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Overview and Intricacies under RERA: Role of CA

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Role of CA under RERA

a) Certification for withdrawal of money from RERA designated account (By Independent CA other than Statutory Auditor)
b) Annual Report on Statement of Accounts (By Statutory Auditor)
c) Verification of separate RERA Bank Account transactions as per specific directions of the RERA
d) Act as an Authorised Representative
e) Other services to RERA authorities
f) Cascading Implications of RERA on GST and IBC

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Genesis of RERA

a) Ensure accountability towards allottees and protect their interest;

b) Infuse transparency, ensure fair-play and reduce frauds & delays;

c) Introduce professionalism and pan India standardization;

d) Establish symmetry of information between the promoter and allottee;

e) Imposing certain responsibilities on both promoter and allottees;

f) Establish regulatory oversight mechanism to enforce contracts;

g) Establish fast- track dispute resolution mechanism;

h) Promote good governance in the sector which in turn would create investor confidence.

REAL ESTATE PROJECT COVERED UNDER RERA	Real Estate Projects not covered under RERA
✓Residential/ Commercial projects including shops, offices – exceeding 500 sq. mtrs. ✓Residential Apartments – exceeding 8 units in all phases. ✓Plotted Developments exceeding 500 sq. mtrs. ✓Projects developed in Phases would require registration for each phase separately ✓Ongoing Projects which do not have Completion Certificate prior to the commencement of RERA.	✓Projects which have received Completion Certificate prior to the commencement of RERA. ✓Redevelopment projects where no new allotments are to be made ✓Renovation/ Repair - Not involving marketing, advertisement, selling or allotment of any apartment, plot or building ✓Sale of ready to occupy property in the resale market

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KEY PROVISIONS UNDER RERA

1	Sale of parking	Only covered car parking space / Garages including mechanical car parks permissible. Open Parking not saleable by Promoters
2	Carpet area	Includes:- Area covered by the internal walls of the apartment
		Excludes:- Area covered by the external walls, exclusive balconies, verandah areas, service shafts and terraces not included.
		3% tolerance allowed. (No limit for decrease in area)

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KEY PROVISIONS UNDER RERA

3	Booking amount before execution of agreement	Not to exceed 10%
4	Undivided Proportionate Share in common areas	Chargeable
5	Conveyance/ Execution of Sale or Sublease Deed	Applicable within three months of completion certificate of real estate project if not specified otherwise in local laws
6	Defects liability period	5 years, Covering Structural Defects, Quality, Workmanship and Provision for Services

KEY PROVISIONS UNDER RERA

7	In case of delay for possession then option of refund of money with interest to the buyers or Payment of monthly interest to the buyers for delayed possession	Simple interest @ 2% + prevailing MCLR rate of the State Bank of India from the date sums are received. Promoter discretion stopped
8	Formation of society	Within 3 months of date of 51% of allotees that have booked their apartments if not specified otherwise

KEY PROVISIONS UNDER RERA

9	Handover of Common Areas/ Facilities to AOA	Within 30 days of issue of occupation certificate if not specified otherwise in local laws

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KEY PROVISIONS UNDER RERA

10	Extension of time for delivery of flat	i. War, civil commotion or act of God. ii. Any notice, order, rule, notification, of the government and/or other public or competent authority. iii. Excludes period of registration where actual construction not carried by promoter due to specific stay, injunction order to the project by any court of law, tribunal, competent authority, statutory authority, high power committee etc. or due to other mitigating circumstances as decided by the RERA authority.

KEY PROVISIONS UNDER RERA

	Contd…..	
10	Extension of time for delivery of flat	iv. If authority is convinced that due to no fault of the promoter there has been a delay he can get extension for the registration of the project

KEY PROVISIONS UNDER RERA

11	Payment terms	As agreed between promoters and allotees
12	Escalation	Escalation free except duty increase on account of development charges to authority.
13	Share of outgoings	Proportion to carpet area instead of floor area.

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KEY PROVISIONS UNDER RERA

14	All receipts	70% to be maintained with designated account and to be withdrawn as per progress of construction. Promoters discretion stopped
15	Project potential	Disclosure to be made about expectation of FSI proposed to be utilized including expectation of future FSI or else consent of 2/3 rd allottees required.
16	Interest	M.C.L.R. plus 2% of SBI Bank Rate. Promoters discretion stopped

KEY PROVISIONS UNDER RERA

17	Termination	Promoter entitled to terminate after 2 installments not paid consequently for 90 days despite notices given.
18	Specification of materials	To mention brand, or price of product (if unbranded). Generic declaration by Promoters is not sufficient.
19	Registration of project	Registration compulsory before any advertisement or receipt of payment by the Promoters.

