

COMPENDIUM ON
**REAL ESTATE
REGULATORY &
DEVELOPMENT
ACT**
2016



Real Estate Act

Financial Discipline

Transparency

Accountability

Customer
Centricity

Compliance

Improve the perception of the sector among various stakeholders

Uniform regulatory environment

COMMERCIAL and
RESIDENTIAL projects including
PLOTTED DEVELOPMENT

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

Projects which do not have
COMPLITION 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

Financial Discipline

What it entails

70% of the funds collected from allottees needs to be parked in the project account

Withdrawals to cover construction and land cost

In proportion to the % completion method

Withdrawals to be certified by Engineer, Architect, and CA

Promoter to compensate buyer for incorrect statement with full rerun of property cost with interest

Provision for RERA to freeze project bank account upon non-compliance

Projects Account to be Audited / FY . Copy to be submitted to RERA

Provision for stronger financial penalties for RERA non-compliance

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 & carpet area of apartments

Consent from affected allottees for any major addition or alteration

Consent of 2/3rd allottees for any other addition or alteration

No false statements or commitments in advertisement

Quarterly updating RERA website with details such as unsold inventory & pending approvals

No arbitrary cancellation of units by promoter

Project completion time frame

Informing allottees for any minor addition or alteration

No Launch or advertisement before registration with RERA

Consent of 2/3rd allottees for transferring majority rights to 3rd party

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

Accountability

What it entails

Quarterly update of project progress along with pending approvals on RERA website

Every officer of the company , who as in charge or responsible will be liable for the conduct of the company and deemed 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

Registration of all projects & brokers/agents and a strong dispute management will be required to ensure compliance

Accountability

What it entails

Authenticated copy of all approvals, commencement certificate, sanctioned plan, layout plan of development work, proposed facilities, proforma allotment letter, agreement for sale & conveyance deed to be given when applying for project registration with RERA

Registrations of brokers/agents with RERA

Timely updating of RERA website

Maximum 1 year extension in case of delay due to no fault of developer

Annual audit of projects account by a CA

Dispute resolution within 6 months at RERA and FERA appellate rebalance

Developers to share details of projects launched in last 5 years with status and reason for delay with RERA

Conveyance deed for common area in favor of RWA

Mandatory registration of new and existing projects with RERA before launch

Separate registration of different phases of a single projects

Construction and land title insurance

Project completion time period

Benefits of RERA

Industry

- ✓ Governance and Transparency
- ✓ Project efficiency and robust project delivery
- ✓ Standardization and quality
- ✓ Enhance confidence of investor
- ✓ Attract higher investments and PE funding
- ✓ Regulated environment

Developer

- ✓ Common and best practices
- ✓ Increase efficiency
- ✓ Consolidation of sector
- ✓ Corporate branding
- ✓ Higher investment
- ✓ Increase in organization funding

Buyer

- ✓ Significant buyers protection
- ✓ Quality products and timely delivery
- ✓ Balanced agreements and treatment
- ✓ Transparency - Sale based on carpet area
- ✓ Affordability will become distant
- ✓ Delayed launches and thereby lesser projects
- ✓ Safety of money and transparency on utilization

Possible impact on sector

Initial Backlog



Initially, a lot of work is to be done to get the existing and new projects registered. Details such as status of each project executed in last 5 years, promoter details, detailed execution plans etc. needs to be prepared.

Increased Project Cost



Registrations with RERA and insurance cost for construction and land title.

Tight Liquidity



Land and approval costs to be meted out of internal accruals as pre launch concept may end . It may lead to a shift in equity financing from debt financing prevailing currently

Rise in Cost of Capital



The cost of capital may go up as developers may now have to fund the land the approval cost through equity. With frequent delay in obtaining approvals, debt funding may not be an ideal route for prominence

Consolidation



With entry in the sector made difficult, the sector may witness consolidation. Strong financial and execution capability is required to launch a project. The development model/agreement may gain prominence

Increase in Project Launch Time



The project launch time may increase since a lot of time will involve in finalizing finer details before launching a project. Details such as complete drawings, utilities layout, etc. Needs to be finalized before project starts.

Who is a promoter ?

Definition primarily covers owners of the project

- Developers and his assignee
- Development authority or other public body ;
- State level Co-operative Housing Finance Society and a Primary Co-operative Housing Society;
- Power of attorney holder for land; and any other person who constructs any building or apartment for sale to the general public

Open issues

- Implication on joint development, development agreement ?
- Is it applicable to services and marketing arrangements ?
- Is independent contractor a promoter ?
- Is society covered under re-development arrangements ?
- Whether slum development for local authorities in return for TDR covered ?

