

Decoding Real Estate (Regulation and Development) Act

Are you ready for RERA?

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10 June 2017



Framework of RERA

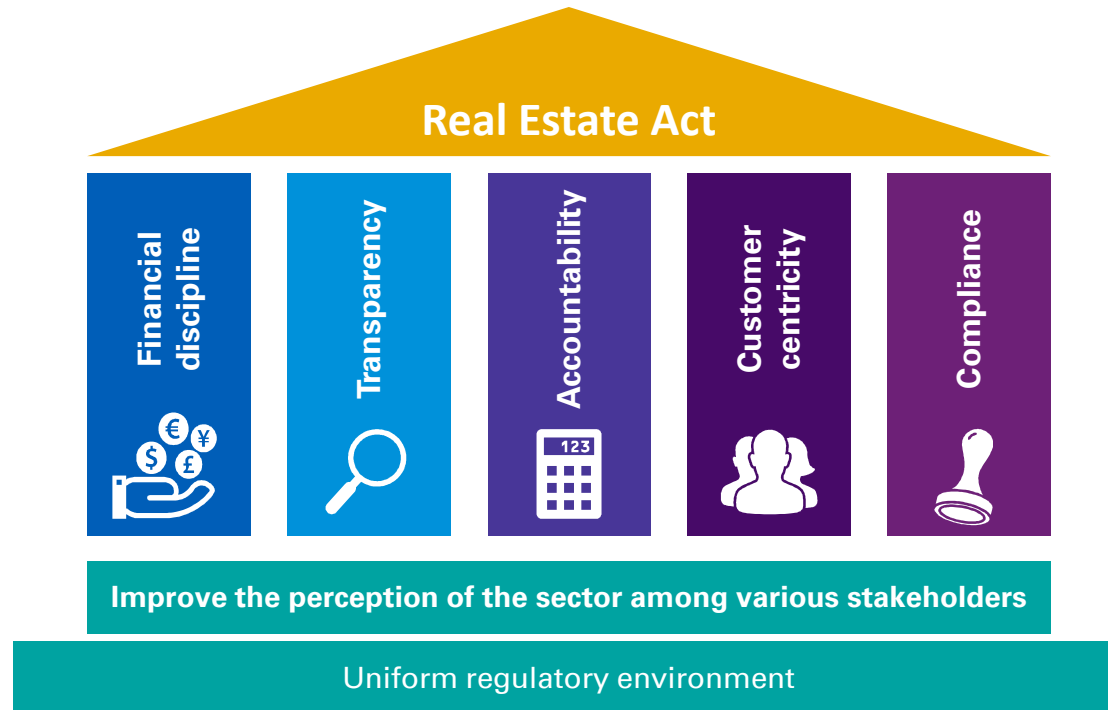
Framework of RERA

Section	Provisions of the Act
1 – 2	Scope and Definitions
3 – 8	Registration of the Project
9 - 10	Registration of Agents and its Functions
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19	Rights and Duties of Allottees
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79 – 92	Miscellaneous Provisions: Bar of Jurisdiction, Power to make Rules & Regulations, Act to have overriding effect over other Acts, Repeal of MOFA 2012

Framework of MAHA RERA

Sr	Rules and Regulations
1	Maharashtra (Real Estate & Development) (Registration of real estate projects, registration of agents, rates of interest and disclosure on website) Rules 2017
2	Maharashtra (Real Estate & Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaint and Appeal, etc.) Rules 2017
3	Maharashtra Real Estate Appellate Tribunal (Members, Officers and Employees) (Appointment and Service Conditions) Rules, 2017
4	Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017
5	Maharashtra Real Estate Regulatory Authority , Chairperson, Members Officers and Other Employees (Appointment and Service Conditions) Rules, 2017
6	Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 Rights and Duties of Allottees: Formats of Certificates of Architects, Engineers, Chartered Accountants, Annual Audit report by Statutory Auditors, Power of Attorney for Representation and Application for Inspection/Obtaining Copies of Documents/Records
7	Maharashtra Real Estate Regulatory Authority (Recruitment and Conditions of Service of Employees) Regulations, 2017
8	Notifications and Orders by RERA Authority

