The Real Estate (Regulations and Development) Act, 2016

* Prevention is better than cure.
* Complaint Redressal is possible thru Consumer Protection Act, 1986.
* 10 lacs people buy houses every year.
* Real estate sector is second largest employer in the country.
* Average 3000-4000 projects are launched every year in 27 major cities.
* There are more than 75000 real estate companies
* This act is a “Project Development Skill” up gradation tool for Real Estate Developer. They need to plan, Manage, Design, Engineer and Deliver the Project in a time bound manner .
* At Present 40 Regulatory agencies are involved in the project clearance. Henceforth single window clearance in 30 days with yes or no attached with reasoning.
* The Act will impact 42% population of Country.
* This Act will help in development of city with proper planning and infrastructure.
* The dream may be reality for Smart city in next 2 decades.
* This Act received President’s Assent on 25.3.2016.
* The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

CONSUMER / ALLOTTEES

RERA=SEBI

REAL ESTATE AGENT/BROKER

PROMOTERS

* Allottee does not include occupant in capacity of Tenant.
* Apartment includes all possible use of units.

2 (*e*) "*apartment" whether called block, chamber, dwelling unit, flat, office,*

 *showroom, shop, godown, premises, suit, tenement, unit or by any*

 *other name, means a separate and self-contained part of any*

 *immovable property, including one or more rooms or enclosed*

 *spaces, located on one or more floors or any part thereof, in a*

 *building or on a plot of land, used or intended to be used for any*

 *residential or commercial use such as residence, office, shop,*

 *showroom or godown or for carrying on any business, occupation,*

 *profession or trade, or for any other type of use ancillary to the*

 *purpose specified;*

* Carpet Area…

*2 (k) "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*

* Estimated cost of Real Estate Project …..

 2(*v*) *"estimated cost of real estate project" means the total cost involved in*

 *developing the real estate project and includes the land cost, taxes, cess,*

 *development and other charges*

* Plot development scheme is also covered.
* Prior Registration of Real Estate Project is must if land area is exceeding 500 Square meters or number of apartments exceeds eight. This Condition can be Cancelled by appropriate Authority for Registration.
* Registration for ongoing project needs to get within 3 months from date of commencement of Act if, completion certificate is not received .
* Redevelopment Project, which **does not include** **new allottee**, Registration is not required.
* Phase wise Registration is required.
* Application for Registration is accompanied by all details of Promoters, Engineers, Architect, agents with past performance of last five years along with details for completion of project, Approval, delay, dispute etc.
* Declaration for 70% fund to be collected , shall be utilized **in proportion of project development** as shall be certified by Engineers, architect and **Chartered Accountants**.
* Within 6 months , accounts need to be audited by CA from year ending and get **recertified utilization of fund**.
* The Draft (Proforma) Agreement to Sale, Allotment letter and Conveyance Deed also to be attached with application.
* Collection Money to be parked only in ‘Schedule Bank’
* Grant of Registration or rejection of application should be done in 30 days, failed to do so, automatic deemed granted Registration. Registration will be valid till estimated projected completion date. Extension with fees payment maximum 1 year. Force Majeure may be considered.
* On granting of Registration, Login ID and Password will be allotted for creating web page on RERA’s Website.
* On Complaint or Suo Motu Revocation of Registration – non compliances of standards, non-fulfillment of promise/ declaration. It leads to freezing of Bank Account. Promoters name will appear in defaulter list.
* Registration of Real Estate Agent is a must .Registration number will have validity period for Services to be rendered .
* **Promoters are suppose to update details related to project developments on quarterly basis. (Just like listed company).**
* Formation of Maintenance/ welfare Association within 3 months from date of **Majority booking done**.
* Pay all Maintenance Obligation till Physical Possession is handover.
* Non Compliance of Advertisement / Prospectus terms will cost more to promoters with refund of advance/ deposit money.
* Maximum 10% of Cost of Apartment can be accepted as booking advance. Thereafter as per agreement.
* No Structural Changes permitted unless **⅔**allottees agree in writing. Any Structural defect within 5 years of possession need to be carried out within 30 days from allottee’s notice.
* Transfer of Real Estate Project to third party with consent of **⅔**allottees . Booking in the name of Association/ Relatives are considered as one allottee. Even Third party has to meet approved time line.
* Promoter should insured the project till physical possession to be handover to association. **In case of defective title , insurance company has to compensate adequate amount to Allottee** .
* Conveyance deed in favour of allottees has to be executed within 3 months from date of issue of occupancy certificate.
* If promoters fails to complete or is unable to give possession, he should return money with interest or pay monthly interest as per choice of allottee.
* Every allottee should pay consideration as per agreement , failing doing so, attract interest.
* Every allottee should take physical possession within 2 months of occupancy certificate.
* RERA should be established by appropriate government, till such time secretary dealing with housing may work as RERA and partly provisions of Act can be enacted.
* Questions come up before RERA should be deposed off in 60 days.
* Any Complaint, relating to violation of provision filed by association or any voluntary consumer association.
* Authority (RERA), vesting same powers as of civil court, can Suo Motu, by order in writing, call upon promoters, allottees or real estate agent.
* Authority, may Suo Motu, in the matter / situation related monopoly etc, refer to competition commission.
* Non Appealed order can be rectified, which is having apparent mistake on record within 2 years.
* Central Advisory council will consist of Government Official, Ministers and representation from promoters, consumers, construction labour, NGO and real estate agent.
* Appeal/ Within 60 days can be admitted with R.E. Appellate , after 30 % payment of order payable amount including interest and penalty. Appeal needs to be dispose of in 60 days.
* Appellate Tribunal shall be deemed to be Civil Court under chapter XXVI of code of Criminal procedure 1973 and proceeding under Indian Penal Code.
* CA/CS/ICWA/Advocate can appear before Appellate Authority
* Order of Appellate Authority can be challenged in High court within 60 days.
* Punishment for non Registration (under section -3) of Project shall attract 10% penalty of estimated cost of project , and if not paid 3 years imprisonment plus 10% more penalty.
* Providing misinformation under section 4 will attract penalty upto 5% of estimated cost. Any other non compliance will lead to penalty upto 5%.
* Unregistered Real Estate Agent has to pay Rs.10000/- per day and may be extent upto 5% cost of project for non registration or soliciting business for which he is not qualified .
* Complaint lying with consumer Redressal forum at any level can be withdrawn with permission and can be filed under this act.
* No civil court or magistrate will entertain matter related to subjects as specified in this act.
* Within 6 months appropriate government will make rules from commencement of act.
* The Authority shall, within 3 months of its establishment make regulations.
* The Provision of this act should have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Further clarification required while issuing Rules and regulation or by amending this act :

