

Real Infra

An e-newsletter from

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RERA IN INDIA

The Ministry of Housing and Urban Poverty Alleviation vide Notification No. S.O. 1216(E) dated 19.04.2017 has notified that the provisions of Section 3 to 19; Section 40; Section 59 to 70 and Section 79 to 80 of the Real Estate (Regulation and Development) Act, 2016 shall come into force from **01.05.2017**.

This legislation is of paramount importance and will significantly change the way business is done in the real estate sector. The law would usher in transparency and accountability apart from ensuring that best practices are adequately recognised and respected by the market.

Functions of RERA

1. To register and regulate real estate projects and real estate agents registered under the Act.
2. Publish and maintain website of records for public viewing of all projects registered including information provided in the application.
3. To maintain database for public viewing and enter names and photos of promoters as defaulters including project registration, revocation of registration, penal action, etc.
4. To maintain database for public viewing and enter names and photos of real estate agents who have applied and registered under the Act.
5. To fix through regulations for each area, standard fees to be levied on the allottees / promoter / real estate agent.
6. To ensure compliance of the obligations cast upon the promoters / allottees / real estate agents.
7. To ensure compliance of its regulations, orders and directions.
8. To person such other functions specified by the Government.

Powers of RERA

1. On a compliant or suo motu it can call upon any promoter or allottee or real estate agent to furnish information or explanation relating to its affairs as the Authority may require and appoint one or more person to make an enquiry in relation to the affairs of the promoter / allottee / real estate agent.
2. RERA has all the powers of the Civil Court under CPC, 1908.
3. RERA can issue an interim order restraining any promoter / allottee / real estate agent from carrying on such act until conclusion of such enquiry of until further order without giving notice to such party where the authority deems it necessary.
4. RERA has the power to issue such directions that it considers necessary and such directions shall be binding on all concerned.
5. Power to impose penalty or interest in regard to contravention of obligations cast upon promoters / allottees / real estate agents under the Act, Rules and Regulations.
6. Natural justice principles to be followed and procedure to be regulated by RERA.
7. Power to refer matter to Competition Commission in certain cases.

States

A number of States have incorporated rules for implementation of RERA and the process is on in other States. RERA has been constituted in some States and in terms of Section 20 of the Real Estate (Development and Regulation) Act, 2016, every State will have to establish an authority known as RERA within a period of 1 year from the date of coming into force of the Act. While a few sections including Section 20 came into force from 01.05.2016, other operational provisions pertaining to registration and compliance aspects have been notified from 01.05.2017.

Registration

1. Application is the most critical document.
2. Rules would specify format, time frame and fees.

3. A number of documents as well as details will have to be provided such as information about the enterprise, approvals, plans, projects launched in the past, disputes, delays, location, etc. Further, one is required to specify minute details about the project including carpet area, agreement formats and other information.
4. The law also contemplates specific declarations and affidavits to be filed apart from undertakings with reference to fund usage as per the mandates specified in the law.
5. **No promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner**, any plot, apartment or building as the case may be in any real estate project or part of it in any planning area without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

On-going Projects

The biggest impact of RERA would be on on-going projects which have not yet been issued completion certificate as on 01.05.2017. The promoter has to make an application to the authority for registration of the said project within **3 months** from the date of commencement of the Act.

The following issues arise:

- (i) *Some States are yet to notify an authority namely RERA.*
- (ii) *Some States do not have the concept of completion certificate. While this problem has been addressed in the context of Section 17(2) dealing with handing over by specifying 'occupancy certificate' as against 'completion certificate' through a Removal of Difficulty Order dated 28.10.2016, similar order has not been issued for Section 3.*
- (iii) *In effect, the legislation seems to have a retrospective colour since even on-going projects will have to register and disclose voluminous data and marketability itself is affected since there is a prohibition from advertising or marketing or selling without registration of the project.*

Revocation of Registration

Registration can be revoked on complaint or suo moto or on recommendation of the competent authority. Revocation can be on account of default in compliance of the law; violation of approvals; unfair practice or irregularities;

Functions and Duties of the Promoter

Promoter as defined in the law has to create a website within the website of the RERA and enter the following information:

- (i) Details of the registration
- (ii) Quarterly up to date list of number and types of apartments or plots as the case may be booked
- (iii) Quarterly up to date list of number of garages booked.
- (iv) Quarterly up to date list of number of approvals taken and approvals which are pending subsequent to commencement certificate.
- (v) Quarterly up to date status of project.
- (vi) Such other information and documents as prescribed.