International reference

- Only master developer and sub-developers under him are covered.
- Developer means a person engaged in real estate development and the sale of properties to third parties.

Registration of a Real Estate project

Must for projects inviting sales before completion

- Minimum threshold for projects registration defined; Can be tightened by states
- Existing projects, awaiting completion certificate, covered
- Phase wise registration allowed
- Registration for a certain time period as stipulated by developer with maximum 1 year extension
- No marketing or sales without registration.

Open issues

- Meaning of project – Single building/plot or cluster of buildings?
- Ability to change the project where municipal approval has been granted
- Implications on township and large format projects
- Built-to-lease model/ long term base?

International reference

- Mandatory registration for all developers and their projects
- Provision to de-register project as well
- No sale of under-construction units before registration
- Must to have all approvals in place before registration

Project account

Safeguarding consumer interest

- 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.

Open issues

- Impact on existing/ new joint development arrangements?
- Separate account for each project?
- Amount realized for the project covers government charges and taxes?
- How to compute %completion?
- Accounting principle/ Physical progress
- Withdrawals for refunds, penalties, SD?

International reference

- Mandatory to open an escrow account with an escrow agent - individual customer accounts to be maintained
- All receipts, including loans, have to be deposited in this account
- Withdrawal only for payment to contractors Post completion of project, amount can be withdrawn, leaving aside 5%, which can be withdrawn after 1 year.

Additions and Alterations in a project

Changes in Design, Structure

- Minor change-authorized by architect/engineer and inform allottees
- Major changes - Approval of all allottees of that unit/ building affected by the change
- Other changes- approval of 2/3rd allottees A person holding multiple units (in his name or family's) will be counted as a single allottees

Open issues

- Implications on the project planning and design processes
- What to do in situation if FSUFAR increases after project launched?
- How will modifications necessitated due to changes in local building bye. Laws (such as fire, MoEF etc.)

International reference

- A project may be cancelled by authority if there is significant changes in project plans

Advertisements

Significant implication for untenable promises

- No advertising and marketing before registration
- Any advertisement published by a developer must mention the website address of RERA, where all details about the project have been entered including the registration number.
- Any loss to the allottee due to **incorrect, false statement** include in advertisement must be compensated by the promoter.
- Further, **a buyer may withdraw his entire investment** along with interest if a buyer is affected by any incorrect, false statement in the advertisement.

Open issues

- Is builder liable for unfair trade practices of an agent / unregistered agent and vice-versa?
- Is marketing or publicity, not inviting sales, allowed? - hoardings etc?
- Conflicting/ contradicting advertisements in different media Change in circumstances beyond control
- Approvals by RERA

International reference

- No advertisement or marketing before authorization by RERA
- Regulation of advertisement norms
- Monitoring of real estate advertisement by RERA

Carpet area disclosure

Sale on carpet area

- Net usable floor area of an apartment
- Excludes the area covered by the external walls, areas under service shafts, exclusive balcony, verandah or open terrace area
- Includes area covered by the internal walls

