cannot be fulfilled and the project implementation schedule gets disturbed resulting in inordinate delay in completion of the project. To prevent this, RERA has introduced the concept of transfer of 70% Booking money collection to a designated bank account for utilization towards "Cost of the Project." Further, certificates from architect, Engineer and Chartered Accountant are required to determine the amount of funds that can be utilized from the designated bank accounts. Further as a matter of countercheck, the Statutory Auditor is required to issue Audit Certificate within 6 months from the end of the financial year confirming the fact that funds have been properly utilized by the Developer.

This mechanism will ensure that there are no diversion or mis-utilisation of booking money received from allottees and the Project implementation schedule would be properly followed by the Developer.

Siphoning
of funds
or
Diversion
of funds



PERFORMANCE DISCIPLINE

- Promoter need to give estimated time period for completion of the project at the time of registration only.
- Maximum one year extension for completion of the project is permitted under section 6 of the Act.
- Further extension also allowed under section 7(3) after getting approval from at least 51% of the allottees on case to case basis.
- Penal Action or prosecution if deadline is not complied with.
- Quarterly up to date booking information, approvals received and status of the project

CORRECTIVE ACTION UNDER RERA

Delay in Project
implementation



Corrective action under RERA -

RERA makes it mandatory for all the developer to commit the date of the completion of the project at the time of applying for registration. The registration under RERA would be granted only upto that date and the project would get de-registered after that date and penal consequences shall follow.

The extension of time is permitted in case of “force majeure” or prohibition or restraining order passed by any Court of law or governing authority. COVID-19 has been declared under Force Majeure and automatic extension of 6 months is granted.

In genuine cases, the RERA Authority may, subject to, verification extend time for further period of one year. In exceptional cases, subject to the satisfaction of the RERA Authority, further extension is considered for which consent of at least 51% of the allottees required. These measures would improve the Project implementation schedule and enforce “operational accountability” on the Real Estate Sector.

CHAPTER III – FUNCTIONS AND DUTIES OF PROMOTER

SECTION NO. 11 TO SECTION NO.18

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

▶ ADVERTISEMENT

- ▶ Section 2(b) of the Real Estate (Regulation and development) Act, 2016 defines advertisement as “any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing person about real estate project or offering for sale of a plot , building or apartment or inviting persons to purchase in any manner such plot , building or apartment or to make advances or deposits for such purpose”
- ▶ While advertising, Promoter is required to “Prominently disclose” following details
 - Website Address of the Authority (GUJRERA Website)
 - GUJRERA Registration Number of Promoter

SECTION 12 – OBLIGATION OF PROMOTER REGARDING VERACITY OF THE ADVERTISEMENT OR PROSPECTUS.

- ▶ Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:
- ▶ Provided that if the person affected by such incorrect, false statement contained in the notice advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

▶ CORRECTIVE ACTION UNDER RERA

Misrepresentation
in Brochure and
Advertisement or
Agreement to
sale



Corrective action under RERA -

RERA has put in place the mechanism wherein the developer is under obligation to promise what he is going to deliver

e.g If a Developer is doing his Project in 3 Phases and providing swimming pool as amenity in Phase No. 3 then he is not permitted to claim swimming pool as an amenity in Phase I and Phase II. Also unless Phase III is registered, he cannot include swimming pool as an amenity in his brochure. RERA has also prescribed format for the Agreement to Sale.

SECTION 13 – NO DEPOSIT OR ADVANCE TO BE TAKEN BY PROMOTER WITHOUT FIRST ENTERING INTO AGREEMENT FOR 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 and register the said agreement for sale, under any law for the time being in force.
- ▶ The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with the specification and internal development works and external development works, the dates and manner by which payment towards the cost of the apartment, plot or building, as the case may be are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to promoter in case of default, and such other particulars as may be prescribed.

SECTION 14 – ADHERENCE TO SANCTIONED PLANS AND PROJECT SPECIFICATION BY PROMOTER

- ▶ Promoter is not allowed to make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that Allottee.
- ▶ Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

SECTION 14 – ADHERENCE TO SANCTIONED PLANS AND PROJECT SPECIFICATION BY PROMOTER

- ▶ **Explanation.**—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment etc.

SECTION 14 – ADHERENCE TO SANCTIONED PLANS AND PROJECT SPECIFICATION BY PROMOTER

- ▶ Any other alteration or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.
- ▶ **Explanation.**—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals etc. by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

SECTION 14 – ADHERENCE TO SANCTIONED PLANS AND PROJECT SPECIFICATION BY PROMOTER

DEFECT LIABILITY

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

SECTION 15 – OBLIGATION OF PROMOTER IN CASE OF TRANSFER OF A REAL ESTATE PROJECT TO A THIRD PARTY

- ▶ The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.
- ▶ Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.
- ▶ **Explanation.**—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

SECTION 15 – OBLIGATION OF PROMOTER IN CASE OF TRANSFER OF A REAL ESTATE PROJECT TO A THIRD PARTY

- ▶ The transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:
- ▶ **Provided** that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

SECTION 16 – OBLIGATION OF PROMOTER REGARDING INSURANCE OF REAL ESTATE PROJECT

- ▶ The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —
 - Title of the land and building as a part of the real estate project; and
 - construction of the real estate project.
- ▶ The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.
- ▶ The insurance as specified under sub-section shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.
- ▶ On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

SECTION 17 – TRANSFER OF TITLE

- ▶ The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:
- ▶ **Provided** that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

SECTION 17 – TRANSFER OF TITLE

- ▶ After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:
- ▶ Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

The “Promoter” Shall

- ▶ Be responsible to obtain “Completion Certificate” or the “Occupancy Certificate” or both as applicable from Competent Authority.
- ▶ Be responsible to obtain the “Lease Certificate”, where the real estate project is developed on “Leasehold Land” specifying the period of lease and certifying that all dues and charges in regard to the leasehold land has been paid.
- ▶ Be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of Allottees.
- ▶ Pay all outgoings until he transfers the physical possession of the real estate project to allottee or the association of allottees which he has collected from allottees for the payment of outgoings.

