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4 Years of RERA – Transformation In Real Estate Industry

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4 YEARS OF RERA – TRANSFORMATION IN REAL ESTATE INDUSTRY



■ **CA. Vinay Thyagaraj**

The Real Estate (Regulation & Development) Act 2016 was enacted fully w.e.f., 1st May 2017 and presently it is effective and has been implemented in most of the States and Union Territories.

Jammu & Kashmir is the latest state / UT to notify Rules in August 2020 and announced that it will appoint the RERA Authority for effective implementation of the Act in Jammu & Kashmir.

With the implementation of The Real Estate (Regulation & Development) Act 2016 by the states and setting up of the Adjudication mechanism including the Appellate Tribunals to hear the matters relating to violation of the provisions of the Act by the Promoters and Allottees, has resulted in speedy disposal of the matters thereby resulting in giving relief to both Allottees and Promoters. Approximately, about 75,000 projects have been registered and as many as 70,000 complaints have been disposed by the Real Estate Regulatory Authorities.

On 1st May 2021, 4 years completed and stepping into 5th year of implementation of the RERA. RERA Authorities have implemented the processes of Registration of the Project, Agent Registration, Extension, modification, Complaint filing, redressal mechanism etc in effective and efficient manner. Various efforts were made by the Authorities to educate various stakeholders in the Industry, their roles and responsibilities in order to achieve the objectives of the Act.

Every stakeholder plays a vital and important role under the Act. Viz., RERA Authorities, Promoters, Landowners, Allottees, Real Estate Agents, Bankers, Financial institutions, vendors, investors, lenders, government agencies, department, professionals like Engineer, Architect and a Chartered Accountant. I presume that each stakeholder understands the importance of RERA and its objective. Efforts were made in complying with the various provisions under the Act, Rules and Regulations.

The Real Estate (Regulation & Development) Act 2016

is a transformation statute for the Real Estate Business. The truest implementation of the statute will bring unbelievable results in the Industry and to the Country.

Over the last 4 years of implementation, RERA Authorities have focused and spent their energy in exercising the regulatory provisions of the Act / Statute. Act has an inbuilt provision wherein the States and RERA Authorities have an obligation to implement the development aspects. These development aspects include strengthening various practices, ease the procedures, recommendations for improvement in policy matters.

During these 4 years, the RERA Authorities have operationalised the website, wherein the promoters have published all the relevant details of the project. In a click of a button, the stakeholders can access to these data and ensure themselves about the correctness of the project and its details.

With the implementation of the website, much more benefits to the buyers of the real estate project. Buyers can verify the details before they take the decision of buying the units in the project.

Over last four years, the Authorities have exercised powers vested under the Act, Rules and levied the penalty on the project for non-compliance of various provisions under the Act.

Even though four years are completed, still long way to go. Few challenges before the RERA Authorities are –

1. Bringing all unregistered projects under its purview
2. Enforcing compliance for the orders passed by the Authority, Adjudicating officer, especially in relation to Allottees complaint and orders thereon
3. Enforcing compliance of all applicable provisions under the Act
4. Continuous monitoring of the progress of development of the project and timely delivery of units to the buyers.

5. Bringing all allied laws in line with RERA Act and Rules
6. Making RERA as the ultimate statute to govern the Real Estate projects
7. Bringing development aspects and implementation of the same, helping industry in Ease of Doing business

Section 32 of the Act gives the power to the Authority to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on -

- (a) protection of interest of the allottees, promoter and real estate agent
- (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project
- (c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials
- (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment
- (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of appropriate construction materials, fixtures, fittings and construction techniques
- (f) measures to encourage grading of projects on various parameters of development including grading of promoters
- (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations
- (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee
- (i) to render advice to the appropriate Government in matters relating to the development of real estate sector

- (j) any other issue that the Authority may think necessary for the promotion of the real estate sector

Let us understand the changes / transformation in real estate business and practices – Post RERA -

Sl. No.	Post RERA Practices
1.	Prior Registration of Real Estate projects is mandatory – every project required to obtain the registration from RERA Authority before marketing, advertising, collection of advances, inviting people etc
2.	Authority either grants or rejects the application for registration within 30 days – further as per the Act, deemed registration if the Authority fail to issue the registration within 30 days of the application
3.	Details of registration granted by RERA for the project available on RERA portal
4.	Details of the Project including Number/ types of apartments or plots booked, approvals granted, NOC's, the status of the project etc are published by the Authority on RERA Portal
5.	Sanctioned plan, layout plan, stage-wise schedule of completion of the project including the provisions for civic infrastructures like water, sanitation and electricity are available on RERA portal
6.	RERA Registration Number shall be displayed on Project Site
7.	All advertising or marketing collaterals shall carry RERA Registration Number, RERA Website address - Print, hoarding, social media handle, SMS, Television etc
8.	RERA Registration number shall be displayed prominently on advertising or marketing collaterals.
9.	Promoter is responsible for obtaining leasehold certificate, commencement and completion / occupancy certificate / completion certificates for all projects