Apart from this, the law stipulates the information that is to be made available by the promoter to the allottee; specify website information and registration number in advertisements. The Act makes the promoter responsible for all obligations / responsibilities / functions under the Act, Rules and Regulations. In addition, the Act casts upon various functions to be carried out by the promoter in detail.

Advance

A promoter cannot collect more than 10% of the cost of the apartment / plot / building as advance payment or application fee from a person without entering into a written agreement for sale with such person and registering the said agreement. Agreement for sale should specify all particulars, specifications, internal development works, external development work, date of payment, date on which possession is to be handed over and rates of interest for default.

New Concepts

The law provides for new concepts such as a clear definition of ‘carpet area’, ‘common area’, ‘promoter’, ‘apartment’. Further, even real estate agents have to register under RERA and cannot market projects which are not registered.

In order to achieve accountability the new law also provides that 70% of the amounts realized for the real estate project from the allottees from time to time to be deposited in a separate bank account maintained in a Scheduled Bank to cover the cost of construction and the land cost and shall be used only for that purpose. Amounts can be withdrawn from the account to cover the cost of the project in proportion to the percentage of completion of project. Further, withdrawing of the funds for the project is subject to specific statutory compliances.

There are also provisions for filing of information online, compensation, penalties, prosecution, etc.

GST –ISSUES RELEVANT TO REAL ESTATE SECTOR

1. Section 2(119) of the CGST Act defines ‘works contract’ to mean a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration, or commissioning of any **immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.
2. In terms of Schedule II read with Section 7, only a works contract as defined in Section 2(119) is considered as a service. *This would mean that works contracts which do not fit into this definition would continue to be plagued by the distinction of goods and services if the rates are different and would also have to deal with concepts such as composite supply and mixed supply.*
3. The CGST and IGST Act indicate new concepts such as reverse charge mechanism, tax deduction at source, compliance rating apart from anti-profiteering clauses.
4. GST would apply even on advances. In the VAT regime tax liability would arise only when there is a transfer of property in goods. There would be

- cash-flow pressures since GST would be payable on the advances even though there is no construction.
5. The provisions pertaining to input tax credit specifically in the context of construction is a replication of the current provisions in Cenvat Credit Rules and all the artificial restrictions seem to continue.
 6. Input tax credit is contingent upon the following:-
 - (i) Possession of tax invoice / debit note/supplementary invoice or such other prescribed document
 - (ii) Receipt of goods and or services
 - (iii) Tax charged in respect of supply and has been actually paid to the credit of the appropriate government either in cash or through utilization of admissible input tax credit
 - (iv) Furnishing of return
 - (v) Matching of outward supply and inward supply by supplier and receiver.
 - (vi) Where the details match, the same would be accepted and communicated.
 - (vii) If there are discrepancies, they would be communicated and if not rectified, it shall become the output liability of the recipient.
 7. Movement of construction materials and equipments from one location to another are likely to attract GST unless specifically excluded.
 8. Sale of land and sale of building is considered as a transaction which is neither a supply of goods nor a supply of services and hence will be out of GST.
 9. Stamp duty and registration fee is not subsumed in GST.
 10. Pure agency conditions will have to be satisfied for excluding reimbursement from value. The current issues with reference to reimbursement of Electricity Board, utility charges and statutory levies are likely to continue.

11. Where the supplier of goods or services or both is an unregistered person and the recipient is a registered person, GST is payable by the registered person.

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