



REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 - SUMMARY

Date of Enactment: 26th March, 2016

Chapters: 10

Sections: 92

Section No.	Section Summary
2.	Definitions Clause It introduced 43 definitions, among which are: ‘Advertisement’, ‘Agreement for Sale’, ‘Allottee’, ‘Appellate Tribunal’, ‘Appropriate Government’, ‘Authority’, ‘Carpet Area’, ‘Commencement Certificate’, ‘Completion Certificate’, ‘Estimated Cost of Real Estate Project’, ‘Interest’, ‘Occupancy Certificate’, ‘Promoter’, ‘Real Estate Agent’, ‘Real Estate Project’. Notable definitions include: Appellate Tribunal: the Real Estate Appellate Tribunal (for short ‘REAT’) established under section 43 Authority: the Real Estate Regulatory Authority (for short ‘RERA’) established under sub-section (1) of section 20 Carpet Area: the net usable floor area of an apartment, including internal partition walls of the apartment. It excludes the area of external wall, service shafts, exclusive balcony or verandah area and exclusive open terrace. Besides ‘Carpet Area’, the Real Estate Industry has been using terms such as: ○ Built-up Area (BUA) includes carpet area plus area of external walls, balconies, terraces or lawns etc. It includes all area belonging solely to one particular unit. ○ Super Built-Up (SBA) area includes BUA plus proportionate area of common areas like lobbies, lifts, shafts, etc. Interest: the rates of interest payable by the promoter or the allottee, as the case may be. In the explanation to the clause it is mentioned that the rate of interest in case of default by either of the parties, paid to the other party shall be same for both cases. That is, interest rate payable, in case of default, by promoter or the

	allottee shall be equal. Real Estate Agent: Any person, who negotiates on behalf of the one person in the sale of his plot/apartment/building with another person, or who negotiates the sale of plot/apartment/building of another person to him, or who introduces prospective buyers and sellers to each other for sale of plot/apartment/building and receives remuneration or fees or commission for his services.
3.	Prior Registration of real estate project with RERA. Promoters are not allowed to advertise, market, book, sell, or offer for sale any plot/apartment/building before registering the project with Real Estate Regulatory Authority (RERA). Ongoing projects are required to be registered within 3 months from commencement. Registration not required where land size does not exceed 500 sq. meters, or when number of apartments in total does not exceed 8, or where completion certificate has been received for the project.
4.	Application for Registration Following documents shall be enclosed with the application: 1. <u>Details of the Promoter:</u> Name and type of enterprise, Registered Address, particulars of registration, Name and Photographs of the Promoter. 2. <u>Details of the Projects launched so far:</u> status of development, any delays in completion, pending cases. 3. <u>Authenticated copy of the Approvals and Commencement Certificate.</u> 4. <u>Details of the Project:</u> the location, sanctioned plan, layout plan, plan of development works, and other specifications of the proposed project. 5. <u>Ownership Documents:</u> Proforma of the Allotment Letter, Agreement for Sale, and the Conveyance Deed proposed to be signed by the allottees. 6. <u>Details of Apartment:</u> the carpet area, number and types of apartments along with areas of balcony/exclusive open terrace. Also, the number and areas of garages. 7. <u>Details of Real Estate Agents:</u> Names and addresses of all real estate agents to be engaged. 8. <u>Details of Persons Involved in Development:</u> Names and addresses of Architects, Engineers, Structural Engineer, and any other person involved. 9. <u>Declaration by the Promoter:</u> That he has legal title to the land along with proof thereof, that the land is free from encumbrances or with details of the encumbrance, that prescribes the time period in which the project is to be completed, that 70% of the amount for the project from allottees shall be deposited in a separate account, and shall be used only for that purpose, that the Promoter shall take pending approvals on time, and that he has furnished such other document as may be prescribed by the Act. RERA shall have an operational online system for submitting applications for

