

Statutes of Real Estate Sector at a Glance

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Abstract

In recent years, the real estate sector has experienced substantial growth, yet it has remained relatively unregulated in terms of safeguarding consumer interests. While consumer protection laws exist, they primarily offer remedies after issues arise rather than proactively ensuring prevention, protection, or precautionary measures. This absence of professionalism and standardization has hindered the sector's full potential for growth. The Real Estate (Regulation and Development) Act, 2016 is intended to fill this vacuum and achieve the objectives of ensuring accountability and answerability towards allottees and protecting their interests, infusing transparency and fair play, reducing fraud and delay establishing symmetry of information between the promoter and allottee, imposing responsibilities on both promoters and allottees and establishing regulatory oversight so that a proper mechanism is established in order to enforce contracts.

Keywords: Real estate sector, consumer protection laws, the real estate (regulation and development) act, allottees

INTRODUCTION

Background and Law Before RERA Under Real Estate Sector

Before the introduction of RERA (Real Estate Regulation and Development Act) [1], Maharashtra operated under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act of 1963 [2], commonly known as MOFA. Under MOFA, Section 4A explicitly stated that the allotment letter issued by the builder would have legal enforceability against the builder, regardless of the provisions outlined in the Indian Registration Act.

Section 4A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act allows an unregistered agreement for sale made under section 4, whether before or after the 1983 Amendment Act, to be accepted as evidence in legal proceedings. This evidence can be used to establish a contract in a specific performance suit according to Chapter II of the Specific Relief Act, 1963 [3]. It can also serve as evidence of partial performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 [4], or as evidence of any related transaction that does not require a registered instrument. This provision stands regardless of any prevailing laws, court judgments, decrees, or orders.

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53A. Part Performance

Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the

contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Section 53A of the Transfer of Property Act, 1882, is designed to safeguard the interests of potential property transferees. It allows them to retain possession of a property even if the transferors fail to complete the transfer as required by law, without any fault on the part of the transferees. This section essentially incorporates a part of the English doctrine of part performance into Indian law. It establishes a legal defense for individuals who lack a registered title in their favor but wish to maintain possession of the property. To gain a deeper understanding of this concept, the author has elaborated on it, drawing from statutory provisions and relevant case law.

In line with this, it is worth noting that even under MOFA, an unregistered allotment letter is considered a legally binding contract between the purchaser of a flat and the builder. It's important to mention that the MOFA provisions haven't been revoked, so they should be considered alongside RERA whenever they don't contradict RERA.

Furthermore, within the framework of RERA, there is no provision that prevents a complainant from exercising their right to claim interest for delayed possession or seek a refund based on the terms agreed upon in an allotment letter. Notably, the RERA Act itself makes it obligatory to register a sale agreement only when the purchaser has paid more than 10% of the total consideration. Failing to consider the allotment letter in such cases would create a perplexing and unjust situation where a flat buyer who has paid less than 10% of the consideration would lose all legal remedies against the builder solely because the formal agreement isn't registered, even though registration is mandated by law. It is highly unlikely that this was the legislative or governmental intention.

Additionally, a practical challenge arises when builders in default refuse to register a formal sale agreement. In such cases, allottees must file a separate complaint requesting the authority's intervention to compel the builder to register the formal sale agreement. Without this registration, purchasers would not be able to assert their rights to interest in or possession of the unit if the authority's interpretation is upheld. This could lead to multiple rounds of RERA complaints, which is contrary to the intended purpose of this welfare legislation.

Before RERA Real Estate Matters Dealt Under Consumer Protection Act, 1986 [5]

If there is an ongoing case before the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986, prior to the commencement of this Act, individuals have the option to request permission from the respective forum or commission to withdraw their existing complaint and instead file an application before the adjudicating officer under this Act, as outlined in Section 71 of this Act.

OBJECTIVE AND DEFINITIONS

Objective of RERA

- (a) **G:** promote *Good Governance* in the sector which in turn would create investor confidence.
- (b) **S:** To establish *Speedy dispute Redressal mechanism*.
- (c) **T:** To ensures/validates *Sale* of plot, apartment, or building or sale of real estate project in an efficient and transparent manner.
- (d) **A:** To establish *Appellate Tribunal to hear appeals* from the decisions, directions or order of the *Real Estate Regulatory Authority* and for matters connected as per the provisions of the said Act.

- (e) **R:** To *Regulate* (control) and *Promote Real Estate Sector* through such Authority.
- (f) **R:** To *Ensure Registration* of Real Estate Projects.
- (g) **E:** To *Establish/create* Real Estate Regulatory Authority.
- (h) **D:** To regulate or take control of *efficiently completing and delivering projects to consumers, home buyers, and allottees by the promoters.*

Definitions

The definition is given under section 2 of the RERA Act, 2016 [6].

- (a) “*Adjudicating officer*”: The term “adjudicating officer” refers to the officer appointed in accordance with sub-section (1) of Section 71. The individual selected for the role of an adjudicating officer should either currently hold the position of a District Judge or have previously served as a District Judge.

Adjudicating Officer shall Adjudicate/to give judgment Compensation after giving any person Reasonable Opportunity of being heard.

1. Section 12 relates to determination of compensation in case a person is affected by false information in any notice or advertisement.
2. Section 14 Relates to change or violation of sanctioned plan by the promoter.
3. Section 18 Relates to failure of promoter to complete or deliver possession or the land title is defective or he fails to fulfill his obligation

- (b) “*Advertisement*” encompasses any communication presented or distributed as promotional material through any means. This definition includes any form of notice, circular, or promotional material in any format that informs individuals about a real estate project or extends an offer to sell a plot, building, or apartment. It also covers invitations to purchase such property or to provide advances or deposits for these purposes.