Pivotal pillars of the Act



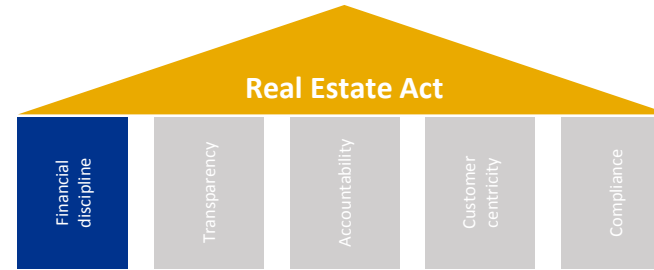
COMMERCIAL and RESIDENTIAL projects including **PLOTTED DEVELOPMENT**

Land under development **MORE THAN 500 SQ MTS / NO. of UNITS** exceed **8**

Projects which do not have **COMPLETION CERTIFICATE** before commencement of **ACT**

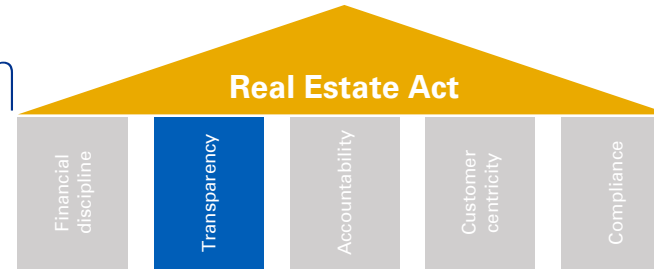
RENOVATION or REPAIR or REDEVELOPMENT projects not involving Marketing, Advertising, Selling & New Allotment **NEED NOT BE REGISTERED**

Fiscal discipline will play a critical role in project development and requires utmost importance



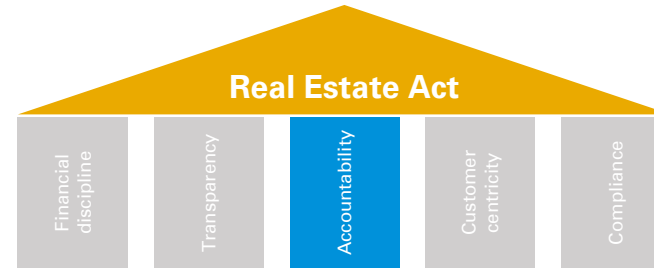
		What it entails				
Financial Discipline	70% of the funds collected from allottees needs to be deposited in the project account	Withdrawals to cover construction and land cost	Withdrawals to be in proportion to the % completion method	Withdrawal to be certified by Engineer, Architect, and CA	Promoter to compensate buyer for any false or incorrect statement with full refund of property cost with interest	
	Provision for RERA to freeze project bank account upon non-compliance	Project Accounts to be Audited / FY. Copy to be submitted to RERA	Provision for stronger financial penalties for RERA non-compliances	Interest on delay will be same for customer and promoter		

Structured communication is required to furnish all project related information to the customers



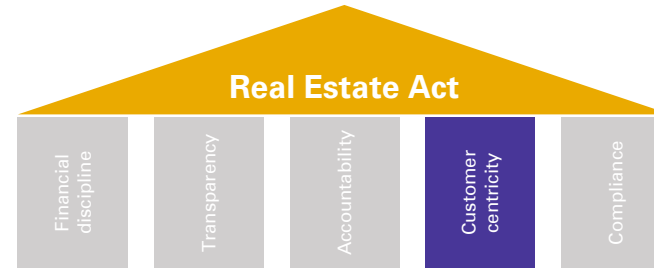
		What it entails				
Transparency		Number, type and carpet area of apartments	Consent from affected allottees for any major addition or alteration	Consent of 2/3 rd allottees about any other addition or alteration	No false statements or commitments in advertisement	Quarterly updating of RERA website with details such as unsold inventory and pending approvals
		No arbitrary cancellation of units by promoter	Project completion time frame	Informing allottees about any minor addition or alteration	No launch or advertisement before registration with RERA	Consent of 2/3 rd allottees for transferring majority rights to 3 rd party

A PMO would be required to track and monitor developments as per the defined project plan



