

Real Estate (Regulation & Development) Act 2016 And Professional Opportunities Therein



Real Estate, one of the fastest growing markets in the world, has four components—housing, retail, hospitality and commercial, where the housing comprises 5-6 percent of India's GDP. Projects in real estate take a comparatively longer time to complete due to very complicated official procedures, and because of that, consumers suffer. To protect the interests of both promoters and consumers, the Parliament of India recently introduced the Real Estate (Regulation and Development) Act, 2016 that received the assent of the President on 25th March 2016 and eventually the official Gazette of India notified that on 1st May 2016. This Act has to establish Real Estate Regulatory Authority (RERA) to regulate and promote the real estate sector and ensure sale of plots, apartments or buildings in an efficient and transparent manner. In this article, the author duo discusses the opportunities for CA professionals in the wake of this recently enacted Real Estate Act of 2016. Read on...

Today Real Estate is one of the fastest growing markets in the world. The four components of this sector are housing, retail, hospitality and commercial,

with housing being the major which comprises 5-6 percent of India's GDP. Gone are the days when constructing a house or purchasing a house is treated as lifetime achievement. At present soon after joining in employment people are thinking to have their own house. Hence more and more people are investing their life time earnings in real estate market. Real Estate project in India take a long time to complete due to complicated and corrupted mechanisms, because of which ultimately the consumer or the



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buyer suffers. To protect both the promoter and the consumers, Parliament has recently introduced Real Estate (Regulation and Development) Act'2016 which has received the assent of the President on 25th March 2016 and notified in official Gazette of India on 1st May 2016. This Act has to establish Real Estate Regulatory Authority (RERA) for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals.

Registration of Real Estate Project under the Act

Promoter means a person who constructs a building or develops land into project for sale (for more clarity please refer section 2 zk) If the land proposed is more than 500 square meters or the number of apartments proposed is more than 8 (Appropriate Govt. may reduce the limit), then the promoter has to get the project registered under this Act. Further those existing promoters, who have not received completion certificate as on date of commencement of this Act have to register the project within 3 months or existing promoters who have taken the work of renovations, repairs, etc., then for marketing, advertising and selling/new allotment, they also have to register the project under this Act. After registration only, act allows the promoter to advertise, market, book, sell or offer for sale, invites purchasers for the project.

For registration of the project, the promoter has to submit the following documents along with the prescribed application; (a) Name, registered address, type of enterprise, its registration with other Acts, and names and photographs of promoters. (b) Details of projects launched in the past 5 years, their status, details of cases pending, details of type of land and payments pending. (c) Certified copies of approvals and commencement certificates. (d) Sanctioned plan and Layout plan. (e) Plan of development works and facilities including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy etc., (f) Location details of the project. (g) Proforma of allotment letter, agreement of sale, conveyance deed. (h) The number, type and the carpet area of apartment for sale. (i) The number and areas of garage for sale in the project.

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(j) Name and address of real estate agents proposed. (k) name and address of contractors, architects, structural engineers. (l) a declaration supported by affidavit which shall be signed by the promoter or his authorised person that:

A– Legal title to the land proposed is legally valid documents with authentication of such title.

B– Land is free from all encumbrances.

C– Time period for completion of project.

D– A separate bank account is to be opened in a scheduled bank. At least 70% of the amounts realised for the proposed project from the buyers/purchasers/allottees from time to time is to be deposited into that bank account. This 70% amount is to be exclusively spent for the Land cost and cost of construction. Promoter shall withdraw amounts from this separate bank account for construction purpose only in proportion to the percentage of completion of the project.

To withdraw amounts from this bank account promoter has to obtain certificate from an engineer, architect, and a chartered accountant that the withdrawal amount is in proportion to the percentage of completion.

E– Promoter has to take all pending approvals with in time

Opportunities for CA Professionals

Opportunity 1: *At the time of each withdrawal of amount from that separate bank account, promoter contacts a practicing Chartered Accountant. After verifying certificates issued by an engineer and architect, Chartered accountant has to certify the withdrawal amount stating which is in proportion to the percentage of completion of the project.*

Promoter shall get his accounts audited within 6 months from the end of every financial year by a practicing chartered accountant and should produce a statement of accounts duly certified and signed by such chartered accountant to the Real Estate Regulation Development Authority.

Opportunity 2: *Real Estate (Regulation & Development) Act 2016 requires every registered promoters to gets their accounts audited by a practicing chartered accountant within 6 months i.e. by 30th September each year.*

Authority shall operationalise a web based online system for registration within a year time. On receipt of application from the promoter, authority shall grant registration within 30 days, and provide registration number, login Id and password. Authority may reject the application for the recorded reasons and gives opportunity of being heard to the promoter. If authority fails to register/reject the project shall deemed to have been registered within a period of 7 days from expiry of the said period of 30 days.

Authority on receipt of complaint or suo motu or on recommendation from competent authority revoke/cancel the registration granted, if it satisfies that promoter makes default in obeying the Act or its rules, violates any terms and conditions, involves in any kind of unfair practices or irregularities. But Authority before cancellation gives 30 days notice to promoter and instead of revoking may permit it to remain in force subject to such further terms and conditions as it may thinks fit in the interest of the allottees. On revocation/cancellation (1) promoter shall be debarred from accessing its website, his name & photo shall be placed in the list of defaulters, it informs to other RERA of other states. (2) Authority shall direct to freeze the bank account. (3) Authority shall consult the Appropriate Govt. to take such action as it deem fit including the carrying out the remaining development works by competent authority or the association of allottees.