Any documents, regardless of their format, will be regarded as advertisements if they aim to provide information about a real estate project, offer plots, buildings, or apartments for sale, invite individuals to buy such properties in any way, or request advances or deposits for these purposes.

Section 3: Provides that no advertisement shall be issued without registration.

Section 11: Website Address of the Authority is required to be mentioned in every advertisement.

Section 12: Where any person makes an advance or a deposit on the basis of information contained in the notice, advertisement or prospectus or on the basis of any model apartment, plot or building, and sustains any loss or damage by reason of any incorrect or false statement included in the said notice, advertisement, or prospectus he shall be compensated by the promoter under this Act.

- (c) “*Agreement for sale*” means an agreement entered into between the promoter and the allottee;

Agreement to Sale Shall Specify the following Section 13(2):

1. Particular of development of a project
 2. It shall include construction of building and apartment
 3. Specification of internal and external development works
 4. Dates and manner by which payments towards the cost of the apartment, plot, or building are to be made by the allottees
 5. The date on which possession of apartment, plot, or building is to be handed over
 6. Rates of interest payable by promoter in case of default
 7. Other prescribed particulars.
- (d) “*Allottee*”: In the context of a real estate project, the term “allottee” refers to the individual to whom a plot, apartment, or building has been assigned, sold (whether as freehold or leasehold), or transferred by the promoter. This definition also encompasses individuals who acquire such allotments through subsequent sales, transfers, or other means. However, it does not include

individuals who have been granted the use of such a plot, apartment, or building through a rental agreement.

Allottee would in real the transferee of apartment, plot, or building who acquire it by any mode including allotment, sale, transfer, as consideration of services by exchange of development rights or by any other similar means.

Transferee-to whom the property is transferred.

- (e) An “apartment,” which may also be referred to as a block, chamber, dwelling unit, flat, office, showroom, shop, warehouse, premises, suite, tenement, unit, or by any other name, denotes an independent and self-contained portion of immovable property. This portion can comprise one or more rooms or enclosed spaces and may be situated on one or more floors or any part thereof, within a building or on a piece of land. It is intended for various uses, including residential or commercial purposes such as living, office work, retail, showrooms, storage, or for conducting any business, profession, trade, or other related activities as specified.

Apartment includes the following:

1. A separate and self-contained part of any immovable property
 2. This may include one or more rooms or enclosed spaces, located on one or more floors or any part thereof;
 3. This may be called by the name of block, chamber, dwelling unit, flat, office, showroom, shop, warehouse, premises, suit, premises, suit, tenement, unit, or by any other name.
 4. This may be located in a building or on a plot of land
 5. This may be used or intended to be used for any residential or commercial use or for carrying on any business, occupation, and profession or trade or for any other type of use.
- (f) “*Appellate Tribunal*” means the Real Estate Appellate Tribunal established under Section 43;
- It shall come into force within 1 year from the date of the commencement of the Act.
 - Composition—One Judicial Member and One Administrative to Technical Member
 - Appellate Tribunal can be 2 or more in the same state
 - Appointment of Chairperson—Chairperson shall have been a judge of a High Court
 - For Judicial Member—He or she shall have held position
 - Judicial Office in India for at least 15 years
 - A member of Indian Legal Service with the Position of Additional Secretary or equivalent
 - An advocate for at least 20 years of experience in deal with real estate matters
 - For Technical or Administrative Member
 - Who is well versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs, or administration of at least 20 years in the field.
 - Who has held position of Additional Secretary in Central Government
 - Appointment of Chairperson—It is to consultation with Chief Justice of High Court or his nominee shall appoint chairperson of the Appellate Tribunal
 - Appointment of Members—to be done Selection committee which consists of:
 - Chief Justice of High Court
 - Secretary of Department of handling Housing
 - Law Secretary
- (g) “*Appropriate Government*” means in respect of matters relating to:
- (i) the Union territory without Legislature, the Central Government;
 - (ii) the Union territory of Puducherry, the Union territory Government;
 - (iii) the Union territory of Delhi, the Central Ministry of Urban Development;
 - (iv) the State, the State Government;

- (h) “*Architect*” means a person registered as an architect under the provisions of the Architects Act, 1972;

Under the Architects Act of 1972, anyone listed in the register is considered an architect. The Act imposes penalties on someone who is not officially registered as an architect but is falsely listed as one.

- (i) “*Authority*” means the Real Estate Regulatory Authority established under sub-section (1) of section 20;
- (j) The term “building” encompasses any construction, erection, or segment thereof that is designed for residential, commercial, or any business-related, occupational, professional, or trade-related use, as well as for other related purposes.

Following are the key ingredients of Definition of Building:

1. *Form*: Building includes any structure or erection or part of a structure or erection;
2. *Use*: Building should be intended for use for residential, commercial, or for the purpose of any business, occupation, profession, or trade or for any related purposes.

Note: Residential and Commercial Buildings are covered under the Act, the building used for Industrial Purposes are not covered.

- (k) “*Carpet area*”: Refers to the practical, usable floor space within an apartment, excluding external walls, service shafts, exclusive balconies or verandas, and exclusive open terraces. However, it does include the space enclosed by the internal partition walls within the apartment.