Sl. No.	Post RERA Practices
10.	Shall provide Estimated Cost of the Project while application for registration. Means the promoters of the project shall prepare the comprehensive plan considering the various aspects / situation / risks in the life cycle of development of project.
11.	Landowner and Developer both are responsible under the Act as Promoter and liable to deliver to the allottees in terms of the agreement entered.
12.	Financial management under the Act is mandatory since inception to completion - collection, deposit and withdrawal of money
13.	70% of the amount realised from the allottees shall be deposited into RERA Designated Project Bank Account
14.	Amount shall be withdrawn based on percentage of completion of development work
15.	Withdrawal of money from RERA Designated Project Bank Account shall be supported by Architect, Engineer and CA certificates certifying the percentage of completion of development work
16.	RERA Annual Audit Due date is 30th Sep of every year (6 months from the end of financial year) – Applicable to all projects since inception to completion.
17.	RERA Audit report shall be uploaded along with quarterly updates (Sep quarter)
18.	Quarterly Updates due date - 15 days from the end of the quarter (K RERA)
19.	Any modification in the sanctioned plan shall require Section 14 Compliance – there cannot be unilateral decision of the promoter. Promoter shall obtain the consent from the allottees for any modification in plan.
20.	Change of promoter / transfer of rights requires Section 15 compliance
21.	2/3 rd consent of allottees required for modification of plan or change of promoter

Sl. No.	Post RERA Practices
22.	Extension application for End Date (renewal) for project is mandatory. Means every promoter shall plan and develop the project and deliver with in timelines provided.
23.	File application for extension 3 months before End Date
24.	All Compliances shall be in place (Quarterly updates, Annual Audit etc to seek for extension of end date)
25.	Extension of Registration in accordance with Section 6 of the Act
26.	Revocation of Registration of Project by authority as per Section 7 – Suo moto or based on complaint received
27.	Display of defaulter list on the website of the Authority and inform to all other states about such defaulter
28.	Formation of Allottees Association once major bookings are to be done as per Section 11 – it is mandatory for the promoter to enable the formation of Association of Allottees once major booking in the project is done. Such Association shall be in accordance with the local applicable laws.
29.	Responsible for compensation for loss or damage caused due to incorrect/ false statement made in prospectus or notice of advertisement or in relation to the model apartment, plot or building – Section 12
30.	Communication to Allottees from time to time about progress of development works in the project through any medium
31.	Mentioning the schedule of development of the projects part of Agreement for Sale
32.	Mention the Carpet Area in all documents (marketing, offer documents, agreement, sale deed etc) – Carpet Area is the unit of measurement under RERA.

Sl. No.	Post RERA Practices
33.	Car Park allotment only for exclusive use of private residence of the project. Such car parks shall be allotted in terms of sanctioned plan
34.	No escalation in price once the agreement is entered with the allottees except in case of increase in statutory levies. Means promoter shall consider all possible escalation cost during the tenure of development of the project as part of estimate cost of the project.
35.	Defect Liability is for 5 years - consider the cost of attending / rectifying such defects as part of the cost of the project. Such defects shall be attended within 30 days of notice by the allottees in the project.
36.	Title Defect - Lifetime warranty
37.	Appointment of RERA Registered Agent only to promote / market the RERA Registered project
38.	Periodical training of Agents / Channel partners and train them on importance of communication with customers
39.	Filing of completion application on receipt of Completion certificate and completion of developments works and all obligations as per Agreement for sale
40.	Change of RERA Project designated Bank Account with prior approval of the Authority.
41.	Promoter Shall not collect more than 10 % of cost of the unit without entering into Agreement of Sale with the allottees
42.	Agreement for Sale shall be registered
43.	Follow Agreement of Sale (mandatory) format as notified by RERA – Rule 8A
44.	Cash collection is not permitted as per Agreement for Sale
45.	After executing an agreement for sale, not to mortgage or create a charge on the apartment, plot or building

Sl. No.	Post RERA Practices
46.	Cancellation of allotment only in terms of the agreement for sale
47.	Execute a registered conveyance deed of the apartment, plot or building within 3 months from the date of issue of Occupancy Certificate
48.	Providing and maintaining essential services until handover the maintenance to the Association of allottees
49.	Handing over the common areas, project land to the Association of Allottees as per Section 17 of the Act
50.	Penalties for non-compliance are based on percentage of Estimated Cost of the project Section 59 to Section 68 of the Act
51.	Proper clauses in Joint Development Agreement in relation to roles, responsibilities, mandatory deposit of landowner share of realization of money from the allottees into the project designated bank account, restrictions on withdrawal and utilisation for the development of project and all other compliances under RERA shall be deliberated and mentioned.
52.	Construction Insurance and Title Insurance is mandatory for the Project
53.	Same rate of interest as compensation (maximum of SBI MCLR + 2%) in case of delay by promoter for completion or delay of payment of instalment by allottees.
54.	Speedy dispute redressal mechanism and timely disposal of complaints under the Act.
55.	Promoter can forfeit only booking amount in case of cancellation by the Allottee.

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