SECTION 11 – FUNCTIONS AND DUTIES OF PROMOTER

FORMATION OF ASSOCIATION OF ALLOTTEES

- ▶ In case of Single building not being part of the layout; or in case of layout of more than one building or a wing of one building in the layout – Promoter shall submit application for formation of the Association of Allottees to Competent Authority within **three months** from the date on which **Fifty one percent** of the total number of allottees in such a building or wing have booked their apartment.
- ▶ Where Promoter is required to form an apex body either as a federation of separate and independent Co-operative housing Societies or Companies or Any other Legal Entity – Promoter Shall Submit application for formation of such entity with Competent Authority within **three months** from the date of receipt of the **Occupancy Certificate** of the last of the building which was to be constructed in the layout.

CORRECTIVE ACTION UNDER RERA

Delay in forming
Society and
handing over of
affairs



Corrective action under RERA -

Provisions of RERA makes it compulsory on the part of the Developer to submit the application to the Registrar for registration of the co-operative housing society under the Applicable Co-operative Societies Act, or a company or any other legal entity within three months from the date on which 51% of the total number of allottees in such a building or wing, have booked their apartment.

SECTION 18 – RETURN OF AMOUNT AND COMPENSATION

- ▶ If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
 - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
 - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to
- ▶ Return the amount received by him in respect of that apartment, plot, building as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:
- ▶ Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

SECTION 18 – RETURN OF AMOUNT AND COMPENSATION

(1) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

(2) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

CHAPTER IV – RIGHTS AND DUTIES OF ALLOTTEES

- ▶ ALL THE FUNCTIONS OF THE PROMOTERS ARE RIGHTS OF ALLOTTEES.
- ▶ SHALL BE RESPONSIBLE TO FOLLOW TERMS AND CONDITIONS OF THE AGREEMENT TO SALE ENTERED IN TO WITH PROMOTER
- ▶ SHALL PARTICIPATE TOWARDS THE FORMATION OF ASSOCIATION OF ALLOTTEES.
- ▶ SHALL PARTICIPATE IN REGISTRATION AND EXECUTION OF THE CONVEYANCE DEED.

DISPUTE REDRESSAL SYSTEM

- ▶ Any aggrieved party can file complaint with GUJRERA.
- ▶ Complaint has to be disposed off by GUJRERA Authority within 60 days of filing of the complaint.
- ▶ Any aggrieved party can file appeal with Appellate Authority within 60 days.
- ▶ Appellate Authority also needs to dispose off the complaint within 60 days.
- ▶ HIGH COURT
- ▶ SUPREME COURT

▶ CORRECTIVE ACTION UNDER RERA

Developer could misguide and even cheat allottee because the redressal mechanism under prevalent Acts was not strong enough to prevent such acts of the Developer. Also inordinate delays in getting justice resulted in denial of justice to the allottee.



Corrective action under RERA -

RERA has set up redressal mechanism in place with a time bound program. All complaints addressed to RERA will be disposed by the RERA within 60 days. In case of any delay in passing an Order, the concerned Officer/ Authority is required to record reason in writing for such delay. Further, the Officer/ Authority is required to submit a quarterly report giving details of pending cases at the beginning of the quarter, new cases received, cases disposed off and balance cases at the end of the quarter. This will result in better accountability and immediate results for the Allottee. Further, the RERA Tribunal set up to hear appeals is also required to dispose off appeals in 60 days and the Tribunal is also governed on similar lines as RERA Officer/ Authority. The Allottee would be entitled to get order for interest, compensation, damage, and refund in a time bound manner. Also, the penalty for violation of RERA is put at an exorbitant high amount of 5% to 10% of estimated cost of the project, the developer community will be more careful now to perform and stay away from the penal provisions of the RERA. Further, RERA Authority is empowered to initiate suo-moto action.

OFFENCES AND PENALTIES

OFFENCES	PROMOTOR		REAL ESTATE AGENT		ALLOTTEE	
	FINE UP TO	IMPRISONMENT UP TO	FINE UP TO	IMPRISONMENT UP TO	FINE UP TO	IMPRISONMENT UP TO
Non Registration of Project	10% of the Estimated cost of the project	--	Rs.10,000/- per day up to 5% of the estimated cost of the transaction facilitated	--	--	--
Non Compliance to directions regarding registrations and continued default of non registration	10% of the Estimated cost of the project	Three Years	Rs.10,000/- per day up to 5% of the estimated cost of the transaction facilitated	--	--	--
Submission of false information for obtaining registration or making false declaration	5% of the Estimated cost of the project	--	--	--	--	--
Penalty for non compliance subsequent to registration	5% of the Estimated cost of the project	--	--	--	--	--
Failure to comply with the directions under RERA	Penalty for each day up to 5% of the Estimated cost of the project	--	Penalty for each day up to 5% of the estimated cost of the transaction facilitated	--	Penalty for each day up to 5% of the estimated cost of the transaction entered	--
Penalty to comply with orders of appellate tribunal	10% of the Estimated cost of the project	Three Years	Penalty for each day up to 10% of the estimated cost of the transaction facilitated	One Year	Penalty for each day up to 10% of the estimated cost of the transaction entered	One Year



THANK YOU

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