Clarification: In this context, “exclusive balcony or verandah area” refers to the portion of a balcony or verandah that is directly associated with the practical, usable floor space of an apartment and is intended solely for the use of the allottee. Additionally, “exclusive open terrace area” refers to the space on an open terrace that is directly related to the usable floor area of an apartment and is exclusively designated for the allottee’s use.

Key Ingredients (Table 1 and 2):

1. Carpet Area is the Net Usable Floor Area
2. Include the Area covered by Internal Partition Walls of the apartment
3. Exclude the Area covered by the External Walls, areas under Services shafts, exclusive balcony or verandah area and exclusive open area.

Table 1. Showing the key ingredients of a floor area.

S.N.	Carpet Area	Built up Area	Super Built-up Area
1.	Net usable Floor Area, where we can spread a Carpet—Kitchen, Toilet, Bathrooms, and Internal Partition Walls, Covered Spaces, Stair cases within the Property. Excludes: Surface Shafts, balcony, Utility Area, Open Terrace Area, Lift and lobby, stair case, verandah, flower bed, club house.	It includes Carpet Area+ External Walls + Balconies + Service Shafts Excludes: Open Terrace Area, Lift and Lift Lobby, Staircase, Club House, Swimming Pool Etc. 10-15% more than carpet Area.	It includes Built-up Area Plus Proportionate share of common areas such a lobbies stair cases, lift, shafts, club house, air ducts, pipe ducts/shafts & other covered common facilities. Excludes: Open Areas such play areas, Garden, Parks, Driveways & roof Terrace. 20% to 40% more than Carpet Area Common Areas like club house, lift lobbies, stair cases, etc. Loading = Super Built up Area and Carpet Area

Table 2. Example for construction of built-up area in Option 1 and Option 2.

Option 1	Option 2
Flat Constructed before 10 years Area of 800 sq. ft. Value= Rs.60 lacs Rate = Rs.7500 per sq. ft. (60lacs/800)	Recently constructed flat Area- 1100 sq. ft. Value- Rs.65 lacs Rate –Rs.5909 sq. ft (65 lacs/1100)
Here it is general Perception that Option 2 is better than Option 1 because Area is more and the rate per sq. ft. is less	
After seeing the flat physically, it is found that Area of flat on Option 1 looks bigger than in Option 2 flat	
Reason in Option 1 = 800 sq ft is the built-up Area	Option 2 = 1100 sq. ft. is the super built-up area. Here comes the Loading Factor = Difference Between Super Built up Area and Carpet Area, While deciding the Price of Flats the Promoter adds the common amenities/areas. Earlier flat were sold on Super Built up Area.

- (l) **“Chairperson”**: means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;
- (m) **“Commencement certificate”**: means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

It is Issued by a Competent Authority, which may be a Municipal Corporation or a Development Authority.

The Purpose of the Certificate is that it is issued to allow or permit the promoter to begin development work on an immovable property as per the sanctioned plan. It can also be called Building Permit or Construction Permit.

- (n) **“Common Areas”** mean:
- The complete land area designated for the real estate project. In cases where the project is developed in phases and registration under this Act is sought for a specific phase, it pertains to the entire land area allocated for that particular phase.
 - The staircases, lifts, staircase and lift lobbies, fire escapes, and shared entrances and exits within buildings.
 - Common spaces such as basements, terraces, parks, play areas, open parking zones, and communal storage areas.
 - Areas designated for accommodating property management personnel, including quarters for security staff or community service personnel.
 - Infrastructure for central services like electricity, gas, water supply, sanitation, air-conditioning, incineration, water conservation systems, and renewable energy installations.
 - Equipment such as water tanks, sumps, motors, fans, compressors, ducts, and any other devices connected to shared utility installations.
 - All community and commercial amenities as specified within the real estate project.
 - Any other segments of the project necessary or convenient for its maintenance, safety, and common use.
- (o) **“Company”**: means a company incorporated and registered under the Companies Act, 2013 and includes the following:
- An entity created in accordance with a Central Act or State Act.
 - A development authority or any governmental body established by the government for this specific purpose concerning the entire land of the Real Estate Project.
- (p) The term “competent authority” refers to the local governing body or any authority formed or authorized by the prevailing laws by the appropriate government. This authority holds

jurisdiction over the land and possesses the necessary powers to grant approval for the development of such immovable property.

Significance:

1. For grant of Statutory Sanctions required in respect of plan, layout plan, specifications, and so on;
 2. For Issue of Commencement Certificate, Completion Certificate and Occupancy Certificate and grant of other permission and certificates
 3. For carrying remaining development work of a project where on lapse of registration or on revocation of registration is entrusted to work with the appropriate Government.
- (q) A “completion certificate” refers to a document, known by various names, issued by the competent authority. This certificate confirms that the real estate project has been constructed in accordance with the approved plan, layout, and specifications as sanctioned by the competent authority under local laws.