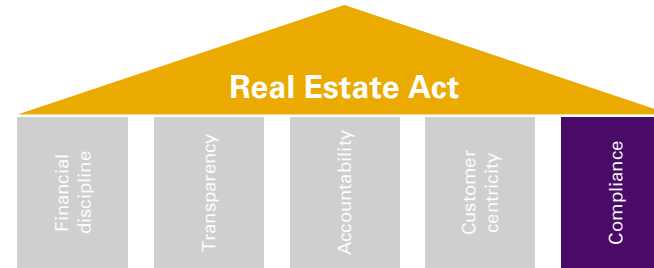
What it entails	
Accountability	Quarterly update of project progress along with pending approvals on RERA website
	Every officer of a company, who was in charge or responsible will be liable for the conduct of the company and deemed to be guilty
	Offence by an officer committed with the consent or connivance of any director, manager, secretary or other officer of the company, will also be guilty

CRM would help to enhance customer centricity focus



Customer centricity	What it entails		
	Sharing information project plan, layout, government approvals, land title status, sub contractors	Increased assertion on the timely completion of projects and delivery to the consumer.	An increase in the quality of construction due to a defect liability period of five years.
	Formation of RWA within specified time or 3 months after majority of units have been sold	Consent of 2/3 rd allottees for any other addition or alteration	Consent from affected allottees for any major addition or alteration
	Unbiased interest on delays	Informing allottees for any minor addition or alteration	No false statements or commitments in advertisement

Registration of all projects & agents and a strong dispute management required



What it entails					
Compliance	Authenticated copy of all approvals, commencement certificate, sanctioned plan, layout plan, specification, plan of development work, proposed facilities, Proforma allotment letter, agreement for sale and conveyance deed to be given when applying for project registration with RERA	Registration of agents/brokers with RERA	Dispute resolution within 6 months at RERA and RERA appellate tribunals	Mandatory registration of new and existing projects with RERA before launch	
		Timely updating of RERA website			
		Maximum 1 year extension in case of delay due to no fault of developer	Developers to share details of projects launched in last 5 years with status and reason for delay with RERA	Separate registration of different phases of a single projects	
		Annual audit of project accounts by a CA		Conveyance deed for common area in favor of RWA	Construction and land title insurance
					Project completion time period

Registration of a Project

Registration of new and existing projects

Registration details to be provided

- **Affidavit of Promoter** – legal titles of land, land free from encumbrances, project completion date, 70:30 Rule, obtain pending approvals and maintain all relevant documents
- **Complete details of the Project**
- **Number and areas of garage** for sale and **open parking** areas
- Name and address of **real estate agents, contractors, architects, structural engineer**, and other person concerned with the development of the proposed project.
- **Proforma agreement for sale, and the conveyance deed.**
- **Sanction letter from bank for construction finance and home loan tie-ups.**
- Plan of development works to be executed in the proposed project and the proposed facilities.
- **Amenities:** detailed note explaining the salient features of the proposed project including **access to the project, design for electric supply including street lighting, water supply arrangements etc.**

Registration of new and existing projects

Registration details to be provided

Promoter details

- PAN Card and Aadhar Card of Promoters
- Balance Sheet and last 3 year IT returns of the promoter and in case of new entity, last 3 years IT returns of parent entity.
- Details of project launched by promoters in last five years, including current status, details of cases and payment pending.
- Developer or group profile (name, registered address, type of enterprise etc.)
- Background and track record of promoters – educational qualification, work experience, projects completed/ongoing etc.
- Litigations – details of past and ongoing litigations (projects only).

Registration of new and existing projects

Registration details to be provided

Land details

- legal title deed reflecting the title of the promoter to the land
- Legally valid documents with authentication of land title if such land is owned by another person
- Details of encumbrances on land
- In case of JV, copy of collaboration agreement, development agreement, JV agreement etc.
- Land title search report from an advocate with 10 years experience

Registration of new and existing projects

Registration details to be provided

Project details

- Agency to take up external development work
- Authenticated copy of the approvals and commencement certificate from the competent authority.
- Sanctioned plan, layout plan and specifications of the project.
- In case of phased development, sanctioned plan, layout plan and specification of the whole project.
- Plan of development works to be executed in the proposed project and the proposed facilities (such as fire-fighting, drinking water, emergency evacuation etc.
- Number, type and the carpet area of apartments for sale along with area of the exclusive balcony or verandah areas and exclusive open terrace.
- Number and areas of garage for sale and open parking areas
- Name and address of real estate agents, contractors, architects, structural engineer, and other person concerned with the development of the proposed project.
- Proforma agreement for sale, and the conveyance deed.
- Sanction letter from bank for construction finance and home loan tie-ups.