* Definition for “structural defects “
* Elements in detailed for working out “estimated project cost “
* Appointment of Chairperson and two committee members should absolutely a professional person rather political or bureaucratic appointment under section 21.
* Check list for timely approval from Authority .
* Spell out Accountability of Authority for timely approval and extension of project
* Detailed guidance for ongoing projects and applicability of Act

The expected outcome of this act :

* Timely delivery of real estate units.
* Better quality of real estate products.
* Avoidance of creating multiple charges and finance on same property.
* Land has to be acquired / possessed or agreed to hold in advance and therefore better title and less chances of misrepresentation.
* Planned city development.
* Positive impact on joint venture arrangement
* Safeguard of customers money will increased
* Better transparency of project and real estate market
* Price of units will go up .
* Cash components from real estate will reduced gradually
* Service tax revenue will boost up
* Elimination of unorganized brokers
* Uniformity in legal documentation
* The manufacturer of raw material in construction industry will have authenticate data for their production cycle and marketing exercise.
* Over all Black money cycle will be punctured .
* Bankers reliability on project execution will be increased.
* Due to various certification process , the service sector opportunities will also increased .
* Due to increasing transparency, corruption cycle may disrupt.
* The accessibility of data from public domain by Income Tax Department may be cause of concerned to Real estate sectors. They may start applying AS -7 Vs AS-9 Vs ICDS , estimated cost of project –I Vs II etc.

**The cases on which the Department relies upon for the proposition that Percentage Completion Method should be followed are :**

1. Sri Sukhdeodas Jalan v CIT (26 ITR 617)(Patna)
2. Tirath Ram Ah ja u v CIT (103 ITR 15)(Del)
3. P. M. Mohammed Meerakhan v CIT (73 ITR 735)(SC)
4. CIT v. Nandram Hunatram (103 ITR 433)(Ori)
5. Uttam Singh Duggal & Co. Pvt. Ltd. v. CIT (127 ITR 21)(Del)
6. Champion Construction Co. v. ITO (5 ITD 495)(Bom)
7. S K Estates (P) Ltd. v. ACIT (60 ITD 621)(TBom)

**Decisions where Project Completion method has been accepted**

1. CITv. Bilahari Investment P. Ltd (299 ITR 1)(SC)
2. CIT v Khoday Distilleries Ltd (Kar HC) (ITRC Nos. 19 to 21 of 1993, dated 12.9.1995)
3. CIT v. V. S. Dempo & Co. Pvt. Ltd. (131 CTR 203)(Bom)
4. CIT v. Vikas Oberoi (165 Taxation 7)(Bom HC)
5. Awadhesh Builders v. ITO (2010)(37 SOT 122)(Mum)
6. Malka Construction Co. in ITA No. 4068-4069/Bom/85 dt. 7.3.1989;
7. Super Builders & Developers P. Ltd. in ITA 2080/Bom/1986 dt. 5.6.1990;
8. P.D.R. Pvt. Ltd in ITA 2704/B/82 dt. 22.1.1983;
9. D. K. Enterprises in ITA 9618/B/1990 dt. 17.7.1991 (39 ITD 394);
10. Flowers Pvt. Ltd. (1989) 33 TTJ (Del) 17
11. Davy Power Gas Ltd. in ITA No. 819/Bom
12. ACIT v. Rajesh Builders Builders (2004-TIOL-88-ITAT-MUM)
13. Rajesh Constructions (ITAT No. 3592/Bom/95, Order dated

 05.09.2003)(Bom ITAT)

1. Maitri Developers v. ITO (2011-TIOL-472-ITAT-Mum)

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