Significance:

1. The primary purpose of a Completion Certificate (referred to as CC) is to confirm that a project has been constructed in alignment with the approved plan, layout, and specifications as authorized by the Competent Authority.
 2. When CC has not been obtained a real Estate Project will be Treated as an Ongoing Project, registration of which is compulsory under Section 4 of the Act.
 3. Where CC is not obtained within the stipulated time period, the promoter is liable to pay compensation to the Allottee under Section 18.
 4. For new Construction Developers have to seek Clearance from the Local authorities.
 5. When Building is Ready, the local Authority awards a completion certificate stating that the approved plan has been followed. This is Mandatory for getting basic amenities such as water and power.
- (r) “Day” means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;
- (s) “Development” with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

Development Includes

1. Procurement of land
 2. Development of site by excavation, demolition and leveling, and so on
 3. Carrying out civil work for creation of infrastructure.
 4. Development of common facilities and services
 5. Carrying out erection, installation, and fittings of required systems, instruments, apparatus, and equipment.
 6. Carrying out material changes in the immovable property.
 7. Redevelopment work
- (t) “Development Works” Means the external development works and internal development works on immovable property;
The work which is within the limits of project land is internal while the area which outside the periphery of internal is External Development Work.
- (u) “Engineer” means a person who possesses a bachelor’s degree or equivalent from an institution recognized by the All India Council of Technical Education or any University or any institution recognized under a law or is registered as an engineer under any law for the time being in force;

Significance under the Act:

1. The promoter is obligated, in accordance with section 4(2)(k), to provide disclosure and details regarding the Project's Engineer.
 2. Regarding the withdrawal of funds received from allottees, Section 4(2)(l)(D) stipulates that the promoter can withdraw amounts from a dedicated account only when it is certified by an engineer, an architect, and a practicing Chartered Accountant that the withdrawal aligns with the project's completion percentage.
 3. Under section 14(2) certificate by Engineer is Required for making minor Alterations.
- (v) The "estimated cost of a real estate project" encompasses the overall expenses associated with the project's development. This includes the cost of the land, taxes, cess, development charges, and other related expenditures.
- (w) "External development works" refer to a range of activities such as road construction, landscaping, water supply, sewage and drainage systems, electricity supply infrastructure like transformers and substations, solid waste management, and disposal. These activities may need to be carried out in the vicinity or outside of a project area for its overall benefit, as specified by local regulations.

External Development work includes the following:

1. Roads and road system landscaping
 2. Water supply
 3. Sewage
 4. Drainage systems
 5. Electricity supply transformer
 6. Sub-station
 7. Solid Waste Management and disposal
 8. Any other work which outside the periphery of the project.
- (x) "Family" includes husband, wife, minor son, and unmarried daughter wholly dependent on a person;
- (y) "Garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

Key Ingredients:

1. Garage would be a place within a project
2. Should be intended for use of Parking of any vehicle
3. Any unenclosed or uncovered parking space such as open parking areas are excluded.

Open Parking and Stilt Parking spaces are not saleable by Promoter, since no information with regard to these are required to be published.

- (z) The term "immovable property" encompasses land, buildings, rights of way, easements, light privileges, or any other advantages stemming from land. It also includes items affixed to the ground or permanently connected to objects affixed to the ground. However, it does not include standing timber, growing crops, or grass.

Key Ingredients:

1. Immovable property refers to assets with a permanent location that cannot be relocated or shifted elsewhere. These assets can include structures affixed to the ground.
2. It also encompasses the land or the physical structure on which a residence or building is situated.

(za) “Interest” means the rates of interest payable by the promoter or the allottee, as the case may be. Explanation. For the purpose of this clause:

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Significance:

1. Interest is liable to be paid by promoters under section 11(g) to pay all outgoings including interests.
2. Promoter is Liable to pay interest together with refund of investment made by the Allottee for providing incorrect or false statement.
3. If the Allottee prefers to withdraw his booking, Promoter is also required under section 13 to specify in the Agreement for sale, the rate of interest payable to the Allottee in case of delay or default in project.
4. As per Section 18 Promoter is Liable to Pay Interest in case of delay in handing over possession within stipulated time period.
5. Allottee has a right to claim refund together with interest in case of delay on handing over the possession as per section 19(4).
6. Allottee is liable to pay interest in case of delay in making payment as per section 19(7).
7. Section 38 empowers authority to impose Interest for any contraventions of the provisions of the Act on Promoters, Allottees, Real Estate Agents.

(zb) “Internal development works” refer to various infrastructure elements within a project, including roads, footpaths, water supply systems, sewers, drainage systems, parks, tree planting, street lighting, provisions for community buildings, sewage and sullage water treatment and disposal, solid waste management and disposal, water conservation measures, energy management, fire protection, fire safety requirements, social infrastructure like educational and health care facilities, and other public amenities. These works are all outlined in the approved plans and are intended for the project’s enhancement and benefit.

Internal development work includes the following:

1. roads, footpaths, and street lighting
2. Water supply and conservation
3. Sewers, drains, and provisions for disposal and treatment of sewage and solid waste.
4. Parks and planting trees
5. Community building
6. Fire, protection, and safety
7. Social infrastructures such as health care centers

(zc) “Local authority” pertains to entities such as Municipal Corporations, Municipalities, Panchayats, or any other local governing bodies established under current laws to administer municipal services or basic amenities in areas under their jurisdiction.

Key Ingredients:

1. Local Authority is the one that has jurisdiction over the planning area in which the Real Estate Project is being implemented by the promoter and has responsibility for providing municipal services or basis services in respect of that area.