KEY PROVISIONS UNDER RERA

20	Insurance Of building	Of building and title
21	Disclosures	On the site and website
22	Title Liability	Promoters Liability in perpetuity.
23	Offences & Penalties	Heavy fine linked with up to 10% of estimated project cost and imprisonment only if directions of authority not followed for both Promoters as well as allottees.

KEY PROVISIONS UNDER RERA

24	Consent to change sanctioned plans	Consent of 2/3 allotees required for making any major modification in sanctioned plans or revised plans.
25	Development of project and amenities	Detailed phase wise development permitted along with different date of possessions for apartment and amenities

KEY PROVISIONS UNDER RERA

26	Unfinished project	Authority with approval of state government may allow development of project by any other person including first right to take over and complete the project will rest with allottees who has purchased apartment in the said project.
27	Marketing Agents	Registration is mandatory with RERA authority.

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Cash Flow Mechanism

- ✓ 70% of the amounts realized for the Project from the Allottees with scheduled bank and 30% in promoters account

- ✓ Incase of ongoing projects, if the estimated receivables is less than the estimated cost of the Project then 100% of the receivables to be deposited.

- ✓ No charge / lien can be created the same after having received 10% of the agreed sale value

- ✓ Promoter shall be entitled to withdraw amounts from the Separate RERA Account, to cover Project Cost in proportion to the percentage of completion of the Project.

Withdrawal permitted Through THREE CERTIFICATES:

1) Certificate of the Project Architect certifying progress of the Project.

2) Certificate of the Engineer certifying actual cost incurred on the construction work
of each of the building/ wing of the Project.

3) Certificate of the Chartered Accountant certifying cost incurred on the construction cost and the land cost. The Chartered Accountant shall also certify the proportion of the cost incurred on the construction and the 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 Separate RERA Account.

PROJECT COST

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LAND COST

INCLUDES

- ✓ Cost for acquisition of ownership of title of Land
- ✓ Overhead cost,
- ✓ Legal cost,
- ✓ Supervision cost.
- ✓ Premium payable to obtain development/redevelopment rights, grant FSI, fungible FSI, additional FSI.
- ✓ Amount paid for acquisition of TDR.
- ✓ Stamp duty transfer charges,
- ✓ Registration fees.

CONSTRUCTION COST

INCLUDES

- ✓ All costs incurred towards onsite and offsite expenditure for development.
- ✓ Payment of taxes, fees, charges, premiums, interest, etc. to Government Authorities.
- ✓ Principal sum and interest paid / payable to the Banks / Financial Institutions linked to the progress of the project.
- ✓ Cancellation amount(s), if any paid by the Promoter to the Allottees on cancellation of booking/ allotment of the Apartment (only to the extent of 70% of the sales proceeds deposited in the Separate RERA Account).

EXCLUDES

- ✓Marketing and brokerage expenses (not to be borne out of proceeds deposited in the Separate RERA Account).
- ✓Income Tax paid by the Promoter.

Cash Flow Mechanism

COST ASSUMPTION	
Land cost	20
Construction cost	30
Overhead, Interest charges	20
Project Cost	70

Payment and Construction Cost		
Booking	Instalment	% Completion
	10%	0
1st Milestone	25%	20%
2nd Milestone	25%	40%
3rd Milestone	25%	70%
4th Milestone	10%	85%
5th Milestone	5%	100%

Cash Flow Mechanism

Particulars	Cumulative Cash Flow	Amount to be deposited (70%)	Completion % Project Cost Cumulative	Retention (Restricted Cash)
Booking	10	7	0	7
Instalment 1	35	24.50	14	10.5
Instalment 2	60	42	28	14
Instalment 3	85	59.5	49	10.5
Instalment 4	95	66.5	59.5	7
Possession	100	70	70	

