

# Planning under RERA

*Top 10 Pointers*

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# Is RERA just one more Act ...?

- Development Control Rules
- Environment Rules
- Income Tax Act
- GST
- Consumer Act
- Labor Laws
- Civil & Criminal Codes
- Banking Regulations

**Vs. RERA**

**RERA controls every aspect from land acquisition to project handover....And even beyond handover for maintenance liabilities**



Part A:

Planning under RERA - Top 10 Pointers

# RERA – Key Challenges

- ① Ongoing Projects which have old obligations such as JV, Customer, Banker etc will need to be carefully planned
- ② 100% details of the project from plans to construction progress will be on Website for public viewing
- ③ Developers will have to change financial management practices with 70% amount to be deposited in Separate Account
- ④ Costs will go up due to registration, money locked up in 70% Account, no pre-launch sales etc.
- ⑤ Developers will have to be careful of commitments like specifications, amenities, possession date as there are heavy penalties for non-compliance



# RERA – Key Benefits

- ① Real Estate will get Industry Status as the business will now be 100% regulated by the same rules across the Country
- ② Customer confidence will increase due to more transparency
- ③ Developers will also get a forum i.e. RERA Authority and Tribunal to file cases of default by Customers and Brokers
- ④ Continuous Audit and Monitoring of project by professionals such as Engineer, Architect and CA should improve performance
- ⑤ Confidence of Banks and Investors will increase which will lead to finance on better terms for long term



# You Should Focus On

- ① Have you planned Completion Certificate for Ongoing Projects ?
- ② Have you identified the Promoter ?
- ③ Have you defined the Project / Phase ?
- ④ Have you frozen Layouts & Plans for all Projects?
- ⑤ What commitments have you made to Old Customers ?
- ⑥ Have you reviewed Marketing Material & Systems?
- ⑦ Have you done Financial Planning of Projects ?
- ⑧ Have you given Training to Staff on RERA ?
- ⑨ Have you prepared for filing under RERA ?
- ⑩ Have you reviewed Legal Documentation ?



# 1 Have you tried to get Completion Certificate

- ① Completion Certificate of the Full Project by 30<sup>th</sup> April
- ② Completion for a Phase by 30<sup>th</sup> April
  - How to define a Phase ?
- ③ Old Completed Projects without completion Certificates
- ④ Cities where Completion Certificate not issued

**Should you start New Projects before 30<sup>th</sup> April ?**



## 2 Have you identified the Promoter

- ① Landowner
  - ② Sole Seller
  - ③ All partners in a Joint Venture / AOP
  - ④ Investor / Sleeping Partners
- 

Offences committed by the Company/ Firm / AOP, the following will also be held responsible and liable:

- Every **Person who was in Charge** or responsible for conduct of business of the company. (He has to prove that **offence was committed without his knowledge** or he had **exercised due diligence to prevent** commission of such offence)
- Director / Manager / Secretary / Other Officer if it is found that offence committed with his consent or due to his neglect





### 3 Have you defined the Phase ?

- ① Single Building or a Few Buildings (typically with common Amenities)
- ② Large Project with common Amenities
- ③ Township Projects with Phase / Sector -wise Amenities

**Separate Account for Each Phase. No Transfer of Funds across Phases**



## 4 Have you frozen Layout & Plans ?

① Change in Layout of the Phase which is registered requires consent of 2/3<sup>rd</sup> allottees of that Phase

- Change in Common Areas

② Consent of every allottee required for addition or alterations to the apartment:

- Sanctioned or Layout plans
- Specifications and nature of fixtures, fitting and amenities

**Will Ongoing Projects get 3 Months to change Layouts?**



## 5 What commitments have you made to old Customers

### ① Allottee

- Possession Date
- Internal Specifications
- Amenities

### ② Association of Allottees

- Project Layout
- Common Areas

Most States Rules do not have the provision of Central Rules to submit the revised Plans and revised possession date