- (zd) “*Member*” means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;
- (ze) “*Notification*” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (zf) “*Occupancy certificate*” means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation, and electricity;

Key Ingredients:

1. The occupancy certificate (referred to as OC) is a legal document issued by a local government agency or building department, often known as the Competent Authority. It serves as proof of a building’s compliance with relevant building codes and other regulations.
 2. Its primary purpose is to confirm that, in accordance with the law, the house or building is suitable for habitation.
 3. This certificate is essential for the occupancy and daily use of the structure.
- (zg) “*Person*” includes the following:
- (j) an individual;
 - (iii) a Hindu undivided family;
 - (iv) a company;
 - (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;
 - (v) a competent authority;
 - (vi) an association of persons or a body of individuals whether incorporated or not;
 - (vii) a co-operative society registered under any law relating to co-operative societies;
 - (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;
- (zh) “*planning area*” means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

Planning Area is the area, covered by State Government or the Competent Authority under the Law relating to Town and Country Planning:

1. Planning area
 2. Development area
 3. Local Planning area
 4. Regional development area
 5. Any designated future area
- (zi) “*Prescribed*” means prescribed by rules made under this Act;
- (zj) “*Project*” means the real estate project as defined in clause (zn);
- (zk) “*promoter*” means,
- (i) An individual who undertakes the construction of an independent building or a building comprising apartments, or converts an existing building or a portion thereof into apartments, intending to sell some or all of the apartments to other individuals. This category also encompasses those to whom these rights are transferred.

- (ii) A person who develops land into a project, regardless of whether they also erect structures on any of the plots. The purpose is to vend some or all of the plots in the given project, with or without structures.
- (iii) Any development authority or public body in relation to beneficiaries of:
 - (a) Buildings or apartments constructed by the said authority or body on lands they possess or were allocated by the government.
 - (b) Plots owned by the authority or body or allocated by the government, with the aim of selling some or all of the apartments or plots.
- (iv) An apex State-level cooperative housing finance society and a primary cooperative housing society that erects apartments or buildings for its members or for the beneficiaries of such apartments or buildings.
- (v) Any other individual who serves as a builder, colonizer, contractor, developer, estate developer, or under any other title, or claims to operate under a power of attorney from the landowner on whose land the building, apartment, or plot is developed for sale.
- (vi) Any other entity that constructs any building or apartment with the intention of selling it to the general public.

Explanation: In the context of this provision, if the individual who constructs or converts a building into apartments or develops a plot for sale is not the same as the person selling the apartments or plots, both of these individuals will be considered promoters. They will share joint liability for the obligations and responsibilities outlined in this Act and its associated rules and regulations.

Builder: An individual who constructs or facilitates the construction of a building comprising apartments, or converts an existing building or a portion thereof into apartments, with the intention of selling.

Developer: An individual who transforms land into a project and aims to sell some or all of the plots within that project, with or without structures.

Corporate Housing Society: An apex or state-level cooperative housing finance society or primary cooperative housing society engaged in the construction and development of buildings for its members or allottees.

Joint Developer: Any other individual who takes on roles such as builder, constructor, estate developer, or any similar designation, or claims to operate under a power of attorney from the landowner on which the building is erected.

Person Doing Construction Work: Any other individual engaged in the construction of any building or apartment with the intention of selling it to the general public.

Where Builder and Sellers are Different Persons: If the individuals responsible for constructing or converting a building into apartments or developing a plot for sale are different from those selling apartments or plots, both parties will be considered promoters. Consequently, they will share joint liability for the obligations and responsibilities outlined in this Act, as well as the rules and regulations established under it.

- (zl) “Prospectus” signifies any document presented or distributed as a prospectus, notice, circular, or any other document that offers a real estate project for sale or invites individuals to make advances or deposits for such purposes. The prospectus is produced by the Promoters as a promotional material for sales and serves as an invitation to book the project, essentially inviting individuals to purchase apartments, plots, or buildings.

Key Ingredients:

1. Any notice or circular
2. Offer for sale of Real Estate Project
3. Inviting any person to make advances or deposits

(zm) A “real estate agent” is an individual who engages in negotiations or represents one party in a transaction involving the transfer of their plot, apartment, or building in a real estate project, typically through a sale, to another party. This agent receives compensation, whether in the form of commission or other fees, for their services. This definition encompasses those who introduce potential buyers and sellers to each other through various means for the purpose of negotiating the sale or purchase of plots, apartments, or buildings. It includes professionals known by various names, such as property dealers, brokers, and middlemen.

A Real Estate Agent Defined to mean any person, who does the following acts:

- (a) They engage in negotiations or represent the owner or seller in transferring their plot, apartment, or building through a sale in a real estate project to another individual.
- (b) They engage in negotiations or represent the buyer in purchasing a plot, apartment, or building from another individual.
- (c) They introduce potential buyers and sellers to each other for the negotiation of plot, apartment, or building sales or purchases, utilizing various means. This category encompasses professionals known by different names, such as property dealers, brokers, and intermediaries.

(zn) A “real estate project” pertains to activities involving the construction of a building or a building comprising apartments, the conversion of an existing building or part of it into apartments, or the development of land into plots or apartments, with the intent to sell some or all of these apartments, plots, or buildings. This definition encompasses common areas, development works, all associated improvements and structures, as well as any easements, rights, or appurtenances related to the project.

Real estate project includes the following:

1. Development of a building;
2. Development of a building consisting of apartments
3. Development of land into plots or apartment
4. The common areas, the development works all and structures thereon and all easement, rights, and appurtenances/accessories/bits and pieces belonging thereto.

(zo) “*regulations*” means the regulations made by the Authority under this Act;

(zp) “*rule*” means the rules made under this Act by the appropriate Government;

(zq) “*sanctioned plan*” means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

The term has a great relevance under the Act, since all the constructions and developments of the project has to be done with adherence of the sanctioned plan. While Manager Changes and Alterations are permissible, in case of any material change consent of 2/3rd Allottees is mandatory.