Registration of new and existing projects

Registration details to be provided

Declaration

- Declaration in Form B stating following:
 - Promoter has clear legal title to the land
 - Land is free from encumbrances and if not, details of such encumbrances
 - Project completion time period
 - Project account maintenance
 - Promoter will not discriminate against any allottee

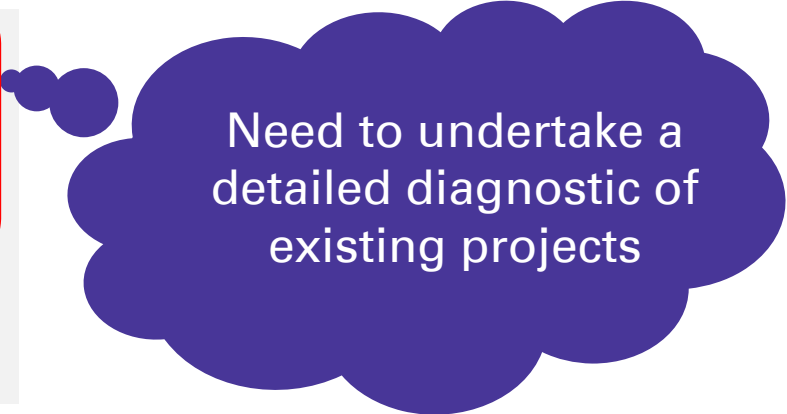
Development plan

- Plan of development works to be executed in the proposed project and the proposed facilities
- Amenities: detailed note explaining the salient features of the proposed project including access to the project, design for electric supply including street lighting, water supply arrangements etc.
- Gantt Charts and Project Schedule

Registration of new and existing projects

Additional details for existing projects

- Current status of project and the extent of completion.
- Carpet area of all the units in the project even if earlier sold on any other basis such as super area, carpet area, built-up area etc.
- In case of plotted development, area of the plot being sold to the allottees.



Need to undertake a detailed diagnostic of existing projects

Projects which have not received 'Completion Certificate' on the date of commencement of the Act, need to get registered with RERA

RERA will have power to scrutinize the application

Additional powers of RERA

- RERA may review the following documents submitted by a promoter:
 - Nature of rights and interests of the promoter to the land
 - Extent and location of area of land proposed to be developed
 - Layout of the project
 - Financial, technical and **managerial capacity** of the promoter to develop
 - Plan regarding the development works to be executed in the project
 - **Conformity of development of the project with neighboring areas**

Requires clarity as managerial capacity is a subjective assessment

Requires further clarity

A second level scrutiny as the same is being done by local development authorities

Ongoing Compliances

Updating RERA website on a quarterly basis

Updating of website within 7 days after every Quarter

- **Sales** – List of number and types of apartments or plots and Garages booked
- **Projects team** – Status of the project
 - Status of construction of building with photographs
 - Status of construction of each floor with photographs
 - Status of construction of internal infrastructure and common areas with photographs.
- **BD team** – Status of approvals
 - Approval received
 - Approvals applied and expected date of receipt
 - Approvals to be applied and date planned for application
 - Modifications, amendment or revisions, if any, issued by the competent authority with regard to any license, permit or approval for the project.

A dedicated IT team to coordinate with BD, Sales and Projects team and upload information on RERA website

The above information along with all the information provided at the time of registration

Other Ongoing Compliances

Other Ongoing Compliances

- Promoter shall be liable for all obligations, responsibilities and functions under the Act or rules or regulations-
 - ✓ Responsible to obtain all the approvals, Completion Certificate (CC), Occupancy Certificate (OC) etc.
 - ✓ Execute a registered conveyance deed within 3 months from the date of OC.
 - ✓ Enable formation of an association or society or co-operative society as the case may be.
 - ✓ Adherence to sanctioned plans and project specifications- **any addition, alteration will require prior consent of the allottees.**
 - ✓ **Warranty for a period of 5 years**
 - ✓ **No transfer** or assignment of **his majority rights and liabilities** in respect of real estate project to a third party **without prior written consent of 2/3rd allottees** and **without prior approval of the Authority.**
 - ✓ **Obtaining Title Insurance**
- In case of **lapse of registration** or on **revocation of registration**, the **Authority** may take action as it deem fit including **carrying out the remaining development** works by competent authority or by association of allottees or any other manner as may be determined by the Authority.

