

# KSCAA

Karnataka State Chartered Accountants Association ®

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*June 2021*

**Must Know Provisions under  
RERA Act 2016  
(Part II of RERA Series)**

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# MUST KNOW PROVISIONS UNDER RERA ACT 2016

(Part II of RERA Series)



■ CA. Vinay Thyagaraj

Land is an essential natural resource, both for the survival and prosperity of humanity, and for the maintenance of all terrestrial ecosystems. Over millennia, people have become progressively more expert in exploiting land resources for their own ends. The limits on these resources are finite while human demands on them are not!

Over the years, movement of human from small places to the cities made concentration of human in a limited place / city / locality resulting into vertical development of buildings. The vertical development of buildings can be called as Apartment complexes.

The shift from individually owning land to common ownership of land (under group housing schemes) call for common rights, responsibilities and continuity of common ownership of the property. Even though the concept of group housing exists since 1970's, the actual and real challenges are not experienced unless the redevelopment stage is reached.

The increase trend of human greed, narrowing the trust, ethics and loyalty factors in business environment leading to uncertainty with various stakeholders. To bring certainty and protect the stake holders, government brought a policy by way of statute. The state government has enacted THE KARNATAKA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1972 (Act 16 of 1973). One of the main objectives of this statute was, *"In the interest of the intending purchasers who advance funds it is necessary to regulate the construction, sale, management and transfer of flats or apartments by individuals or group of individuals who construct such multi-storeyed buildings."*

However, till today (49 years), the state government has neither appointed the proper officer nor regulated this statute, similar situation prevails in other states also. Hence the central government has stepped in

with an intention to regulate and develop the industry, resulting in enactment of The Real Estate (Regulation & Development) Act 2016 (Act 16 of 2016), which came into effect from 1<sup>st</sup> May 2017.

The Real Estate (Regulation & Development) Act 2016 (otherwise called as RERA) empowers state government to appoint the Real Estate Regulatory Authority to perform functions within the framework of the statute – with the enactment of RERA, the endeavor of the Government is to regulate this sector.

Important and must know provisions / terms / requirements under RERA. Which may be useful as a professional, individual or a home buyer etc –

1. Sale of Real Estate (building) in Carpet Area – Unit of Measurement
2. Deposit of money (minimum 70%) realised from Allottees in a separate designated bank account for the specific Project – Financial Regulation under RERA
3. Conveyance of Carpet Area to the Allottees and delivery of possession of Common area to the Association of Allottees along with all project related documents.
4. Project Land shall be conveyed to the Association of Allottees in accordance with Section 17 of the RERA Act
5. Formation of Association of Allottees in accordance with local laws within 3 months of the majority booking in the real estate project.
6. Maximum Rate of interest for delay in delivery of project by the promoter or delay in payment of installments – SBI MCLR + 2 %
7. Agreement for Sale is Mandatory to be executed and mandatory registration of such agreement for sale.

8. Format for Agreement for sale is notified. Mandatory to follow the same format without diluting the provisions of the Act, Rules – Sec 13 and Rule 8 A
9. Non-adherence, non-compliance Penalties are up to 10 % of estimated cost of the Real Estate Project.
10. Adjudication, Appeal mechanism, redressal mechanism under the Act by excluding jurisdiction of other dispute redressal forums including civil courts.

Will deliberate each of these provisions and share the practical experience with the readers of the journal month on month. To start with will discuss and deliberate on the unit of measurement for the transaction in Real Estate Project - **CARPET AREA**

Sl No	Provisions	Change in Practice	Impact
	<b>CARPET AREA - Unit of measurement</b>	<p>Prior to RERA, the Real Estate industry followed the practices depending upon market acceptability, ability to convince the stake holders etc.</p> <p>E.g., Built up Area, Saleable Area, Super Built up Area, loading factor.</p> <p>There exists an imprecision of measurement of the unit.</p> <p>The inclusion of definition of Carpet Area under RERA made industry to practice a Common Unit</p>	<p>The introduction of Carpet Area resulted in -</p> <ol style="list-style-type: none"> <li>a) Transparency</li> <li>b) Standardisation in business and trade practices.</li> <li>c) Certainty and measurability of Carpet Area.</li> <li>d) building trust and confidence</li> <li>e) All marketing collaterals, communication shall mention the Carpet Area of the unit</li> <li>f) Sale Price / consideration of the unit shall be based on Carpet Area.</li> <li>g) Any variance in carpet area results in adjustment of consideration.</li> </ol>

		<p>of Measurement in the trade.</p> <p>While filing the application for grant of RERA Registration for the Real Estate project, the promoter shall submit the Carpet Area Statement of the building, individual units.</p>	
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*Sec 2(k) of the RERA Act defines - carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.*