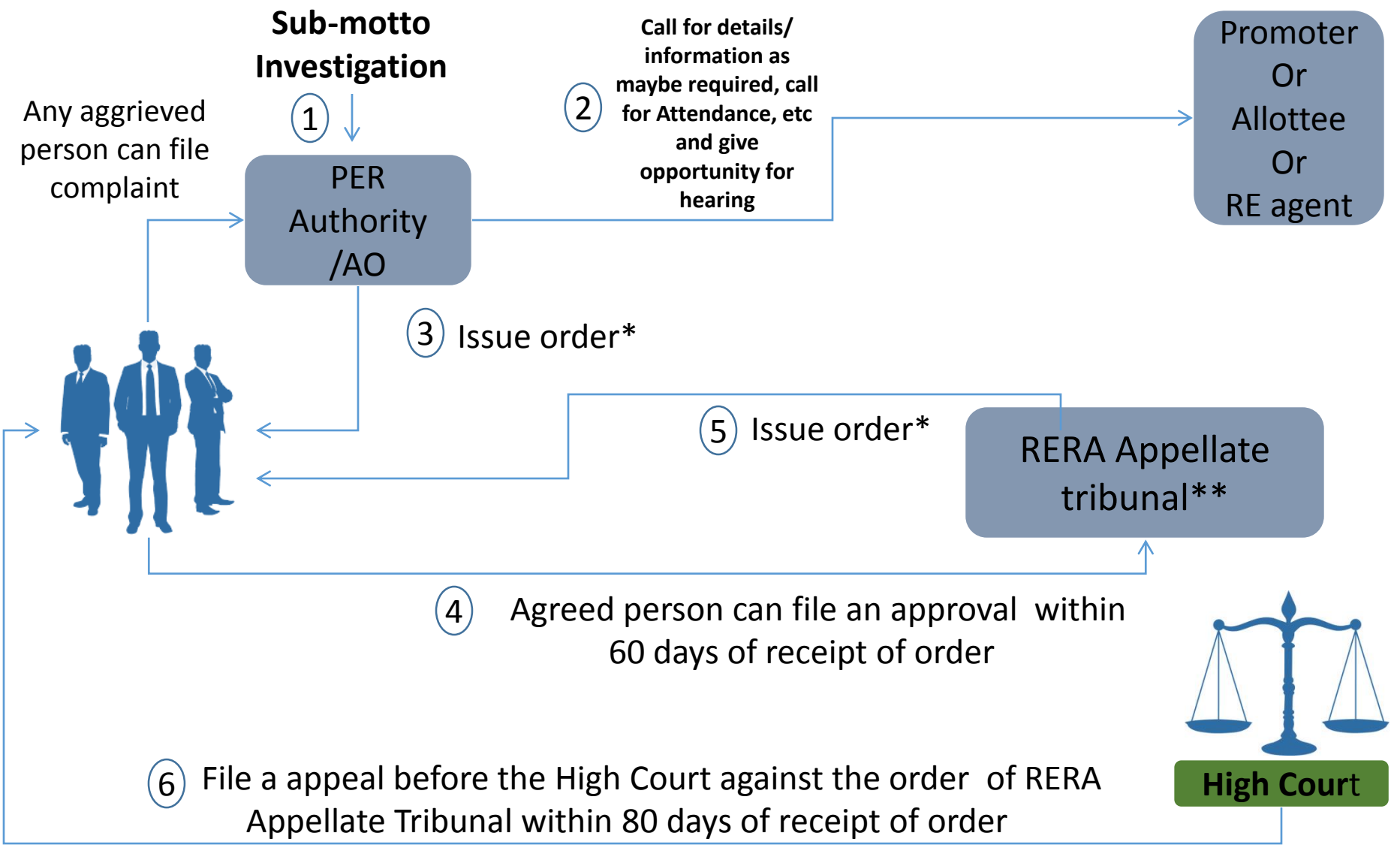
Open issues

- Sale of balconies, verandah or terrace?
- What would happen if the final size of flat increases or decreases?
- Closed balconies on payment of municipal fees?

International reference

- The registration with the authority is on Net Area basis (which is essentially the carpet area)
 - The agreement may be done on Gross Area (which is super area)
 - In case of more than 5% decrease in the net area, developer has to refund pro-rated amount to property buyer
 - In case of increase in net area, property buyer does not have to pay anything to the developer.

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 alter deposit of unrest 30% of penalty or such higher % as may be determined or payment of interest and compensation to the Allottee, or both

Other provisions (1 of 2)

Structural defects

✓ 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, brought to notice of promoter within 5 years from possession, has to be rectified within 30 days free of charge by the promoter.

Transfer and assignment

- ✓ Promoter shall not transfer or assign his majority rights and liabilities in respect of a project to a third party without obtaining prior written consent from 2/3 allottees and RERA
- ✓ The allottee, irrespective of
- ✓ Number of apartments or plots booked by him or booked in the name of his family
- ✓ In the case of other persons such as companies/firms/any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities/related enterprises, shall be considered as one allottee only.

Other provisions (2 of 2)

Refund with interest

✓ Failure of promoter to give possession in accordance with the terms agreed or due to revocation of registration- liability to return the amount received with prescribed interest (under Rules).

Association of allottees/ Conveyance

- ✓ To be formed within specified time period under the local laws or 3 months after majority of units have been sold
- ✓ Execution of a registered conveyance deed in respect of the undivided proportionate title to the common area in favour of RWA.