Registration of Real Estate Agent under the Act

Every Real Estate Agent shall make application to the authority for registration accompanied by such fee and documents as may be prescribed. Authority may grant single registration to the agent for the entire state. Authority shall grant a registration

number to the agent which shall be quoted by the agent in every sale facilitated by him under this Act. Registered real estate agent shall not facilitate the sale or purchase of any project which is not registered with the Authority. Agent should maintain and preserve such books of accounts, records and documents as may be prescribed. Authority may cancel/revoke the registration given to agent, if it satisfies that agent has committed breach of any terms and conditions under this Act.

Functions and Duties of a Promoter

Act has fixed the duties and functions of the promoter such as (1) Quarterly update of all project related details (3) Promoter is responsible for sanctioned plans, layouts, stage wise time schedule of completion of project (4) responsible as per agreement of sale, responsible for obtaining completion certificate/occupancy certificate, enable formation of an association/society of the allottees, execute a registered conveyance deed with the undivided proportionate title in the common areas to the association of allottees, pay all outgoings until he transfers the physical possession of the real estate project to the allottees. Promoter shall not accept any sum more than 10% of the cost of apartment as an advance payment. Promoter has to develop and complete the project in accordance with sanctioned plans, layouts and specifications as approved by the competent authority. Any structural defects brought to the notice of the promoter within 5 years from the date of handing over the possession, promoter has to discharge the same within 30 days, if not compensation shall be awarded to allottees from promoter as per the provisions provided in the Act. Promoter shall obtain all such insurances as may be notified by the appropriate govt. If promoter fails to complete or is unable to give possession as per agreement of sale he should return the amount received with interest, and if allottee does not intend to withdraw from project, interest for every month of delay is to be paid till handing over possession.

Rights and Duties of Allottees

Act have given rights and duties for allottees; (1) Information relating to sanctioned plans, layouts, specifications etc., and agreement of sale signed with the promoter. (2) Stage wise time schedule of completion of the project, including provisions of water, sanitation, electricity and other amenities

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and services as agreed. (3) Claiming possession of apartment, plot (4) Refund of amount paid along with interest. (5) Responsible to make payments in the manner entered into agreement of sale (6) Liable to pay interest to promoter for any delay in payments. (7) Participate in formation of association or society of the allottees. (8) Taking physical possession of the apartment within 2 months of occupancy certificate issued.

Real Estate Regulatory Authority

Appropriate Govt. shall within a period of 1 year from the date of coming into force of this act, establish an Authority to be known as Real Estate Regulation Authority (RERA). Authority shall consist of chairperson and not less than two whole time members. Chairperson and members shall hold office for a term not exceeding 5 years or Sixty years of age whichever is earlier, and they shall not be eligible for re-appointment. There are restriction on chairperson and members on employment even after cessation of office. Authority on a complaint or suo motu by order in writing call upon any promoter, allottee or real estate agent to furnish information or explanation or appoint one or more persons to make enquiry in relation to affairs of any promoter or allottee or agent.

Central Advisory Council

Central Govt. shall establish by notification called "Central Advisory Council" which shall advise and recommend central govt. in the matters of implementation of this Act, question of policy, protection of consumer interest, growth and development of real estate sector etc., Govt. of India, Minister dealing with housing shall be ex-officio Chairperson with representatives of Ministries of Finance, industry and commerce, Urban Development, Consumer affairs, Corporate affairs,

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Real Estate Appellate Tribunal

Appropriate Govt. within a period of one year establishes appellate tribunal known as Real Estate Appellate Tribunal (REAT). The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his case before the appellate tribunal or regulatory authority or adjudication officer.

Opportunity 3: *Representing client before Appellate Tribunal one more opportunity which this act has given to chartered accountants.*

Offences and Penalties

Act has advised stringent penal provisions for defaulters or non performers. If promoter contravenes registration procedures penalty - 10% of estimated project cost/3 years imprisonment. On providing false information 5% of estimated project cost. If a real estate agent contravenes any provisions of registration, penalty of ₹10000 per day or 5% of cost of plot/apartment. If any allottee who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority/Appellate Tribunal, shall be punishable with 1 year imprisonment or with fine for every day during which such default continues, which may cumulatively extend up to 5/10 percent of the plot, apartment or building cost.

Finance, Accounts, Audits and Reports

Appropriate Govt. shall constitute a fund called "Real Estate Regulatory Fund" there shall be credited all Govt. grants received by the authority, fees received under this act, interest accrued and this fund shall be applied for meeting salaries and allowances payable and other expenses. Authority shall prepare a budget, maintain proper accounts and other relevant records, annual statement of accounts in such form as may be prescribed by appropriate govt. in consultation with comptroller and auditor general of India. Accounts of the authority shall be audited by the comptroller and auditor general of India in such intervals as may be specified.

(Article includes extracts from the bare Act and present them in understandable format. Readers may check the complete Act at <http://egazette.nic.in/WriteReadData/2016/168720.pdf>.) ■