(zr) Words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

SPECTRUM OF PARTIES AND PROVISION UNDER THE ACT.

The Table 3 shows the range of Parties that are involved in the Act are as follows:

Table 3. Range of parties that are involved in the Act.

Parties	Sections
Allottees	29(d), 8, 11 to 18, 19, 40(1), 67, 68, 71(1), 72
Promoters	2(za), 3to 7, 11 to 18, 40(1), 59 to 61, 63, 64, 71 & 72
Real Estate Agents	2(zm), 10, 40(1), 62, 65, 66
Adjudicating Officer	31, 71 & 72
Real Estate Regulatory Authority	3 (10), 4(3), 5 to 8, 20, 30 to 40, 71(1)
Real Estate Appellate Tribunal	43, 44, 53, 56 to 58
Central Advisory Council	41, 42

WHAT IS REAL ESTATE REGULATORY AUTHORITY?

Meaning

- (a) The appropriate State Government shall establish an Authority within one year of the Notification of the Act.
- (b) A single authority can be formed by two or more Union Territories.

Functions

General Practice of *Real Estate Regulatory Authority as per law:*

- (a) Safeguarding the interests of allottees, promoters, and real estate agents.
- (b) Establishing a streamlined system to ensure timely project approvals and clearances for on-schedule project completion.
- (c) Promoting transparency and establishing a robust mechanism for addressing grievances related to actions, both deliberate and unintentional, of competent authorities and their officials.
- (d) Encouraging investment in the real estate sector.
- (e) Enhancing financial support for the affordable housing segment.
- (f) Promoting the construction of environmentally sustainable and cost-effective housing, while advocating for standardization and the use of suitable construction materials, fixtures, fittings, and building methods.
- (g) Encouraging project grading based on various development parameters and grading of promoters.
- (h) Facilitating amicable dispute resolution between promoters and allottees through a dispute settlement mechanism.
- (i) Providing counsel to the Appropriate Government on matters concerning the development of the real estate sector.

Advocacy and Awareness Measures

- (a) The Authority shall provide its opinion on the reference made by appropriate Government on the matters related to real Estate Sector for Formulating Policy.
- (b) To take actions for creating awareness and imparting training about laws relating to real estate sector and policies.

Regulatory Measures

- (a) To register and Regulate Real Estate Projects and real estate agents that are required to be registered under the Act.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 IMPLEMENTATION AND ITS ESTABLISHMENT?

1. The Real Estate (Regulation and Development) Bill received approval from the Rajya Sabha on March 10, 2016, and from the Lok Sabha on March 15, 2016.
2. The Act was passed by the Parliament during the 67th year of the Republic of India.
3. It officially came into effect on May 1, 2016, with 59 out of the total 92 sections being notified. The remaining provisions were enforced on May 1, 2017.
4. The Act applies across the entire country (Table 4), including the Union territories of Jammu and Kashmir and Ladakh, with its applicability extending to Ladakh as of October 30, 2019 (Notification No. S.O. 3912(E), dated 30th October 2019).

Table 4. The Act applies across the entire country.

S.N.	State/UT	Date of notification	Rules	Website
1.	Gujarat	29 October 2016	http://www.naredco.in/notification/pdfs/Gujarat%20Real%20Estate%20(Regulation%20and%20Development)%20Rules,%202016_1%20(1).pdf	http://gujrera.gujarat.gov.in/
2.	Uttar Pradesh	11 October 2016	http://www.naredco.in/notification/pdfs/Uttar%20Pradesh%20Real%20Estate%20(Regulation%20and%20Development)%20Rules,%202016_Notification%20No.%201438_Eight-3-16-65%20Vividh16%20dated%2027th%20October%202016.pdf	www.up-rera.in
3.	Chandigarh	31 October 2016	https://www.rerafiling.com/upload/services/services_1104620937.pdf	http://rera.chbonline.in
4.	Dadra and Nagar Haveli	31 October 2016	https://www.rerafiling.com/upload/services/services_1302468553.pdf	http://maharera.mahaonline.gov.in/
5.	Andaman and Nicobar Islands	31 October 2016	https://www.rerafiling.com/upload/services/services_1688545558.pdf	http://www.tnrera.in/
6.	Lakshadweep	31 October 2016	https://www.rerafiling.com/upload/services/services_268724899.pdf	
7.	Daman and Diu	31 October 2016	https://www.rerafiling.com/upload/services/services_890635374.pdf	http://maharera.mahaonline.gov.in/
8.	Madhya Pradesh	22 October 2016	http://naredco.in/notification/pdfs/Madhya-Pradesh-RERA-Rules-22October2016.pdf	http://rera.mp.gov.in/
9.	Delhi	24 November 2016	http://naredco.in/notification/pdfs/NCT%20of%20Delhi%20Real%20Estate%20(Regulation%20and%20Development)%20(General)%20Rules,%20202016.pdf	http://dda.org.in/rera/index.aspx
10.	Maharashtra	19 April 2017	http://naredco.in/notification/pdfs/Maharashtra%20Real%20Estate%20(Regulation%20and%20Development)%20(Recovery%20of%20Interest,%20Penalty,%20Compensation,%20Fine%20payable,%20Forms%20of%20Complaints%20and%20Appeal,%20etc.)%20Rules,%20202017.pdf	https://maharera.mahaonline.gov.in/
11.	Andhra Pradesh	28 March 2017	https://www.rera.ap.gov.in/rera/boooks/pdf/Handbook.pdf	https://www.rera.ap.gov.in