	registration, within a period of one year from the date of its establishment.
5.	Grant of Registration Authority shall within a period of 30 days from receipt of application reject or grant registration. If registration is granted, then RERA shall provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project. If neither rejected or granted registration, within 30 days time, the application shall be deemed to be granted registration. Registration shall be valid for the duration of time as mentioned by the Promoter in the application, the time in which the project is to be completed.
7. & 8.	Revocation of Registration For three reasons, as follows, RERA may <i>suo motu</i>, on receipt of a complaint, or on the recommendation of the competent authority, revoke registration: 1. Promoter makes default in doing anything required under the Act. 2. Promoter violates terms and conditions of the approval granted by a competent authority. 3. Promoter is involved in any kind of unfair practices (false representation of the standard of services, of approval or affiliation that does not exist, or any other false or misleading representation regarding the services, or practice of any fraudulent practices) Revocation may only be done after, RERA gives, in writing, a 30 days' notice stating the grounds for proposed revocation, and consideration of any cause shown by the Promoter within the notice period. RERA, upon revocation: 1. Shall debar the Promoter from accessing the Authority's website in relation to the project and the name of the Promoter shall be added to the list of defaulters along with his photograph on the website. Other State RERAs shall be intimated of such revocation. 2. Shall facilitate the remaining development works to be carried out as per the decision taken by it, which may include carrying out of the remaining development works by competent authority or by the association of allottees. 3. Shall direct the bank holding the project bank account to freeze it, and thereafter may direct the bank to de-freeze it for the purposes of facilitating the completion of the project.
9.	Registration of Real Estate Agents Before facilitating the sale or purchase of any unit part of a real estate project registered under the Act, being sold by the promoter, the real estate agent (for short 'Agent') must have registration under this section.

	For registration, one must make an application to RERA, along with such fee and relevant documents, as may be prescribed. Registration may be granted for the entire Indian territory, or as the case may be. Registration may be for the prescribed period, and subject to renewal, in the manner and on payment of such fee, as may be prescribed. A registered Agent shall have a registration number, which shall be quoted in all sales facilitated by him. Registration of an Agent may be revocable or suspendable on the grounds such as breach of provisions of the Act, or when the Authority is satisfied that such registration has been obtained by the Agent via misrepresentation or fraud. Opportunity to be heard in this regard shall be given before any such revocation or suspension.
11.	Functions and Duties of Promoter 1. A registered Promoter shall use Login ID and password provided to him to the Authority's website to create a webpage and enter all details of the project for public viewing, including details of registration and quarterly up-to-date status of project, quarterly up-to-date list of number and type of apartment/units and garages booked and quarterly up-to-date list of approvals taken and pending approvals. 2. The advertisement/prospectus issued by Promoter shall have prominently mentioned the Authority's website, where abovementioned information is available for public viewing. 3. Promoter shall, at the time of booking and issuing of allotment letter, make available to the allottee: i. Sanctioned plans, layout plans with specifications as approved by competent authority, by display at site or as may be prescribed by RERA. ii. Stage wise schedule of completion of project 4. Promoter shall obtain all relevant documents such as completion certificate or occupancy certificate (or both, as applicable), the lease certificate (with all dues paid in regard to leasehold land, where the project is on a leasehold land) and make it available to the allottees. 5. Promoter shall execute a registered conveyance deed of the apartment, plot or building in favour of the allottee along with undivided proportionate title in the common areas to the association of allottees or competent authority as the case may be. 6. Promoter shall pay all outgoings until he transfers the physical possession of the project to the allottee. Outgoings may include: land cost, local taxes, electricity/water charges, maintenance charges, loans and mortgages. The promoter also has the right to cancel allotment, but only on the terms of agreement of sale. Although, allottee shall have the right to approach the Authority aggrieved by such cancellation citing it unilateral and not in accordance with the terms of the agreement of sale.

12.	Compensation for loss/damage due to incorrect or false information provided by Promoter Promoter shall have to compensate any person who makes a payment on the basis of information in the notice advertisement or prospectus or model apartment and sustains loss or damage due to incorrect, false information. If such person shall decide to withdraw from the project then his entire investment along with interest shall be returned to him along with the compensation.
13.	No Deposit or Advance without Agreement for Sale Promoter shall accept amount not more than 10% of the cost of the apartment as advance payment/application fee without entering into a registered agreement for sale. Such an agreement shall include details of the project, dates and manner of payments are to be made, and the date on which possession is to be handed over, rates of interest payable by either party in case of default.
15.	Transfer of Rights and Liabilities in Project to Third-Party Promoter shall first obtain consent from two-third allottees and written approval of the Authority before transferring or assigning his majority rights and liabilities in the project.
18.	Return of Amount and Compensation If Promoter is unable to complete or give possession on time as stipulated in the agreement for sale 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, if the allottee wishes to withdraw from the project, to return the investment with interest on it as well as compensation for the same. If the allottee does not wish to withdraw then the Promoter shall be liable to pay interest for every month of delay till possession. Promoter is liable to pay compensation for failure in discharging any other obligation imposed on him under the Act or the agreement for sale. In case of loss caused to the Promoter due to defective title of land, he is liable to compensate the allottees according to the Act.
19.	Rights and Duties of Allottees 1. Allottee shall be entitled to obtain information regarding sanctioned plans, layout plans with specifications as approved by the competent authority, and any other information as provided for in the Act or the agreement for sale. 2. Allottee shall be entitled to obtain stage wise schedule of completion of project. 3. Allottee shall be entitled to claim possession of the apartment on such date as