PENALTY ON PROMOTERS

Contravention of the provisions of Section 3 i.e.., making any invitation for sale without getting the project registered with RERA (Section 59)	Penalty up to 10% of estimated cost of the project. For the continued default imprisonment up to three years or with further fine up to 10% of the cost , or with both
Contravention of Section 4 i.e.., failure to make application for registration, submitting false information, failure to keep 70% in separate bank account etc. (Section 60)	Penalty up to 5% of the estimated project cost

PENALTY ON PROMOTERS

Contravention of any other provision of the Act/Rules/Regulations (Section 61)	Penalty up to 5% of the estimated project cost
Failure to comply with the directions/orders of the Regulatory Authority (Section 63)	Penalty for every day of the default which can cumulatively go up to 5% of the estimated project cost
Failure to comply with the orders, decisions of the Appellate Tribunal(Section 64)	Imprisonment up to three years or with fine for every day of default which can cumulatively go up to 10% of the estimated cost of the project, or with both.

PENALTY FOR AGENTS

Failure to comply with order or direction of the Authority (Section 65)	Penalty for every day of default which can cumulatively go up to 5% of the estimated cost of the building/ apartment or plot
Failure to comply with order or direction of the Tribunal (Section 66)	Punishment with imprisonment up to one year or with fine for each day of default which can cumulatively go up to 10% of the cost of the building/ apartment or plot, or with both

PENALTY FOR ALLOTEES

Failure to comply with orders of the Authority (Section 67)	Penalty per day of the default which can cumulatively go up to 5% of the cost of building/plot or apartment
Failure to comply with decision or orders of the Tribunal (Section 68	Punishment of imprisonment up to one year or with fine for each day of default cumulatively going up to 10% of the cost of building/ apartment or plot, or with both.

HITS FOR CONSUMERS	MISSES FOR CONSUMERS
✓ Increased affirmation on timely completion/ delivery of projects ✓ Increase in quality of construction - Defect liability period of 5 years from the handing over of possession ✓ Balanced builder-buyer agreements (otherwise agreements heavily loaded in favour of developer) ✓ Regulated Agent/ Broker environment ✓ Greater visibility into the developer's delivery track record ✓ Sale on the carpet area basis/ terms to help improve transparency in pricing and bring in standardization	✓ Timelines for approval by the regulatory authorities not defined ✓ May lead to slightly higher prices due to the reduced competition, insurance and other ancillary costs passed on by the Developers etc ✓ Combination of this with plethora of guidelines to be followed may put brakes on the number of new launches (in the short term)

HITS FOR DEVELOPERS	MISSES FOR DEVELOPERS
✓ A more regulated real estate sector would bring in efficiencies and may result in higher investments (FDI) and possible reduction of the cost of funds. ✓ Increased scope for eliminating casual operators, leading to the better organization of the sector. ✓ Greater visibility into the developers' delivery performances ✓ Higher focus on project delivery capabilities ✓ Overleveraging which generally result in project delays may not be possible	✓ Power of RERA- disproportionately coercive and may limit the ability of developers ✓ Fixing a rigid capital reserve ratio (70 percent deposit and 10 percent booking amount) imposes greater liquidity constraints , impacting their entry into the market, subsequent expansion and project cost ✓ Multiple forums for dispute resolution of grievances (Consumer forums, RERA, IBC, CCI) could facilitate forum-shopping and lead to conflicting jurisprudence ✓ Responsibility of buyers/ developers/ brokers/agents fixed – **What about the Government Agencies?**

NEW ROLES AND RESPONSIBILITES

Finance	**Legal**
✓Cash flow / liquidity management (70 percent clause) ✓Managing project wise bank accounts and withdrawal certification ✓Impact on pricing ✓Alternate ways of funding/ sourcing equity partners ✓Insurance ✓Monitor cost and schedule overruns ✓ Auditing of project accounts Institutionalize periodic RERA checks	✓Revised agreement of sale/ affidavits/ declarations as per Rules ✓Deep land due diligences ✓ Registrations/ Extensions/ Updation of details on RERA website ✓Formation of association of allotees within 3 months from the date of majority of units being booked ✓No mortgage or charges etc ✓Vendor management/ Dispute Resolution/ Cyber Security ✓Ring-fencing of senior management/ promoters liabilities
Design ✓Prioritize design development and delivery capabilities ✓Fix structural defects or any other defect in workmanship, quality or provision of services or any other obligations of the promoter – 5 year warranty period ✓Minor vs major additions/ alterations (changes) to the structure as per sanctioned plan – careful consideration ✓Process Compliance Audits	**Operations** ✓Strengthen delivery and management capabilities around execution, monitoring, handover and operations ✓Managing alterations and additions ✓Empanelment of channel partners (including architects, engineers, real estate agents etc) ✓Redefine indemnities and liabilities for channel partners and associates

NEW ROLES AND RESPONSIBILITES

Marketing/Sales/CRM

✓No project promotions/ advertisements/ marketing before registration.