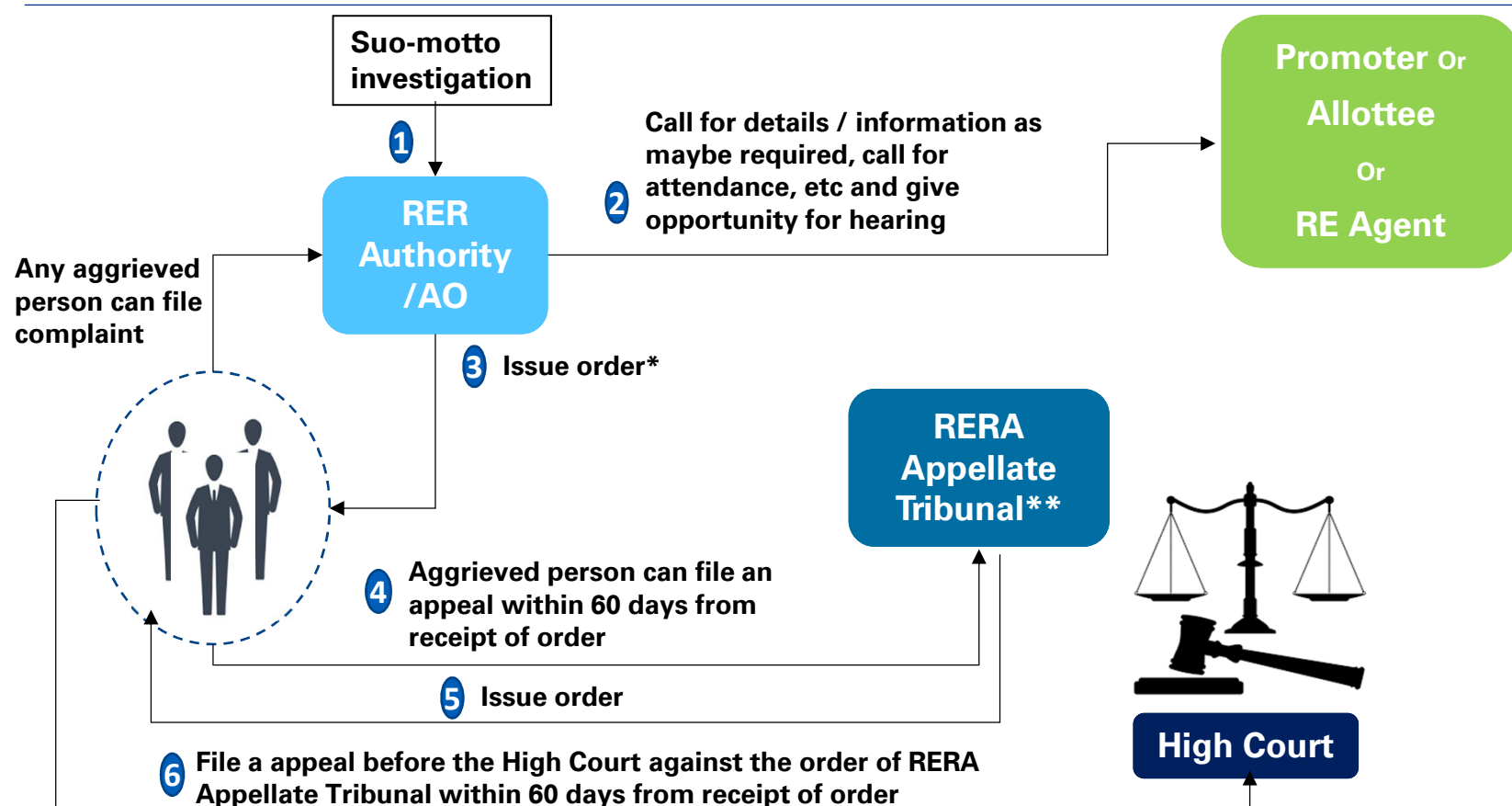
Other Ongoing Compliances

Other Ongoing Compliances

- In the case of **failure to complete** or unable to give possession-
 - ✓ If the **allottee** intends to **withdraw** from the project- **Return the amount received with interest;**
 - ✓ If the **allottee does not intend to withdraw, interest** to be paid for **every month** of delay **till handing over of the possession.**
- In the case of **defect in title of the land**, Promoter to **compensate the allottees** in case of **any loss** caused to them. This **claim of compensation** shall **not be barred by limitation** provided **under any law** for the time being in force.
- **Annual Report** on Statement of Accounts by **Statutory Auditor** of the Promoter