*Explanation— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;*

*Further the requirement of a Promoter of the Real estate project to disclose the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment in accordance with Sec 4(2)(h) of the Act, makes it that much more transparent for a home buyer while purchasing an apartment.*

**Allottees / Customers do understand, appreciate when they have common comparison - lets understand the sensitivity of Carpet Area with a small Example -**

Details	Project A	Project B	Other factors
Apartment	2 BHK Unit	2 BHK Unit	
Super-built-Up Area	1200 Sft	1200 Sft	Both are good, similar location equally good

Total Price	54 Lacs	60 Lacs	Generally, everyone tries to compare the price. Lower one would be considered
Carpet Area	800 Sft	900 Sft	
Rate per Sft of Carpet Area	Rs.6,750 per sft	Rs.6,666 per Sft	Given the details of Carpet Area, one would prefer Project B, even though the total price is more.  As the price per square feet of carpet area is less and the purchaser gets more area in the apartment.

**CARPET AREA = NET USABLE FLOOR AREA + INTERNAL WALLS**

Excludes External Walls

Excludes Service Areas like utility, balcony, service shafts etc.

Inside the Darker line in this diagram represents the Carpet Area (



Hope you understood the CARPET AREA of the Apartment with this diagram.

The common question is - will the price of the apartment come down / reduced with implementation of Carpet Area under RERA?

The answer is NO. There will not be any reduction or change in transaction value between the buyer and the builders.

Eg., Apartment with 1200 Square Feet of Super built up Area (900 Square feet of Carpet Area) Costs Rs.60.00 Lacs. Means Rs.5,000/- per square feet of Super built up Area.

Post RERA, the cost of the Apartment continues to be Rs.60.00 Lacs. However, it would mention as (Rs.60.00 Lacs / 900 square feet) Rs.6,666/- per square feet of Carpet Area.

Next Question, what will be called for Areas like utility, balcony, veranda, private terraces, service shafts?

RERA Act has a definition of Carpet Area and Common Area. It is assumed that anything other than Carpet Area is called Common Area. Hence, Areas like utility, balcony, service shafts, private terrace (inside the unit) are also fall into the category of Common Area.

However, these are exclusive use for a particular owner of the apartment / unit. Hence, by practice, it will be mentioned as Exclusive common Area. i.e., the owner of the unit will have exclusive right to use of these Areas.

The formula is Built up Area of the Unit = Carpet Area + Exclusive Common Area

However, there exist a common area in the project for use of all residents etc, i.e., common passage, lobbies, staircase, lift area, parking area, service shaft etc (refer Sec 2(n) of the RERA Act for the Definition of Common Area)

The possession of the common areas in the real estate project are vests with the Association of Allottees. In turn each allottee gets a right in these Common Areas in proportionate to undivided share in land or based on Carpet Area.

Now the formula of Saleable Area / Super built up Area =

**Carpet Area + Exclusive Common Area + Share (in Common) Areas**

Sl No	Area	Includes / Defines	Measurement in Sq. Feet
1	Carpet Area	Net Usable Floor Area + Internal Walls	900
2	Exclusive Common Area	Utility, balcony, veranda of the unit for the purpose of Exclusive use of the apartment or unit	100
		BUILT UP AREA of the APARTMENT	1000
3	Share Area	Sec 2(n) - the staircases, lifts, staircase and lift lobbies, fire escapes, and common	200

	entrances and exits of buildings, the common basements, terraces, parks, play areas, open parking areas and common storage spaces;	
	SALEBLE AREA / SUPER BUILTUP AREA	1200

#### Points to note -

1. RERA Carpet Area = Net Usable Floor Area + Internal Walls (excluding outer walls)
2. Built up Area = RERA Carpet Area + Exclusive common Area
3. Super built-up Area = Built up Area + Share Area
4. Carpet Area statement shall be prepared with the Assistance of Architect as per the provisions of RERA. The statement shall be accurate and error free.
5. It is mandatory to mention the Carpet Area in all documents, marketing collaterals, legal documents, communication with the Allottees, Bankers, lenders etc.
6. Landowners and promoters (builders or developers) shall consider the concept of RERA Carpet Area and accordingly arrive, mention the sharing ratio in Joint Development Agreement.
7. All marketing collaterals like brochures, pamphlets, websites etc shall mention the Carpet Area of the units.
8. Customer Allotment letter, Agreement for Sale, Sale Deed shall have Carpet Area details of the unit / apartment in the project.
9. CA Certificate issued by the practicing Chartered Accountant shall mention the Carpet Area in Annexures under sold and unsold Table.
10. Presently registration of the unit / apartment with sub registrar is based on Super built up Area. Home Buyers, Industry bodies has made a representation

to modify the registration of units / apartments based on Carpet Area, which is in line with RERA Act.

