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Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

► Indirect Tax ► Direct Tax ► Financial Reporting
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March 2023

Vol. 10, Issue 07

₹ 25/-

English Monthly
for Private Circulation only

35th KSCAA ANNUAL CONFERENCE 2023

Order & Chaos



17th March 2023, Friday &
18th March 2023, Saturday
White Petals, Palace Ground
Bengaluru



March 2023

Promoter's Functions And Duties
Under RERA Act 2016
(volume 10, Issue 07)

CA. Vinay Thyagaraj
Senior Partner, Venu & Vinay,
Chartered Accountants

vinay@vnm.ca www.vnmca.com
+91-80-26606498, 26671433, 26676751

PROMOTER'S FUNCTIONS AND DUTIES UNDER RERA ACT 2016



CA. Vinay Thyagaraj

Real Estate (Regulation and Development) Act, 2016, which is a central legislation in India that seeks to regulate the real estate sector and promote transparency and accountability in the sector.

In the context of RERA, a promoter refers to any person, who develops or constructs real estate projects for the purpose of sale to the public. The promoter is responsible for obtaining all necessary approvals and permissions for the project, and for ensuring that the project is completed in accordance with the approved plans and specifications issued by the planning authority.

Under RERA, the promoter is required to register the real estate project with the RERA authority before advertising, marketing, or selling any apartments or plots in the project. The promoter is also required to provide certain information, affidavits and documents related to the project, such as the project details, approvals, layout plans, and timelines for completion, at the time of registration.

In addition, the promoter is required to maintain a separate bank account for each project, and to deposit 70% of the funds realised from buyers into this bank account. This is to ensure that the funds are used only for the development of the project, and to prevent diversion of funds.

RERA also provides for penalties and other consequences in case of non-compliance with its provisions, including imprisonment and fines.

Section 11 of the RERA Act specifically provides for the Functions and duties of the promoters. These duties are mandatory in nature.

Section	Provision	Provision	Author inputs
11(1)	On receipt of registration certificate, promoter shall update/enter the details on the website for the public viewing	a) RERA registration number (b) <u>quarterly up-to-date</u> I. the list of number and types of apartments or	

Section	Provision	Provision	Author inputs
		plots, as the case may be, booked; II. the list of number of garages booked; III. the list of approvals taken and the approvals which are pending subsequent to commencement certificate; IV. status of the project; and (c) such other information and documents as may be specified by the regulations made by the Authority	It is important for the promoters to submit the details quarter on quarter basis within the due date as provided in the Rules. Non submission of Quarterly updates / Quarterly returns attracts penalty U/s. 60 of the RERA Act. The penalty may extend to 5 % of the cost of Real Estate Project
11(2)	Advertisement or prospectus issued or published by the promoter	(a) Shall mention <u>prominently</u> the website address of the Authority, (b) RERA registration number obtained from the Authority	It is important for the promoter to mention these details without fail. The authorities have issued various guidelines with respect to advertisement and size of the fonts to be used etc. Registration numbers shall be Prominently visible on the advertisement.

Section	Provision	Provision	Author inputs
11(3)	The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottees	(a) sanctioned plans, layout plans, (b) specifications, approved by the competent authority, (c) the stage wise time schedule of completion of the project, (d) provisions for civic infrastructure like water, sanitation and electricity.	The promoter shall provide the details to the allottees while issuance of allotment letter. It is recommended to obtain and keep a copy of the letter or make a paragraph in the allotment letter that the details and documents related to the project are provided to the allottees and obtain the acknowledgment from the allottees.
11(4)	(a) The promoter shall be responsibilities for all obligations till the conveyance of all the apartments or plots and common areas to the association -	(a) As per the Act, Rules and notifications issued by the Authority (b) As per the terms of agreement for sale entered with the allottees (c) To the association of the allottees Note – the structural defect or any other defect shall be as per sec 14(3) of the Act, Viz., 5 years from the date of possession.	
	(b) responsible to obtain	(a) the completion certificate or (b) the occupancy certificate, or both, as applicable (c) make it available to Allottees and to the association	RERA Act made it mandatory for the promoter to obtain the completion certificate from the planning authority stating the project is completed in accordance with the plan sanctioned.

Section	Provision	Provision	Author inputs
			Further, the authority made it mandatory to submit and upload these certificates online on the portal of the authority.
	(c) responsible to obtain	The lease certificate, where the real estate project is developed on a leasehold land	Specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees
	(d) responsible for providing	maintaining the essential services, on <u>reasonable charges</u> , till the taking over of the maintenance of the project by the association of the allottees;	Essential services include water, electricity, sanitation, safety and security to the assets. It is important to note that the provision mentioned the charges as reasonable towards the maintenance. Reasonability is always subjective.
	(e) responsible for	<u>enable the formation</u> of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable. (in case of absence of local laws, the association shall be formed within 3 months of majority allotments in the project)	Association is for the purpose of maintenance of common areas or common assets in the Real Estate Project. Act mandates the promoter to enable the formation of the association. Viz., it is the duty of the allottees to