## 6 Have you reviewed Marketing Material & Systems

- ① Recall & Take Control of all Marketing Material
  - Hoardings
  - Online Ads
- ② Ad Campaigns post 1<sup>st</sup> May – Review
- ③ Check Marketing Material with Sanctioned Plans
- ④ Training of 100% Marketing & Sales Staff
- ⑤ Standardized Communication – Emails, Messages
- ⑥ Sample / Model Flats
- ⑦ Disclaimer in All Advertisements



## 7 Have you done Financial Planning of Projects?

- ① Separate Account – Designating existing Account as Separate Account should be allowed
- ② If Profit margin more than 30% - especially in case of historical lands / JVs – some money will get locked up
- ③ Giving security & cash flow cover of one project for another project - restrictions
- ④ Project & Phase-wise Accounting & Costing required for annual Audit & Certification of Costs
- ⑤ Project Loan Interest & Principal
  - Bank Loans & Interest
  - Unsecured / Private Loans & Interest



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## Have you given Training to Staff on RERA?

### ① Training to all stakeholders:

- Promoters & Directors: Rights & Obligations
- Senior Management: Project Planning
- All Staff: Departments should understand each other's issues
- Teams wise Training: Land & Liasoning, Architecture & Planning, Marketing & Sales, Legal, Finance

### ② External Parties

- Brokers
- Advertising Agencies
- Architect, Engineer & CA
- Suppliers & Contractors



## 9 Have you prepared for filing under RERA?

- ① Past Project Data of the Promoters – Delayed Projects
- ② Cases pending against Promoters
- ③ Details of Litigation on Land
- ④ Broker Registrations
- ⑤ Stage-wise Project Planning Charts



# Have you reviewed Legal Documentation?

- ① Booking Form
- ② Allotment Letter
- ③ Agreement to Sale
- ④ Legal Disclaimer in Marketing
- ⑤ Broking Agreements
- ⑥ Supplier & Contractor Agreements
- ⑦ Employee Agreements
- ⑧ Consultant Agreements
- ⑨ Investment Agreements
- ⑩ Loan Agreements



# Part B: Basics of RERA

# Structure of the Act

*RERA has 10 Chapters – 5 are Crucial from Business angle*

Procedural	Business / Finance	Administrative
I. Preliminary	<b><i>I. Definitions</i></b>	VI. Advisory Council
V. RER Authority	<b><i>II. Registration</i></b>	IX. Audit
VII. Tribunal	<b><i>III. Functions and Duties of Promoter</i></b>	X. Miscellaneous
	<b><i>IV. Allottees</i></b>	
	<b><i>VIII. Penalties</i></b>	

*Note 1: Roman numbers in table are Chapter numbers in RERA. The full names of the Chapter has been shortened for better understanding and presentation*

*L i n k t o d o w n l o a d R E R A :*  
<http://164.100.47.4/BillsTexts/RSBillTexts/PassedRajyaSabha/realst-238-RSP-E.pdf>

## **Status of Maharashtra Ownership of Flat Act (MOFA) (and similar Acts in other States)**

RERA has repealed only the Maharashtra Housing and Regulation Act, 2012 and hence MOFA is still applicable. Once date of commencement of RERA is notified in Official Gazette, ***the provisions of MOFA (and similar Acts in their respective states) will continue to apply to the extent that they are not inconsistent with RERA.***

# Application for Registration

*Promoter to also keep updated details on his page on website of Authority*

Company Details	Project Details	Details in Affidavit
Name, Registered Address,	Copy of Approvals	Legal Title in Land
Entity Type (proprietorship, partnership firm, LLP, Company etc.) & Registration Number	Sanctioned Plans, Layout and Specification of the Project. Location details and clear Demarcation.	Land is free from encumbrances or details of encumbrances
Name & Photos of Promoters	Details of Development Plan and facilities	Time period for completion of project/phase
Details of Past projects in last 5 years (completed and under development) and their Current Status	Pro-forma of Allotment Letter, Agreement for Sale and Conveyance Deed	70% of amount realized from allottees to be deposited in Separate Bank Account to be used for construction and land
Details of delays in projects completed and being developed	Number, Type and Carpet area of Apartments, exclusive Balcony and open terraces	Accounts of Project to be audited within 6 months of Year End
Details of Land and Payments pending in projects completed and being developed	Number and areas of garages	Promoter will take pending approvals in time
Details of cases pending in projects completed and being developed	Details of Real Estate Agents, Architect, Contractor	Promoter has furnished all documents