Redressal Mechanism

Redressal mechanism



**for payment of compensation/ penalty basis complaint received or suo-motto investigation*

***Promoter aggrieved by the order of the Authority or of AO, the appeal before RERA Tribunal can be heard only after deposit of at least 30% of the penalty or such higher % as may be determined or payment of interest and compensation to the Allottee, or both*

Appellate Tribunal

Important Aspects

- **Tribunal to pass the order within 60 days** – record reasons for any delay in disposal of appeal
- **Tribunal not bound by the procedures under Code of Civil Procedure 1908** – can have its own procedures and shall be guided by **principles of natural justice**
- **Tribunal not bound by the rules of evidence under Indian Evidence Act, 1872**
- **Tribunal has same powers as are vested in Civil Court under the Code of Civil Procedures 1908** – examine documents, issue summons, examination on Oath, asking affidavits, issuing commissions for examination of documents/witness, reviewing decisions, etc.
- All proceedings before Tribunal to be **judicial proceedings under Indian Penal Code and tribunal shall be deemed to be a Civil Court for the purposes of Code of Criminal Procedure 1973**
- **Order passed by Tribunal to be executed as Decree of Civil Court**
- **Allottee or Complainant cannot seek remedy both before the Tribunal and Civil Court** – No Civil Court has jurisdiction to entertain any suit or proceedings in respect of any matter with the Authority or Tribunal
- **Appeal can be preferred against the order of Tribunal before HC within 60 days**
- Representations before Authority and Tribunal can be made by Company Officer or CA or CS or Cost Accountant or legal practitioner

Offences and Penalties

Offences and Penalty

Provision	Promoter	Agent	Allottee
Non-registration of project/agent with RERA and continue to do so	Up to 10% of the estimated project cost	Penalty of INR10,000 per day during default tenure up to 5% of property cost	
False information while making an application to RERA	Up to 5% of the estimated project cost		
Contravention of any provisions of the Act (other than stated above)	Up to 5% of the estimated project cost	Up to 5% of the property cost	
Non-compliance with the order of RERA	Daily penalty up to 5% of the estimated project cost	Daily penalty up to 5% of property cost	Daily penalty up to 5% of property cost
Non-compliance with the order of the Appellate Tribunal	Up to 10% of project cost	Up to 10% of property cost	Up to 10% of property cost

Prosecution and Compounding

Important Aspects

- **Non compliance of penalty order by Promoter (for non-registration of Project) issued by the Authority entails imprisonment upto 3 years or further penalty of 10% of estimated cost or both**
- **Non compliance with the order of the Appellate Tribunal by Promoter entails imprisonment upto 3 years or further penalty of 10% of estimated cost or both**
- **Non compliance with the order of the Appellate Tribunal by Agent entails imprisonment upto 1 year or daily fine of 10% of estimated cost of apartment or plot of land**
- **Non compliance with the order of the Appellate Tribunal by Allottee entails imprisonment upto 1 year or daily fine of 10% of estimated cost of apartment or plot of land**
- **Imprisonment punishment could be compounded (before or after the institution of prosecution) can be compounded by the Court**

Separate project account
(70:30 Rule)

Separate Project account (70:30 Rule)

Safeguarding consumer interest 70:30 Rule

- Of the total collections, **only 30% can be withdrawn without any restriction.**
- Rest of the amount (70%) can be withdrawn in stages **in proportion to the percentage completion** of the project (construction cost plus land cost).
- Withdrawals to be certified by CA, Engineer and Architect; Audit report by a practicing CA to be submitted to RERA annually.