✓Provide information to allotees - sanctioned plan, layout plan, stage wise schedule of completion.

✓Sanitize marketing collaterals/ brochures etc. (identify and address conflicting customer commitments) and align to RERA regime.

✓ Be careful in Email and communication exchanges with customers.

✓Managing cancellations (to be compliant with the terms agreed)

WHO IS ALLOTTEE

Allottee in relation to a real estate project includes a 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.

Allottee does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

Normally, a person to whom the plot, apartment, building is given on leasehold basis would be paying rent and therefore a clarity is required to that effect.

Thus term allottee includes secondary sales.

RIGHTS OF ALLOTTEE

- ✓ Right of information-regarding sanctioned plans, layout plans with specifications. Stage-wise time schedule of completion of the project.
- ✓ Right against major alteration of project without consent from 2/3 allotees. The buyer can demand refund with interest and compensation if there is any change from agreement to sale.
- ✓ Right to withdraw from the project and claim return of investment with interest and compensation in case of false advertisement.
- ✓ Right to execution of Agreement for Sale, before payment of 10 % of cost of flat/ apartment/ gala/land etc.;
- ✓ Right to Claim the refund of amount paid with interest in case of revocation of his registration.

RIGHTS OF ALLOTTEE

- ✓ *Right to Claim possession on or before the date stipulated in the agreement . In case of delay , can claim refund along with* simple interest @ 2% + prevailing MCLR rate of the SBI from the date sums are received as well as compensation*. Delay is excused only following force major clause:-*
  - *a. War, Civil commotion or act of God*
  - *b. Any order of the government, competent authority or court*

- ✓ *However if allotee does not want to withdraw from the project , he can claim interest.*

- ✓ Right to be charge same rate of interest for default in payment as promoters will be charges in case of breach of any clauses of the Agreement of Sale.

RIGHTS OF ALLOTTEE

- ✓ *Right to pay escalation free price to promoter except additional development charges levied by the competent authority are payable by the allottee and demand can be made by promoter attaching notification issued by competent authorities. The right to pay taxes only as per the carpet area till the handing over the possession to the allottee.*

- ✓ *Right to receive notice by registered AD on the address given to promoter and mail at email.id before cancellation of allotment due to failure to pay three due instalment.*

RIGHTS OF ALLOTTEE

- ✓ *Right to keep the allotment even if the possession is not taken over within specified period and liable only to pay maintenance charges. The allotment cannot be cancelled by company for not taking over the possession.*
- ✓ Right to claim compensation or interest from promoters for breaches of agreement of sal
- ✓ *Right to notify any poor workman ship, structural defects, quality or provision of service within a period of 5 years and promoter will rectify the same in 30 days. Otherwise allotte can claim compensation*

RIGHTS OF ALLOTTEE

- ✓ Right to receive Completion Certificate/Occupancy certificate.
- ✓ Right to execution of registered conveyance deed by the promoters
- ✓ Right to receive title of insurance to be transferred in the name of allottees or association or society of allottees.
- ✓ Right to remedy of approaching RERA against wrongful cancellation of allotment by promoters(Builders and Developer.
- ✓ Right to claim compensation for the promoters in case of loss caused to allottes due to defective title.
- ✓ Right to statutory remedy of filing compliant with adjudication authorities for enforcement of rights.
- ✓ Right against transfer or assignment of project by the promoters to third party without consent of allottees or association of allottees.

RIGHTS OF ALLOTTEE

- ✓ Right to occupation/ completion certificate of the project to be acquired by the promoters and handed over to allottees or association or society of allottees ,within a period as may be allowed by RERA.

- ✓ If project is on lease , then the promoter will hand over the lease certificate in favour of allottees or associations of allottees.

- ✓ Right to document of insurance, the promoters of a project are required to execute or take an insurance policy form insurers to insure the project and after completion of the same promoters will transfer the title of insurance in favour of allottees or association of allottees.