# Registration & Impact of Ongoing Projects

*Register projects not having Completion Certificate when Act comes into force*

Provision	Impact
Projects not require to be registered	If Completion Certificate obtained before commencement of the Act
Single Building with part completion for few apartments / floors	Should be registered since entire Building is one Real Estate Project
Project with several buildings and part completion for 1 or more buildings	Whether the Buildings with full completion certificate can be excluded from Registration as a completed “Phase” of the Project depend on the facts each case
Sales Collections from Customers in sold units for ongoing projects	After ongoing Project is registered, the sales collection after registration should also be deposited in Separate Account in which 70% collections are deposited
Changes in Plans of Ongoing Project	If ongoing Project is registered, then consent of all the people whom apartments allotted will also be required
Applications of provisions of RERA	<b><i>No exemptions have been given to ongoing projects and all provisions of RERA apply to them</i></b>



# Advertisements & Model Apartment

*Has a wide scope and includes all communication related to Project*

Provision	Impact
Definition	Any document described or issued as advertisement
Publicity in any form is advertisement	Care has to be taken in press releases, customer conferences, exhibitions etc.
Incorrect and false statement in advertisement <b>or Model Apartment, Plot or Building</b>	<p>a. If Allottee <b>retains</b> the apartment - any person who gives advance can claim compensation from the Promoter <b>if he has suffered loss or damage</b></p> <p>b. If Allottee <b> Cancels</b>– refund entire investment plus interest plus compensation (<i>Note: It seems for cancellation, showing he suffered loss is not required</i>)</p>
Model Apartment	Care to be taken will constructing Model / Show Flats and even 3D Walkthroughs.



# Booking & Sales

*Booking is a critical stage: Allottees get all rights under the Act*

Provision	Impact
Cannot book, sell advertise, offer for sale without registration	Investor Sale / Pre Launch not possible in Project
Taking “Application Fee” instead of “Booking Amount”	Not Possible as expressly prohibited
Existing projects need to register within 3 months of commencement of the Act	RERA will also apply to Apartments already sold if the Project has not received Completion Certificate
All “bookings” to be reported on Website of Authority	Reporting is to be done to Authority at Booking stage itself and not registration of document stage
Registration of Agreement	Compulsory before taking more than 10% booking advance or Application Fee
Cancellation of Booking	Allotment has to be cancelled by Agreement of Sale <i>(Note: It seems Agreement for Sale will have to be entered into at the time of booking itself and terms of cancellation mentioned)</i>



# Cancellation of Agreement

*Cancellation Clauses of Booking & Agreement need to be drafted carefully*

Provision	Impact
Conditions of Cancellation	Promoter can cancel only in terms of <b>agreement for sale</b>
Conditions for allottee for approaching authority for relief	<ol style="list-style-type: none"><li>1. If Cancellation is not as per terms of agreement</li><li>2. Is unilateral</li><li>3. Without sufficient cause</li></ol> <p><i>Note: All the conditions have to be satisfied</i></p>
Delay in payment by allottee of cost of flat and all related charges	Promoter can charge interest at prescribed rate
Compensation to Promoter	No provision of compensation to Promoter even in case of repeated defaults by allottee



# Formation of Society & Conveyance

*Both Promoter and Allottees to ensure formation of Society and Conveyance*

Provision	Impact
Registration of Project	Pro-forma of Conveyance Deed has to be submitted at the time of Registration of Project
Formation of Society	Promoter to enable formation of Association/Society/Federation as per Local Laws. <i>In absence of Local Laws, the Association of Allottees can form a Society <b>within 3 months</b> of majority of allottees booking property in the project.</i>
Time for Conveyance Deed	In case no timeline specified in Local Laws: <b>Within 3 months</b> of date of issue of Occupancy Certificate
Responsibility of Promoter <i>(Also Refer slide 'Possession &amp; Maintenance')</i>	The responsibilities of Promoter are till conveyance of Apartment to allottees or the Common Areas to the Association of Allottees. Responsibility for structural or other defects continues even after Conveyance.
Responsibility of Allottee <i>(Also Refer slide : 'Filing of Complaints')</i>	Every allottee must participate in the registration of conveyance deed. Promoter or Association of Allottees can file a complaint to Authority for failure of Allottee.