- a. Government Of Karnataka Department of Stamps and Registration has given a converter to convert the Carpet Area to Super Built-up Area for the purpose of calculation of stamp

Super built-up area in square meter = 1.25 X Carpet Area in square meter.

ಉದಾ:- ಒಂದು ಪ್ಲಾಟ್‌ನಲ್ಲಿ 120 ಚದುರ ಕಾರ್ಪೆಟ್ ವಿಸ್ತೀರ್ಣ ಇದ್ದಲ್ಲಿ

ಸೂಪರ್ ಬಿಲ್ಡ್ ಅಪ್ ವಿಸ್ತೀರ್ಣ = 1.25 X 120 = 150 ಚದುರ ಮೀಟರ್ ಸೂಪರ್ ಬಿಲ್ಡ್ ಅಪ್ ವಿಸ್ತೀರ್ಣದ ಮೇಲೆ ರೂ. 25000/- ಪ್ರತಿ ಚದುರ ಮೀಟರ್ ದರ ರೂ. 37,50,000/-

"ಅಥವಾ"

ಪ್ಲಾಟ್‌ನ ಒಟ್ಟು ಮೌಲ್ಯ = (1.25 X 120) X 25000

= Rs. 37,50,000/-

11. Haryana RERA has issued direction to sell flats only on carpet area -

- a. The Haryana Real Estate Regulatory Authority (HARERA), on April 27<sup>th</sup>, 2021, said that builders can sell apartments in their projects only based on carpet area. While stating that the sale of flats on a super area or any other bench will be treated as fraudulent and an unfair trade practice, the state RERA said penal proceedings would be initiated against builders for violating these instructions.
- b. *"The property in real estate projects is not properly described by way of mentioning super area without specifically giving details and breakup of the components included in the super area. The practice of sale of the real estate on super area basis is misleading, ambiguous, opaque and gives rise to confusion and complexities and at times results into avoidable litigation,"* said Haryana RERA chairman KK Khandelwal.
- c. *"The practice of sale of real estate on super area basis is misleading, ambiguous, opaque, and gives rise to confusion and complexities, and at times, triggers avoidable litigation,"* – Mr. Khandelwal.

12. Refer to clause 1.7 to the Agreement for Sale as notified by Karnataka, in case of *reduction in carpet area compared to agreement for sale*, the promoter shall refund amount along with interest. On the other side, Promoter may demand for the increased carpet area only if the increase is more than 3 % compared to agreement

for sale – extract of the clause is mentioned here –

- a. *The Promoter shall confirm to the final carpet area that has been allotted to the Allottee after the construction of the building is complete and the occupancy certificate\* is granted by the competent authority, by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the Promoter. If there is any reduction in the carpet area then the Promoter shall refund the excess money paid by Allottee within sixty days with annual interest at the rate prescribed in the Rules, from the date when such an excess amount was paid by the Allottee. If there is any increase in the carpet area, which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Promoter may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule-C. All these monetary adjustments shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.*

13. Non-adherence to the provisions of the RERA Act may attract penal provisions. The Authority may issue a Show Cause Notice for levying penalty U/s. 61 of the RERA Act, which may extend up to 5 % of the estimated cost of the Real Estate Project.

#### Conclusion –

Professionals (engineers, architects and chartered accountants) shall understand the concept of RERA Carpet Area and its relevance while preparing various applications, details, documents, professional certificates etc. Understanding the concept of RERA Carpet Area also helps the professionals while advising / providing service to any individual / home buyers on property purchase / investments.

Value added services can be given to the promoters of the real estate project while advising on Joint development agreement, investment agreements, MOU's, application for grant of RERA Registration, document preparation for financial assistance with financial institutions etc.

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#### Solution to Sudoku -9 May 2021

2	4	6	8	7	3	5	9	1
5	1	8	6	4	9	2	7	3
7	9	3	5	2	1	4	8	6
9	3	5	4	1	8	7	6	2
1	6	7	9	5	2	3	4	8
4	8	2	7	3	6	9	1	5
3	2	9	1	6	7	8	5	4
6	7	4	3	8	5	1	2	9
8	5	1	2	9	4	6	3	7



#### Word of the Month:

Pertinacious

#### What is this?

Very determined and refusing to be defeated by problems

#### Use instead of:

Insistent, Persistent

#### How can I use it?

- ✓ Like most successful politicians, she is **pertinacious** and single-minded in the pursuit of her goals.
- ✓ A **pertinacious** salesman who would simply not take “No!” for an answer.

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