RIGHTS OF ALLOTTEE

- ✓ Rights to documents and plans, the promoter will hand over all plans, documents, certificates , drawings, NOC to the allottees or association of allottees after completion of project or at the time of handing over the possession of project.

- ✓ In case registration of a promoter is revoked by the RERA, then allottees or association of allottees have right to transfer the amount kept in separate bank account by the promoters according to the provisions of The Real Estate (Regulation and Development) Act, 2016.

OBLIGATIONS OF ALLOTTEES

- ✓ Responsibility to pay interest for delay in payment according to Agreement of Sale;
- ✓ Responsibility to participate in formation of Association of Allottees;
- ✓ Responsibility to take physical possession of the apartment, plot or building as the case may be within a period of two months of the issue of Occupancy certificate;
- ✓ Responsibility in participating in execution of conveyance deed;
- ✓ Responsibility to pay penalty for breach of any order of the Competent Authority;
- ✓ Penalty for failure to comply with the order of Appellate Tribunal.

LIABILITIES OF PROMOTER

- ✓ 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.
- ✓ Obtain all such insurances in respect of —

  (*i*) title of the land and building and

  (*ii*) Construction of the real estate project.
- ✓ Execute registered conveyance deed in favour of the allottees 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 to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, and the other title documents pertaining thereto within specified period.
- ✓ After obtaining the occupancy certificate and handing over physical possession to the allottees, handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority.

LIABILITIES OF PROMOTER

- ✓ 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, to return the amount received by him with interest including compensation.
- ✓ If an allottee does not intend to withdraw from the project, he shall be paid, pay interest for every month of delay, till the handing over of the possession.
- ✓ Compensate the allottees in case of any loss caused to him due to defective title of the land and the claim for compensation shall not be barred by limitation provided under any law for the time being in force.
- ✓ 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 compensation.

RESPONSIBILITY OF THE REGULATORY AUTHORITY

No 'assurance' function like other parties which accord development permission such as local government, PWD, Fire safety etc.

- Function essentially to create an information forum

- Authority takes no responsibility of streamlining the approvals/ NOC process, nor does it reduce the no. of approvals required for a Real Estate Project

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DILUTIONS IN RERA ACT THROUGH STATE RULES

By default, the law should apply to all such projects where a completion/ occupancy certificate has not been issued.

However, some states have gone ahead with Rules that effectively diluted the provisions of the law:

– Exemption to projects which already applied for CC

– Exemption to projects where services have been handed over to the Resident Welfare Association/ Apartment Owners' Association for maintenance

– Exemption to projects where development work is completed and sale/ lease deeds of 60 percent of the units/ plots have been executed

OVERALL VIEW ON RERA

- ✓ RERA provisions are hard on developers due to stiff penalties – would leave only serious developers in the market
- ✓ Increase in cost of capital and compliance due to new regulatory framework
- ✓ May Attract PE Funding for Tier-II and Tier-III developers with the increase in transparency. Currently ~80 - 85 percent PE funds invest in Tier-I developers owing to good corporate governance structure.
- ✓ Restricted use of 70 percent Funds– Well intentioned but may have little economic merit
- ✓ Dispute settlement mechanism - Given the experience of consumer courts, it's only a matter of time before the new mechanism gets as clogged as the existing

OVERALL VIEW ON RERA

- ✓ Consumer confidence will increase in the over-supplied/ over-priced RE market due to balance agreement to sale.
- ✓ Agreement for sale become compulsorily registrable. The Indian Registration Act, 1908 does not provide for compulsory registration of an agreement for sale.
- ✓ Penalize the developer for delay in project but does not fix any responsibility on Govt Agencies for delay in approvals.
- ✓ Silo style of operation should stub out with the requirement to make disclosures of project details.
- ✓ Pre-launch/ Soft launch sale of projects will now be a history

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Thanks

Let us explore possibilities

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IRECFO is team of diverse professionals having rich and strong multi-dimensional experience of Real Estate Business while working at Top Corporate Level positions with unique competency of taking Deep Dive into such complex matters having multi-level cascading long term impacts on Real Estate Business. We are providing End to End Customized solutions in RERA related matters with in depth analysis on business operations and are closely working with many leading developers, on all types and sizes of Real Estate projects, to resolve such issues.