70:30 Formula

Formula

- $\frac{\text{Total Cost incurred for the project}}{\text{Estimated Cost of the project}} \times 100$

Applicability of the 70:30 rule to the ongoing projects

Applicability of the 70:30 rule to the ongoing projects

Applicable
Prospectively

- 70% of the amount **to be realized** from the allottees shall be deposited in such separate account

100% of the Amount
to be realized to be
deposited

- In the event where the **estimated receivables** of the ongoing project is **less than the estimated cost of completion** of the project, then **100%** of the amount to be realized from the allottees shall be deposited in the said separate account

Withdrawals from Project Account

Withdrawals from project account

- Withdrawal from project accounts – following documents are required for withdrawal from project account
 - ✓ A certificate from Architect certifying the percentage of completion of construction work
 - ✓ A certificate from the engineer for the actual cost incurred on the construction work
 - ✓ A certificate from a CA for the cost incurred on construction cost and land cost
 - ✓ The Chartered Accountant shall also certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project
 - ✓ The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the project account.
- As per the Act, the land cost can be withdrawn only in proportion to construction cost even if it has been paid in full.

Project and Land Cost

Project and Land Cost

Land Cost

- The costs incurred by the Promoter for acquisition of ownership and title of the land parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost;
- Premium payable to obtain development or redevelopment rights;
- Amount paid for acquisition of TDR;
- Premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- Consideration payable to the outgoing developer to relinquish the ownership and title rights over such land parcels;
- Amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, transfer charges, registration fees etc.; and

Construction Cost

Project and land cost

Construction Cost

- All such costs, incurred by the Promoter, towards the on-site and off-site expenditure for the development of the Real Estate project including:
 - ✓ Payment of Taxes, Fees, Charges, Premiums, Interest etc. to any Competent Authority or Statutory Authority of the Central or State Government under any laws or rules or regulations of the time being in force;
 - ✓ Principal sum and interest, paid or payable to any financial institutions including scheduled banks or non-banking financial companies etc. or money-lenders (under the Maharashtra Money-Lending Regulation Act, 2014) for the Real Estate Project;
 - ✓ Excludes loan obtained from banks, non-banking finance companies or money-lenders, for the purpose of purchase of land for the project or for obtaining the development rights over such land.

Examples for the 70:30 Rule

Sr. No.	Particulars	Estimated Cost (in crores)	Amount Incurred (in crores)
1	Land Cost	1000	1000
2	Construction Cost	600	200
3	Other Cost and Marketing Cost	200	100
4	Total Cost	1800	1300
5	Amount realized in separate bank account		1600

Maximum Amount that can be withdrawn- **1,200 Crore**







Examples for the 70:30 Rule

Sr. No.	Particulars	Estimated Cost (in crores)	Amount Incurred (in crores)
1	Land Cost	1000	500
2	Construction Cost	600	200
3	Other Cost and Marketing Cost	150	50
4	Total Cost	1550	750
5	Amount realized in separate bank account		1000

Maximum Amount that can be withdrawn- **700 Crore**

Impact of RERA

Possible impact on sector

 Initial backlog	 Increased project cost	 Tight liquidity	 Rise in cost of capital	 Consolidation	 Increase in project launch time
<p>Initially, a lot of work is to be done to get the existing and new project registered.</p> <p>Details such as status of each project executed in last 5 years, promoter details, detailed execution plans etc. needs to be prepared.</p>	<p>Registration with RERA and insurance cost for construction and land title</p>	<p>Land and approval costs to be meted out of internal accruals as pre-launch concept may end.</p> <p>it may lead to a shift in equity financing from debt financing prevailing currently.</p>	<p>The cost of capital may go up as developers may now have to fund the land and approval cost through equity.</p> <p>With frequent delay in obtaining approvals, debt funding may not be an ideal route for developers.</p>	<p>With entry in the sector made difficult, the sector may witness consolidation</p> <p>Strong financial and execution capability is required to launch a project.</p> <p>The development model/agreement may gain prominence</p>	<p>The project launch time may increase since a lot of time will involve in finalizing finer details before launching a project.</p> <p>Details such as complete drawings, utilities layout, etc. needs to be finalized before project starts.</p>

Tax Impact of RERA

- **Possibility of AOP exposure in the case of JDAs considering that the land owner is also considered to be a promoter**
- **Reorganising of JDA arrangement, especially the revenue share arrangement**
- **Tax treatment / allowability of expenditure done by a promoter during defect liability period**
- **Tax treatment / allowability of fines, penalties and interest paid by the promoter**
- **Treatment of expensed incurred on a project which is then taken over by the Authority in the case of lapse in registration or revocation of registration**

Thank You

CA Jayesh Kariya

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.