	declared by the Promoter to be the date of completion. 4. Allottee shall be entitled to obtain a refund with interest and compensation from the Promoter, if the Promoter fails to give possession of the apartment in accordance with terms of the agreement of sale or due to revocation/suspension. 5. Allottee shall be entitled to have the necessary document and plans, including that of common areas after physical possession of the apartment. 6. Allottee shall be responsible to make payments within such time and in the manner as prescribed in the agreement for sale for an apartment, including any taxes and charges. 7. Allottee shall be liable to pay interest for any delay in payment towards any amount or charges mentioned above. Obligations and liabilities of the Allottee shall be reduced when mutually agreed upon by allottee and promoter. 8. Every Allottee shall participate in forming an association of allottees. 9. Allottee shall take physical possession of the apartment within 2 months of issuance of the occupancy certificate. 10. Allottee shall participate towards registration of the conveyance deed of the apartment.
20.	Establishment of RERA The Real Estate Regulatory Authority (RERA) will come into existence one year from the date of commencement of the act, by a notification, which will be issued by the appropriate government. The Government or Governments, as the case may be, have the discretion of establishing just one RERA for two or more states, or establish more than one RERA in a single state. The Government can appoint any authority to carry out the functions of a RERA for as long as the RERA is not established. As soon as the RERA is established, all the cases would be transferred from the authority acting as RERA to the established RERA. RERA shall be a body corporate.
21. 22. & 23.	Member of RERA and Appointment of Members RERA will consist of 1 chairman and minimum 2 whole time members. The appropriate government will have the authority of appointing the members, on the recommendation of a selection committee which will comprise of the Chief Justice of the High Court, Secretary of the Department (Housing and Law Secretary). The Chairperson is to have a minimum experience of 20 years in the members are to have 15 years in urban development, real estate development, infrastructure, management, industry, etc. The Chairperson and the members will hold the office for 5 years or until they

	turn 65 years of age.
31.	Filing of Complaints Any aggrieved person may file a complaint with the Authority or the adjudicating officer for any violation of the provisions of the Act against any promoter allottee or real estate agent.
32. 33. & 34.	Functions of RERA 1. To register and regulate real estate projects and real estate agents. 2. To publish and maintain a website of records, publicly accessible, of all projects with details. 3. To maintain a database online, publicly accessible, of defaulter Promoters with their names and photographs. 4. To maintain a database online, publicly accessible, of registered real estate agents and a list of those whose registration has been rejected or revoked. 5. To advice and make recommendations to the Government to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.
35. -	Powers of RERA 1. To impose penalty or interest on Promoter/Allottee/Agent in regard of any contravention of obligations. 2. To regulate its own procedure. 3. To <i>suo motu</i> make reference to Competition Commission of India of any matter that has effect of market power of monopoly situation being abused for adversely affecting the interest of allottees. 4. To, <i>suo motu</i> or upon a complaint, call upon Promoter/Allottee/Agent at any time and order to furnish in writing information or explanation. 5. Authority may appoint one or more persons to investigate and inquire in relation to the affairs of Promoter/Allottee/Agent. 6. Authority may have the following powers, same as a civil court, namely: i. Direct the discovery and production of books of accounts and other documents ii. Summon and enforce the attendance of persons and examine them on oath iii. Issue commissions for the examination of witnesses or documents 7. To restrain Promoter/Allottee/Agent from carrying any act until the conclusion of inquiry, which it believes to be in contravention of the Act. (Interim Orders) 8. To give directions to Promoter/Allottee/Agent, that would be binding on them. 9. To amend orders passed by it, only within 2 years of the date of passing of order. 10. To recover interest/penalty/compensation from Promoter/Allottee/Agent. 11. To enforce orders or directions of any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be.