12.	Odisha	25 February 2017	http://www.urbanodisha.gov.in/Handler4.ashx?ID=1117	http://orera.in/
13.	Bihar	1 May 2017	https://rera.bihar.gov.in/images/surveytendermkm.pdf	https://rera.bihar.gov.in/
14.	Rajasthan	1 May 2017	http://naredco.in/notification/pdfs/Rajasthan%20Real%20Estate%20(Regulation%20and%20Development)%20Rules,%202017.pdf	http://rera.rajasthan.gov.in/
15.	Jharkhand	18 May 2017	https://jharera.jharkhand.gov.in/uploads/Documents/RERAJharkhandRules.pdf https://jharera.jharkhand.gov.in/uploads/Documents/JHARERA%20Regulation.pdf	http://rera.jharkhand.gov.in/
16.	Uttarakhand	28 April 2017	http://www.uhuda.org.in/wp-content/uploads/2017/07/RERA_Presentation_for_30th_June-min.pdf	http://www.uhuda.org.in/real-estate-act/
17.	Tamil Nadu	22 June 2017	https://www.rera.tn.gov.in/homePageFiles/TNREAT_Regulations.pdf	http://www.tnrera.in/index.php
18.	Karnataka	10 July 2017	https://rera.karnataka.gov.in/resources/staticpage/KARNATKA_FAQs.pdf	https://rera.karnataka.gov.in/
19.	Punjab	8 June 2017	https://www.rera.punjab.gov.in/pdf/act-rules/Real_Estate_Rules_Punjab.pdf	https://www.rera.punjab.gov.in/
20.	Chhattisgarh	26 April 2017	https://centrik.in/wp-content/uploads/2017/06/chhattisgarh-real-estate-regulatory-act.pdf	https://rera.cgstate.gov.in/
21.	Haryana	04 October 2018	https://tcparyana.gov.in/Policy/Rules%20on%2027_07_2017.pdf	http://www.haryanarera.gov.in/
22.	Assam	6 May 2017	https://gmدا.assam.gov.in/sites/default/files/swf_utility_folder/departments/gmda_webcomindia_org_oid_4/menu/document/Assam%20Real%20Estate%20%28Regulation%20and%20Development%29%20Rules%20C2017.pdf	https://gmدا.assam.gov.in/
23.	Telangana	4 August 2017	http://www.naredco.in/notification/pdfs/Telangana%20State%20Real%20Estate%20_Regulation%20and%20Development_%20Rules,%202017.pdf	http://rera.telangana.gov.in/
24.	Himachal Pradesh	28 September 2017	http://www.hprera.in/Areas/WebSite/Avatars/RuleRegulation/HP_RERA_Rules_October_2017.pdf	http://www.hprera.in/
25.	Goa	24 November 2017	https://rera.goa.gov.in/reraApp/resources/staticpage/RERA_Rule_345.pdf	https://rera.goa.gov.in/
26.	Tripura	27 October 2017	https://udd.tripura.gov.in/sites/default/files/TRIPURA%20REAL%20ESTATE%20%20Rules%202017.pdf	https://udd.tripura.gov.in/acsnrules
27.	Puducherry	18 July 2017	http://www.rerafirst.com/wp-content/uploads/2018/07/puducherry_rules_2017.pdf	
28.	Kerala	18 June 2018	https://go.lsgkerala.gov.in/files/gz20180620_22056.pdf	https://rera.kerala.gov.in/

29.	Jammu and Kashmir	20 June 2018, Applicable from 30.10.2019	http://jkhudd.gov.in/pdfs/Jammu%20and%20Kashmir%20Real%20Estate%20(Regulation%20and%20Development)%20Act,%202018%20Governor%20Act%20No.%20LIII%20of%202018.pdf	http://jkhudd.gov.in/
30.	Mizoram	15 March 2019	http://udpamizoram.nic.in/Documents/RERA/The%20Mizoram%20Real%20Estate%20(Regulation%20&%20Development)%20Rules,%202019.pdf	http://udpamizoram.nic.in/RERA.HTML
31.	Manipur	Not setup	http://mohua.gov.in/upload/uploadfiles/files/RERA_Status_Tracker%20(11-01-2020)%20(1).pdf	

NOTIFICATION FOR APPLICATION OF THE ACT

- The Central Government Introduced the BILL Real Estate Regulatory Authority BILL, 2013. Rajya Sabha approved the Bill on 10.03.2016 and Lok Sabha on 15.03.2016. The Bill got President's assent on 25.03.2016.
- Notification No. SO 1544(E) dated 26.04.2016—Section 2, Section 20 to 39, Section 41 to 58, Section 71 to 78 and Section 81 to 92 came in to force.
- Rest Other Sections Section 3 to 19, Section 40, Section 59 to 70 Section 79 to 80 came into force.
- It extends to the whole of India including Union territory of Jammu and Kashmir and the Union territory of Ladakh which obtained its applicability on 30 October 2019. (*Notification No. S.O. 3912(E), dated 30th October, 2019*)
- As per Section 84 of the Act, the Appropriate Government is required to issue rules for implementing the provisions of the Act through a notification within 6 months of the Act's commencement.
- Section 20 stipulates that, within one year from the effective date of this Act, the appropriate government must establish an Authority called the Real Estate Regulatory Authority through a notification. This Authority will be entrusted with the powers and responsibilities outlined in this Act.
- According to Section 3(3), the Authority is mandated to launch a web-based online system for project registration applications within 1 year of its establishment.
- As outlined in Section 43 of the Act, the formation of the Real Estate Appellate Tribunal must occur within a maximum of 1 year, specifically by April 2017.