Section	Provision	Provision	Author inputs
			come forward, volunteer to form the association
	(f) responsible for	(a) execute a registered conveyance deed of the apartment, plot or building in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act	It is important to note and understand the method of conveyance of the common areas to the association of the allottees. State shall notify the method of conveyance to comply with the provisions of Section 17 of the RERA Act
	(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees	(a) Land Cost (b) Ground Rent (c) Municipal Taxes (d) Water (e) Electricity charges (f) Maintenance charges (g) Mortgage loan, interest (h) Any other liabilities	This provision makes it clear that the promoter continues to incur the expenses or liabilities till he transfers the physical possession of the real estate project. Hence it is recommended that the promoter shall handover the possession on completion of the project to avoid the financial burden or liability of the project.
	(h) After enter into agreement with the allottees	The promoter shall not create any mortgage on such apartment or plot or building	

Section	Provision	Provision	Author inputs
11(5)	The promoter may cancel the allotment only in terms of the agreement for sale	Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause	
11(6)	The promoter shall prepare and maintain all such other details as may be <u>specified, from time to time</u> , by <u>regulations</u> made by the Authority.		

Apart from above table, following are the other obligations or mandatory compliances under RERA Act 2016

Section	Provision	Provision	Author inputs
3	Prior Registration of Real Estate Project	Section 3 of the RERA Act mandates the promoter to register the real estate project before market, advertise, sale, collection of advance etc	The promoter or professionals should understand the scheme of the project before filing an application for grant of the RERA registration.
4(2)(L)(D)	Bank Account opening, depositing, withdrawal of funds	Section 4(2)(L)(D) of the Act mandates the promoter to a. Open the Rera designated bank account in scheduled bank b. Deposit minimum 70% of the money realised from the allottees in the project	Financial management under RERA is a mandatory and non-compromise provision under RERA. The promoters and the professionals shall read and understand the Act, Rules and Bank Account directions 2020 and other notifications

		c. Withdrawal of money so deposited based on the % of completion of the project after obtaining the professional certificates of Engineer, Architect and a Chartered Accountant in practice	issued by the Authority with respect to bank account and financial management of the project. Section 60 of the Act may be invoked by the RERA Authority for non-compliance, the penalty for such non-compliance may be extended upto 5 % of the estimated real estate cost
4(2)(L)(D)	Annual Audit of Accounts under RERA	3 rd provision to section 4(2)(L)(D) of the RERA Act 2016 mandates the Annual Audit of Accounts of the Real Estate Project. Same shall be conducted within 6 months from the end of the financial year.	The authorities has notified the form and manner such annual audit certificates shall be obtained from the Chartered Accountants in practice. Many states have invoked the penal provisions for non-submission of Annual Audit of Accounts reports to the RERA Authorities.
13	Agreement of Sale	The promoter shall enter the agreement of sale as per the format notified by the RERA Authorities. The RERA Act 2016 further states that the promoter shall not collect more than 10 % of the unit cost without entering into the Agreement of sale.	Pre RERA the promoters used to enter into agreement of sale by collecting 15 % to 30 % of the unit consideration. RERA brought the standardisation and restriction of collection more than 10 % Further the promoters shall follow the format as notified by the state RERA Authorities. Most of the clauses in the agreements are NON-NEGOTIATE

			clauses. The promoter shall not modify or change or delete mandatory clauses in the agreement
14	Adherence to sanctioned plans and project specifications by the promoter	The project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. Any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person and any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least 2/3 rd of the allottees.	For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, <u>shall be considered as one allottee only</u>
	Defect Liability Period (DLP)	In case any a) structural defect or b) any other defect in i) workmanship, ii) quality or iii) provision of services or iv) any other obligations	

		of the promoter as per the agreement for sale is brought to the notice of the promoter <u>within a period of five years by the allottee from the date of handing over possession,</u>	it shall be the duty of the promoter to rectify such defects without further charge, <u>within thirty days,</u> and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act. Promoters and professionals shall consider the additional cost due to DLP as part of project cost
15	Obligations of promoter in case of <u>transfer of a real estate project to a third party</u>	The promoter <u>shall not transfer or</u> assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from 2/3 rd allottees, except the promoter, and without the prior written approval of the Authority	In case of the promoters transferring the project or rights in the project. Mandatory consent from the allottees and approval from the authority. These are prior approval. Guidelines and online application is available to comply with the provisions
16	Obligations of promoter regarding insurance of real estate project.	Promoter shall obtain 1. construction insurance policy 2. title insurance policy	Promoter shall pay the premium of the insurance and transfer the same to the allottees or association of allottees
17	Transfer of title - The promoter shall	(a) execute a registered conveyance deed in favour of the allottee along with the undivided	

		proportionate title in the common areas to the association of the allottees or the competent authority, (b) hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, (c) other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws	The state shall pass proper statute and procedure to convey the common areas to the association of the allottees.
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Further the penalty and prosecution related to the non-compliance of the Act with respect to functions and obligations of a promoter are in accordance with the Section 59, 61, 63 and Section 69 of the Real Estate (Regulation and Development) Act 2016 read with rule 45 of the Karnataka Real Estate (Regulation and Development) Rules 2017. The quantum of penalty proposed in the Act ranges from 5 % to 10 % of the estimated cost of the real estate project.

To conclude the RERA Act has considered the various aspects of the Real Estate and made promoters responsible or obligated to follow / comply with the same.

*Author can be reached at :
vinay@vnnv.ca*

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