43.	Establishment of Real Estate Appellate Tribunal Any person aggrieved by the direction, decision or order made by the Authority or by an adjudicating officer may appeal before REAT. Ordinarily one state to have one REAT. By the act of governments, one may have more than one Tribunal and more than one state may have one sole Tribunal. States to establish Tribunals within one year from enactment that are to be known as— (name of the State/Union territory) Real Estate Appellate Tribunal.
44.	Application for Settlement of Disputes and Appeals Appeals may be filed by appropriate Government or the competent authority or any person aggrieved. Appeals may be filed within 60 days from date of order of Authority. Tribunal may entertain appeals beyond this period subject to satisfaction of the cause of delay. On receipt of an appeal Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.
53.	Powers of Tribunal 1. To regulate its own procedure. 2. Powers same as a civil court. Tribunal to be not bound by procedure in the Code of Civil Procedure, 1908 or by the rules of evidence contained in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice.
56.	Legal Representation Applicant/Appellant may either appear before tribunal in person or authorise one or more of the following: accountants, company secretaries, cost accountants, legal practitioners, or any of its officers.
57.	Orders passed by Tribunal to be executed as Decree Every order made by the Tribunal shall be executable by itself or via civil court having local jurisdiction, as if it were a decree made by court.
58.	Appeal to High Court Within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, one may file an appeal to High Court on grounds specified in section 100 of the Code of Civil Procedure, 1908.

	No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.
59.- 61. 63. 64.	Penalties & Punishment for Promoter 1. <u>For non-registration:</u> Promoter found in contravention of section 3 (registration), he shall be liable to penalty up to the extent of 10% of the estimated cost of project. Repeat violation or non-compliance of the above shall be punishable with imprisonment of up to 3 years or with fine up to the extent of 10% of project cost, or both. 2. <u>For Contravention of Section 4 (Application for Registration)</u> A Promoter for providing false information or contravention of Section 4, shall be liable to a penalty up to 5% of project cost. 3. <u>For Contravention of any other Provisions</u> A Promoter for contravention of provisions other than Sections 3 & 4, shall be liable to pay a penalty up to 5% of project cost. 4. <u>For failure to comply with orders of Authority</u> A penalty for every day during which default continues extending up to 5% cost of project. 5. <u>For failure to comply with orders of Appellate Tribunal</u> Punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to 10% of project cost.
62. 65. & 66.	Penalties & Punishments for Real Estate Agent: 1. <u>For Non-registration and Contravention of Sections 9 & 10:</u> Any Agent if contravenes Section 9 (Registration) or Section 10 (Functions), he shall be liable to a penalty of Rs. 10,000/- for everyday during which default continues, which may extend up to 5% of cost of apartment. 2. <u>For failure to comply with orders of Authority:</u> Liable to a penalty for every day during which such default continues, which may cumulatively extend up to 5% of the estimated cost of apartment. 3. <u>For failure to comply with orders of Tribunal:</u> Punishable with imprisonment for a term which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the estimated cost of apartment.

67. 68.	Penalties for Allottee 1. <u>For failure to comply with orders of Authority</u> Liable to a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the apartment. 2. <u>For failure to comply with orders of Tribunal</u> Punishable with imprisonment for a term which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the apartment.
69.	Offences by Companies All persons in charge of the conduct of business of company, at the time offence was committed, as well as the company, shall be deemed guilty of the offence, and shall be proceeded against and punished accordingly. If consent or connivance or any neglect with regard to an offence under the Act may be established on the part of any director, manager, secretary or other officer of the company, such officer of the company may deemed guilty Defence may lie in the establishing the fact that the offence was committed without one's knowledge and that due diligence was exercised to prevent commission of such offence.
82.	Power of appropriate Government to supersede RERA Appropriate Government may by notification supersede the Authority for a period not exceeding six months if it is of the opinion that RERA for reasons beyond its control is unable to perform its functions and duties, or that the Authority has persistently defaulted in complying with directions given by the government or by default in performance of functions has led to financial position of the Authority to suffer, or that it becomes necessary for public interest.
84. & 85.	Power to make Rules Within 6 months of enactment, state government shall make rules for carrying out provisions of the Act. RERA within 3 months of its establishment shall make rules for carrying out provisions of the Act.