

FROM THE DESK OF ' B S S Rao'

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ARTICLE ON BASICS OF THE REAL ESTATE REGULATORY AUTHORITY (RERA) Act, 2016.

Dear Colleagues, Greetings of the day.

Today I'm going to discuss about the "Real Estate Regulatory Authority (RERA) Act, 2016. The Real Estate industry plays a key role in fulfilling the requirements of the Country's housing and infrastructures. So, there is a necessity to know the basics of the REAL ESTATE REGULATORY AUTHORITY (RERA) Act as a Tax Professional. We are handling various taxable person's files in our tax profession. Some of our clients have been doing construction activity and hence it has become necessary to have the basic knowledge of RERA Act.

Let us understand what is RERA?

What are the responsibilities of builders and contractors under RERA? What are the responsibilities of buyers under RERA? What are the objects of RERA and how will RERA impact on home buyers? Which projects come under RERA? What are the statutory obligations of Builders and Buyers? Whether registration of a project is mandatory and if mandatory what is the information to be provided to the Regulatory Authority?

1. What is Real Estate Regulatory Authority (RERA)?

The Real Estate (Regulation and Development) Act, 2016, enacted by the Parliament establishes RERA in each State for regulation of the Real Estate Sector. It also acts as an adjudicating body for speedy dispute resolution. The bill was passed by the Rajya Sabha on the 10th March, 2016 and by the Lok Sabha on the 15th March, 2016. The Act came into force on the 1st Mar, 2016 and some provisions became operative from the 1st May, 2017.

2. What is the intention of Government in introducing Real Estate Regulatory Authority (RERA) in India?

The Government of India has received complaints from the home buyers that real estate transactions were unequal and densely in favour of the developers. Government's aim is to create a more equitable and fair transaction between the seller and the buyer of properties, especially in the primary market. Real Estate Regulatory Authority (RERA) is designed in such a way that it will make real estate purchase simpler by bringing in better accountability and transparency, provided that the State does not dilute the provisions and the spirit of the Central act.

The RERA Act was made mandatory for each State and Union Territory to form its own regulations and frame the rules that will govern the functioning of the regulator.

3. Is it mandatory to register with Real Estate Regulatory Authority (RERA) by every builder or developer as per RERA Act, 2016?

Yes. It's mandatory for all commercial and residential real estate projects where the land is over 500 (five hundred) square meters or Eight (8) apartments to register with the Real Estate Regulatory Authority (RERA) for launching a project.

For on-going projects which have not received completion certificate on the date of the commencement of the Act, they will have to seek registration within 3 months .

4. Which projects come under Real Estate Regulatory Authority (RERA)?

The following projects are included under the RERA Act:

- i. Commercial and Residential projects including plotted development,
- ii. Projects measuring more than 500 sq mts or 8 units,
- iii. Projects without Completion Certificate (CC) , before commencement of the Act,
- iv. The projects that are for the purpose of renovation/repair/re-development which do not involve re-allotment and marketing, advertising, selling or new allotment of any apartments, plot or building in the real estate project will not come under RERA.
- v. Each phase is to be treated as standalone real estate project requiring new registration.

5. How to register projects under RERA by Builder, or Developer ?

The following documents have to be submitted by the builder, developer etc., to get registration from the Real Estate Regulatory Authority (RERA):-

- i. 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,
- ii. Mandatory registration of new and existing projects with RERA before launch,
- iii. Registration of agents/ brokers with RERA,
- iv. Timely updating in RERA website,
- v. Maximum 1 year extension in case of delay due to no fault of developer.
- vi. Annual audit of project accounts by a Chartered Accountant.
- vii. Conveyance deed for common area in favour of Residential Welfare Association (RWA).

- viii. Construction and land title insurance.
- ix. Project completion time period.

6. What are the objectives of Real Estate Regulatory Authority (RERA)?

The objectives of the Real Estate Regulatory Authority (RERA) are to regulate and promote the real estate sector, ensuring transparency in the real estate project transactions in an efficient manner, safeguarding consumer interests and creating a customer-friendly environment along with creating a system for adjudicating the timely resolution of conflicts by distinguishing those brought within the authority of the Appellate Tribunal.