# Possession & Maintenance

*Understand nature of consent for addition/alteration*

Provision	Impact
<p>Promoter fails or <i>is unable</i> to give possession:</p> <ul style="list-style-type: none"> <li>- <b><i>In accordance with terms of the Agreement</i></b></li> <li>- By date as per Agreement or</li> <li>- Due to Discontinuance of business as developer</li> <li>- Due to <b><i>Suspension</i></b> or Revocation of Registration</li> <li>- <b><i>Any other reason</i></b></li> </ul>	<p><b>If Allottee wishes to withdraw:</b> Interest at rate as may be prescribed AND compensation</p> <p><b>If Allottee wishes to continue:</b> Interest at rate as may be prescribed for every month of delay till date of possession</p>
<p>Loss due to defective Title of Land</p>	<p>Promoter shall compensate allottee for loss caused to him (i.e. Promoter) due to defective Title in Land</p>
<p>Rectification of Defects after possession</p>	<p>Defects '<b>brought to notice</b>' within 5 years to be rectified <b>without cost</b> within <b>30 days</b></p> <p><b>Defects covered:</b></p> <ul style="list-style-type: none"> <li>- Structural</li> <li>- <b><i>Workmanship</i></b></li> <li>- <b><i>Quality or Provision of services</i></b></li> <li>- <b><i>Any other obligation of promoter as per Agreement</i></b></li> </ul>



# Filing of Complaints

*Any Aggrieved Person can file complaint to Authority*

REGULATORY AUTHORITY	Penalty
Who can file	Any <b>Aggrieved Person</b> <i>Note: Following can also file a complaint:</i> <ul style="list-style-type: none"><li>- Association of Allottees</li><li>- Registered Voluntary Consumer Association</li></ul>
Basis for filing complaint	Violation or Contravention of provisions of the Act, Rules of Regulations
Against Whom can Complaint be filed	<ul style="list-style-type: none"><li>- Promoter</li><li>- Allottee</li><li>- Real Estate Agent</li></ul>
Interim Orders during enquiry	Authority can pass <b>Restraining Orders without giving notice</b> if it deems fit where it is of the opinion that an act has been committed or continuing to committed <b><i>or about to be committed</i></b> in contravention of the Act, Rules, Regulations.
Power to issue directions	Authority may issues such directions to Promoter, Allottee, Real Estate Agent as considers necessary to discharge its functions under the Act
Competition Commission	Authority has powers to suo-moto make a reference to the Competition Commission of India



# Penalties on Promoter by Authority & Tribunal

*Penalty for contravention can also include imprisonment*

REGULATORY AUTHORITY	Penalty
Not taking Prior registration u/s 3	<b>Upto</b> 10% of Estimated Cost of the Project as decided by the Authority <i>(See Note 1)</i>
Not paying Penalty imposed as above <b>Or</b> Continues to violate Sec 3	- Imprisonment upto 3 years - Further penalty of 10% of project cost - <b>Or both</b>
Giving false information or contravening provisions of Sec 4	Upto 5% of Estimated Cost of the Project as decided by the Authority
Contravening any other provision other than Sec 3 and 4	Upto 5% of Estimated Cost of the Project as decided by the Authority