Real estate agent



Facilitate transaction of properties in **projects which are registered with RERA**



Facilitate possession of all the information and documents to the allottee at the time of booking
Unfair trade practices



Maintain and preserve books of accounts, records and documents as prescribed

Functions of an agent



Not indulge in **unfair trade practices**

Unfair trade practices

False or misleading statement, whether written or orally

Falsely represent that services are of particular grade

Falsely represent affiliation with a developer

Permitting publication of false advertisement

Offences and Penalty

Provision	Promoter	Agent	Allottee
Non-registration of project/agent with RERA and continue to do so	Up to 10% of project cost and imprisonment of 3 years for continuous default	Penalty of INR10,000 per day during default tenure up to 5% of property cost	
False information while making an application to REM	Up to 5% of the estimated project cost		
Non-compliance with any provision of the Act	Up to 5% of the estimated project cost	Up to 5% of the property cost	
Non-compliance with the aforesaid order of REM	Up to 5% of the estimated project cost	Up to 5% of cost property cost	Up to 5% of cost property cost
Non-compliance with the aforesaid order of the Appellate Tribunal	Up to 10% of cost and imprisonment of up of up to 3 years or both	Up to 10% of cost and imprisonment of up of up to 1 years or both	Up to 10% of cost and imprisonment of up of up to 3 years or both

Revisit business and operational model - Developer

- Land due diligence
- Prioritizing approvals
- Phase-wise approval
 - Dealing with RERA
- Company profile for application purpose

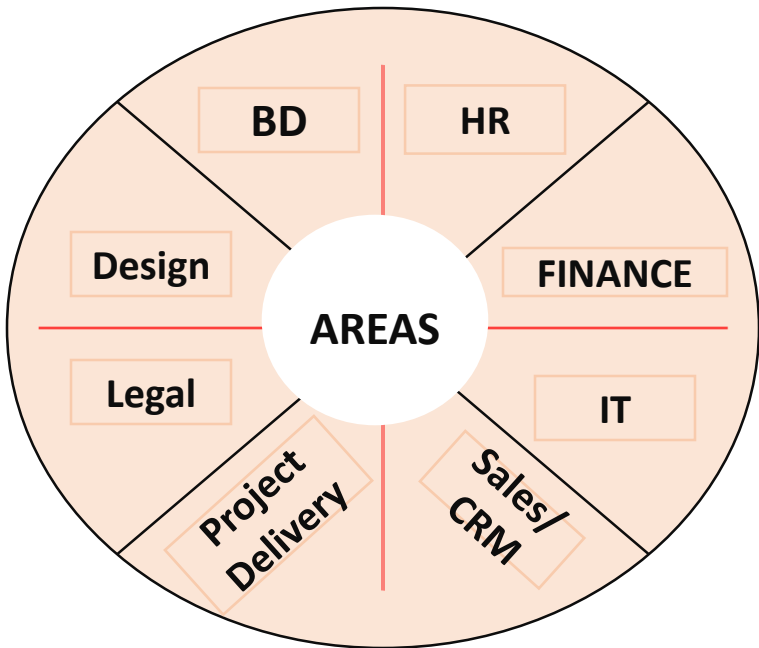
- Review employment contract
- Organization structure
- Requisition approval process

- Detailed project and construction plan
 - Managing modifications
- BD Design Finance

- Cash-flow management
- Sourcing equity partners
- Monitor cost and schedule overruns
 - Auditing of project accounts

- Developing agreements and contracts for sales, contractors, vendors, agents etc. Areas Legal IT project Sales/ Deliver CRM

- Manage RERA website
- Cyber security



- Capability to design, budget, execution, monitoring and handover
- Identification and finalization of contractors
- Defect liability
- Managing alterations and additions

- Advertisements
- Email and communication exchange with customers
 - Empanelment of channel partners

Prioritize existing and planned Projects

Project Status

Final stage < 1 year	Medium	Top	Prioritize completion
Mid-way	Medium	Low	Prioritize completion
New launch/Planned	Low	Top	Build RERA competency

< 10% **10-50%** **> 50%**

% sold out

Priority status

Medium Low Top

Next steps

Developer

- ✓ RERA readiness assessment
- ✓ Institutionalize periodic RERA, project, process compliance audits
- ✓ Explore mature design development and project execution and monitoring concepts
- ✓ Institutionalize periodic RERA, project, process compliance audits

Investor

- ✓ RERA readiness assessment
- ✓ Review and revisit existing commercial arrangements - Escrow/ Waterfalls/ Structured deals etc
- ✓ Ring fence senior management - promoter obligations liabilities
- ✓ Reinvent future commercial arrangements
- ✓ Institutionalize periodic RERA, project, process compliance audits