Some of the main objectives of RERA are as below:

- i. It establishes a centralized Real Estate regulatory authority, a specific adjudicatory authority and a Central Advisory Council. The States are to issue guidelines for controlling the real estate industry in compliance with this Act,
- ii. It enables the transfer of risk bearing from Customers to Developers by including liability of promoters, builders, developers and real estate agents, etc.
- iii. The Act sets out a process for real estate transactions in which the maintenance of a separate bank account for each project is compulsory of which only 30% of the total may be appropriated. The remaining 70% will only be used for the same project.
- iv. No sale or advertisement of any real estate project is permitted without prior registration with the authority concerned. It's mandatory to disclose all the project details such as all accounts, audit report, the details of the promoters, developers, agents, engineers, architects and approval authorities etc., which are to be published on a single website.
- v. It clearly defines the rights, responsibilities and functions of all parties in the projects.
- vi. Significant decrease of malpractices, penalty provisions and penalties for offences committed by promoters, real estate agents, allotted persons and companies.
- vii. The Act supersedes all State legislation which is incompatible with the Central Act and also delegates the power to the Member States to draw up their own legislation on real estate in accordance with the Central Act.
- viii. Under Real Estate Regulation Authority (RERA) Act, a timely grievance redressal process was developed. The commissioner's regulator/adjudication officer has been empowered to investigate consumer or suo moto concerns regarding infringement of the Act. Real Estate Appellate Tribunal (REAT) is to be formed to deal with appeals more quickly. A period of 60 days is specified for redressals. Instead of consumer forums/courts, where they are clubbed with several other consumer disputes, this would create a concentrated platform for real estate dispute redressal.

7. How Real Estate Regulatory Authority (RERA) will impact on real estate agents?

Under the Real Estate Regulatory Authority (RERA) Act, real estate agents will need to register themselves to be able to facilitate a transaction. The broker segment in India is estimated to be a Rs.296 Cr. industry, with an estimated 6 to 9 lakhs brokers. However, it has traditionally been unorganised and unregulated . It will bring a lot of accountability in the industry and the ones who believe in professional and transparent business, will reap to perform as they will have to disclose all the appropriate information to the customer and even help them choose a Real Estate Regulatory Authority (RERA)- Compliant developer. As per Real Estate Regulatory Authority (RERA) Act, brokers cannot promise any amenities or services that are not mentioned in the documents. Moreover, they will have to provide all information and documents to the home buyers at the time of booking . Consequently, Real Estate Regulatory Authority (RERA) is likely to filter out the inexperienced, unprofessional, fly-by-night operators and brokers not following the guidelines will face hefty penalty or jail or both.

8. How can real estate broker become compliant under Real Estate Regulatory Authority (RERA)?

i).As per Section 3 of the RERA Act, Promoter cannot advertise, book, sell or offer for sale without registration with Real Estate Regulatory Authority (RERA),

ii). As per section 9 of the RERA Act:

(a). No agent can sell any project without obtaining RERA registration,

(b). Agent's RERA number needs to be documented and every sale facilitated by him,

(c). Registration needs to be renewed,

(d). Registration can be revoked or blocked if any breach is made to conditions of registration for a specified time.

iii). As per Section 10 of the RERA Act:

(a) No agent can sell a project not registered,

(b) Shall maintain books and records,

(c) Not to be involved in unfair trade practices---

(i) Make an incorrect statement either oral, written or visual,

(ii) Represent that services are of a particular standard,

(iii) Represent that the promoter or himself has approval or affiliation which such promoter or himself does not have,

(iv) Permit publication of advertisement in the newspaper or other wise of services not intended to be offered.

Iv).Agent needs to facilitate possession of all the documents to allottee at the time of booking.

9. How to file a complaint under RERA Act?

As per Section 31 of the RERA Act, complaint can be filed either with the RERA or the adjudicating officer. Such complaints may be against promoters, allottees and/or real estate agents. Most state government's rules, made appurtenant to the RERA have laid out the procedure and form, in which such applications can be made. In the case of Chandigarh , Union Territory or Uttar Pradesh, for instance, these are placed as Form "M" or Form "N" (common with most other states and union territories). A Complaint under the RERA is required to be in the form prescribed under the respective State's rules. The complaint can be filed with respect to a project registered under the RERA Act within the prescribed time limit for violation or contravention of provisions of the Act or the rules or regulations framed under RERA Act.

10.If the developer or builder has not followed RERA Act, what are the penal provisions applicable as per the RERA Act, 2016?