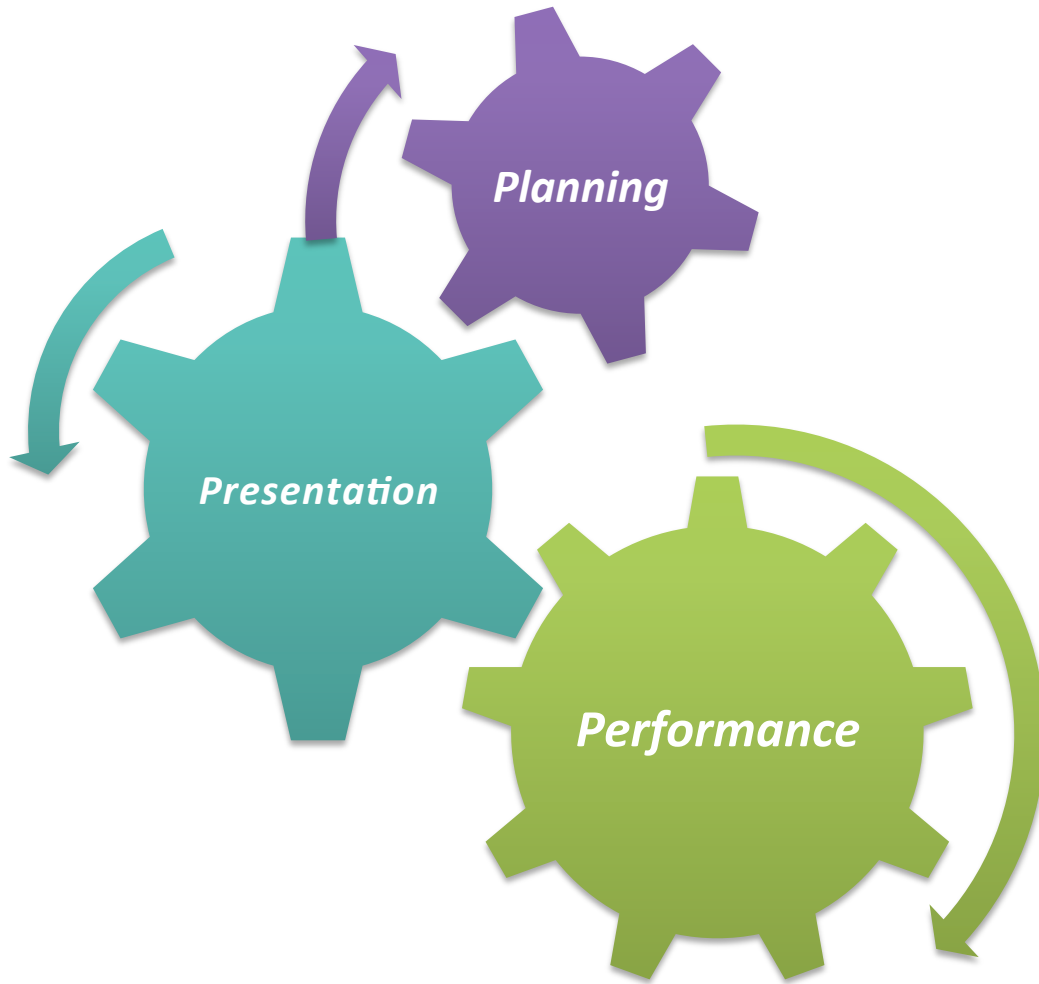
APPELLATE TRIBUNAL	Penalty
Promoter fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal	- Imprisonment upto 3 years - Penalty of 10% of project cost - <b>Or both</b> <i>(See Note 2)</i>

*Note: 1) The estimated cost of the Project will be **not as declared** by the promoter but **as decided** by the Authority for purpose of penalty provisions*

*2) Appeal will be heard **only after deposit of 30% of penalty** or such higher percent as decided by the Tribunal or amount to be paid to allottee including interest & compensation or both*



# Conclusion: Success Mantra in Era of RERA



“Let our advance  
worrying become  
advance thinking and  
planning.”

Winston Churchill



YOUR TRUSTED PARTNERS IN GROWTH

### Fund Raising Services for Real Estate Developers

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Project Finance from Banks &amp; NBFCs</li><li>• Equity Funding for Land Acquisition</li></ul> | <ul style="list-style-type: none"><li>• Cash-out Financing for Ongoing Projects</li><li>• Corporate &amp; Project Restructuring</li></ul> |
|--|---|

*To Know more on how we can be Your Trusted Partners in Growth:*

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## Thank You

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