BAR OF JURISDICTION OF CIVIL COURT

- Section 79 states that any matter within the purview of the Authority, the Adjudicating Officer, or the Appellate Tribunal as authorized by this Act cannot be the subject of a suit or legal proceeding in a Civil Court. Furthermore, no court or authority is permitted to issue an injunction in relation to any action to be taken in accordance with the powers granted by this Act.
- The jurisdiction of Civil Courts to entertain suits or proceedings and the issuance of injunctions, as provided for under this Act, are restricted.
- High Courts under Article 226 have the Power to Listen to Aggrieved by Way of Writ of *Mandamus* or *Certiorari*.

CONSTITUTIONAL VALIDITY OF THE ACT

- The Act's objective is to govern interactions between purchasers and promoters of residential real estate projects, with the aim of securing consumer protection and promoting uniformity in industry practices. This is accomplished through the establishment of State-level Real Estate Authorities.

- (b) Presently, the regulation of real estate projects is primarily the responsibility of State Governments, as land and land improvement fall under the State List of the Seventh Schedule of the Constitution. According to Entry 18 of the State List, States are empowered to enact legislation related to land, rights in or over land, land improvement, and land colonization.
- (c) The Scope of this Act is limited to contracts between buyers and Promoters and Transfer of Property. Both these items fall within the concurrent list i.e., List III, Entry 6 which has following items:
- i. Entry 6: Transfer of Property other than agricultural Land, Registration of deeds, documents
 - ii. Entry 7: Contracts includes Partnerships, Agency, contracts of carriage and other special forms of contracts but not including contracts relating to agricultural Land.

The Ministry reiterated that the Prime Responsibility of state Government is to regulate Real estate and states must monitor Real Estate Projects.

HOW MANY SECTIONS, CHAPTERS, RULES, REGULATIONS DIVIDED IN THE ACT?

- (l) There are totally 92 sections, which are divided among 10 Chapters.
- (m) Amendment(s)/Notification(s)/Removal of Difficulties Order published time to time as per the changing circumstances (Published by Ministry of Law and Justice - Legislative Department).
- (n) The making Rules & Regulations in order to carry out the provisions of this Act, done by the Appropriate Government (Table 5).

Table 5. What do you mean by Rules and Regulations?

S.N.	Point of difference	Rules	Regulations
1.1	Meaning	Rules can be described as the guidelines or instructions of doing something correctly	Regulations refer to the directives or statute enforced by law.
1.2	Section	Section 2(zp) of the RERA, 2016 —“rule” means the rules made under this Act by the appropriate Government	Section 2(zo) of the RERA, 2016 “regulations” means the regulations made by the Authority under this Act

POWER TO MAKE CHANGES UNDER THE RERA ACT, 2016?

- (o) The Central Government has the Power to remove Difficulties under this Act, the Government may do so by passing order and has to fulfill certain conditions (Section 91):
- i. By publishing in Official Gazette;
 - ii. Has to be consistent with the provisions of this Act;
 - iii. The order has to be presented before each house of the parliament;
 - iv. All the above can only be done within 2 years from the date of the commencement of this Act.
- (p) The appropriate Government has the power to supersede (to surpass/to go beyond authority actions) the Authority in case any default committed by the Authority or any directions not followed given by the appropriate government (Section 82).

LAWS LINKED WITH THE ACT.

- (q) The laws linked with RERA are as follows:
- i. Code of Civil Procedure, 1908.
 - ii. Indian Evidence Act, 1872.
 - iii. Consumer Protection Act, 1986.

(Additional Information: RERA has an overriding effect on conflicting state laws (Section 89))

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- (r) The Authority shall have same Powers of a civil Court under the Code of Civil Procedure, 1908 in respect of the following matters:
 - i. For Discovery of Production of Books of Accounts and other documents at such place and at such time as may be specified by the Authority;
 - ii. For Summoning and Enforcing Attendance of Persons.
 - iii. For issuing Commissions Examination of Witnesses or documents.
 - iv. Any other prescribed matter.
 - (c) The Appellate Tribunal is empowered to exercise the same powers as a civil court under the Code of Civil Procedure, 1908, for the purpose of fulfilling its duties under this Act. These powers include summoning individuals, taking oaths, demanding document production, receiving affidavits as evidence, issuing commissions for witness or document examinations, revisiting its decisions, dismissing applications for non-appearance, and addressing any other matters as prescribed in Section 53(4)(a).
 - (d) The Appellate Tribunal is not constrained by the rules of evidence outlined in the Indian Evidence Act, 1872, as stated in Section 53(3).

If any matter is currently before the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, an individual may, with the respective Forum or Commission's permission, withdraw the pending complaint there and instead file an application before the adjudicating officer under this Act, as stipulated in Section 71 of this Act.

CONCLUSION

The Real Estate Regulation and Development Act, 2016 is not a Primary Law and is a State Law and any other Statute which has higher powers in such circumstance such Act shall prevail over Real Estate Regulation and Development Act, 2016. However, RERA Act will not work alone hence the acts namely Code of Civil Procedure, 1908, Indian Evidence Act, 1872, Consumer Protection Act, 1986, Maharashtra Ownership Flats (Regulation of the Promotion of Construction, sale, Management, Transfer) Act 1963, Specific Relief Act, 1963 and Transfer of Property Act, 1882 are connected with the RERA Act which goes hand in hand with each other.

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