The following information in tabular form would be easy to understand about the penal provisions, Section wise:

Section	Offences	Applicable Penalties
Sec.9 (7)	a).Registration secured through misrepresentation or fraud, b). Breach of terms for which registration obtained.	Revocation of Agent's Registration Number.
Sec.62	Contravention of Sections 9 & 10	Penalty of Rs.10,000/- per day during which the default continues extending up to 5% of the cost of unit sold.
Sec.65	Contravention of Orders of RERA authorities.	Penalty up to 5% of the cost of unit sold.
Sec.66	Contravention of orders of the Appellate Tribunal	If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

11. What are the benefits of RERA?

The following benefits are available to the Industry, Developers, Buyers and Agents, etc.

To Industry	To Developer	To Buyer	To Agents
Governance and transparency.	Common and Best practices.	Significant buyer's Protection	-----
Project efficiency and robust project delivery.	Increase efficiency	Quality products and timely delivery to save time and cost of the property.	Consolidation of sector (Due to mandatory State Registration).
Standardization and quality of the project.	Consolidation of sector of the project.	Balanced agreements and treatment of the project.	Increased efficiency of the project.
Enhance confidence of investments and P.E. Funding in Real Estate projects.	Corporate Branding to promote their projects.	Transparency in sale based on carpet area.	Minimum litigation by adopting best practices.
Regulated Environment of the projects.	Increase in organised funding of the project.	Safety of money and transparency on utilization of fund in the project.	-----

12. Can RERA overturn "FORCED CONSENT" agreements procured by builders for changing project plans?

As per Section 14 of the RERA Act, RERA prohibits developers from making any amendments to the sanctioned plan of the project without the prior consent of the home buyer. As per Sec.14 of the RERA Act, any alteration in the plans and specifications of an individual apartment is permitted only with the prior written consent of the concerned home buyers. In spite of that alterations in the layout of the entire project and the common areas of the building cannot be effected unless the developer obtains the prior written consent of the 2/3rd of all the home buyers or allottees in the project.

Important FAQ's on Real Estate Regulatory Authority (RERA) :

Q.1. What is the Real Estate Regulatory Authority (RERA) Act, 2016?

Ans: The Real Estate Regulatory Authority (RERA) Act, 2016 is an Act passed by the Parliament to protect the interest of home buyers and also boost investments in the real estate sector in India.

Q.2. How the home buyer can check RERA Registration number of the developer?

Ans: A Buyer can check the RERA number of the developer from the respective State's Portal. Every web portal has a list of registered projects along with RERA Number, approvals and other documents of the respective developer.

Q.3. If any developer wants to take registration with RERA, what is the procedure to take registration with RERA?

Ans: Generally Builders or Property agents can apply for RERA registration on respective State's RERA web portal under individual's name or company's name . All the required documents have to be submitted to the authority of respective State's RERA Board for getting registration.

Q.4. What is RERA approval?

Ans: Generally, RERA approval means whoever applies for registration with RERA to start projects, shall submit all the relevant documents for getting registration. Based on the documents submitted by the developer, and after verification by the RERA Board the applicant will be given registration and registration number will be allotted to start projects as per the norms of the RERA Act.

Q.5 How to calculate CARPET Area in a project as per RERA Act, 2016?

Ans: Carpet Area is defined in RERA Act, 2016 as "the net usable floor area of an apartment excluding the area covered by the external walls, areas under services shafts, exclusive balcony or veranda area and exclusive open terrace area but includes the area covered by the internal partition walls of the apartment.

Q.6. How RERA Act will help buyers?

Ans: RERA Act, 2016 protects the interests of homebuyers and investors by making the real estate market organized and transparent.

Q.7. How can a home buyer lodge a complaint against developer as per the RERA Act, 2016?

Ans: If any home buyer wants to lodge a complaint against any developer, he is required to fill in the form prescribed under the respective State's RERA Rules.

The Compliant can be filed with respect to a project registered under the RERA Act, 2016 within the prescribed time limit for violation or contravention of the provisions of the Act or the rules or regulations framed under the RERA Act, 2016.

Dear Colleagues, I have prepared the above article to every tax consultant especially who are handle builder's files , they must know about Basics of the RERA Act before prepare books of accounts, filling of GST returns and Income Tax Returns and what are the statutory obligations shall be follow by their client. So, kindly refer and provide your suggestions and comments on the above article to my what's app no 9848099490 and mail i.d. sitapathirao@yahoo.co.in.

THANK YOU