

RERA [Real Estate (Regulation and Development) Act]

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

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Introduction to RERA

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Timeline

March 15, 2016

Real Estate Regulation and Development Bill was passed by the Parliament

May 05, 2017

Came into absolute effect in India including the state of Maharashtra



Received the President's assent

March 25, 2016

Purpose of Introducing RERA

- Establish a central legislation to regulate and promote the real estate in the country
- Address all the possible concerns relating to the real estate industry

Rules and Regulations to enforce the Act

- Government of Maharashtra has notified the following Rules and Regulations to enforce the Act -
 - The Maharashtra Real Estate Regulatory Authority, Officers and Employees (Appointment and Service Conditions) Rules, 2016
 - The Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, forms of complaints and appeal etc) Rules, 2016
 - The Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2016
 - The Maharashtra Real Estate Appellate Tribunal, Officers and Employees (Appointment and Service Conditions) Rules, 2016

Regulatory Update

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Regulatory Update

- The major act prevalent regulating the real estate industry was Maharashtra Ownership(Regulation of the promotion of construction, Sale, Management and Transfer) Act, 1963 (MOFA) in Maharashtra which got introduced in the year 1963 for a period of 5 years.
- However, the same got extended upto the year 2012.
- The same was repealed by section 56 of the Maharashtra Housing (Regulation & Development) Act of 2012 in 2015.
- Subsequently, RERA was enacted. It thus repeals the Maharashtra Housing (Regulation and Development) Act, 2012.

Requirement of Registration and its Process

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Requirement of Registration

- As per plot area or number of apartments
 - Section 2 of the RERA Act, 2016 states that “... no registration of the real estate projects shall be required—(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:...”
 - The basic understanding of the above explains that the registration requirement is not mandatory for all projects but only for projects where area of land is more than 500 square meters or number of apartment exceed 8 in total. This essentially covers a majority of buildings or plot getting constructed.
- Ongoing projects
 - There is one more understanding here when RERA became applicable from 01.05.2017 the promoters/developers had got a period of 3 months for the purpose of registration any ongoing projects. There was a scenario where the entire project was completed but the same was pending to be sold and therefore still required registration for the project.

Registration Process under the MahaRERA

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Online Registration under MahaRERA

- Registration has to be done online on the website - <https://maharera.mahaonline.gov.in/>
- Registration requires all details pertaining to the project
- Registration comes with a Fees of Rs. 10 per square meter or minimum of Rs. 50,000 only and maximum up to Rs. 10,00,000 only

Online Registration Process under MahaRERA

- Registration has to be done on the RERA website namely - <https://maharera.mahaonline.gov.in/login/UserRegistration>
- The registration requires you to comply with basic details pertaining to the project. Project details include the following:
 - Promoter
 - Project information
 - Land FSI
 - Address
 - Apartment Type
 - Project Cost
 - Upload of necessary documents
 - Project Professional
 - Litigation relating to the Project
 - Activity
 - Payment

A. Promoter (1/3)

My Profile

General Information (All * Mark field are mandatory)

Information Type Individual Other Than Individual

Organization

Name* PAN Number*

Organization Type*

Address Details

Block Number* Building Name*

Street Name* Locality*

Land mark* State*

Division* District*

Taluka* Village*

Pin Code*

Organization Contact Details

Name of Contact Person* Designation of Contact Person*

Company Mobile Number* Secondary Mobile Number*

Office Number* Fax Number



A. Promoter (2/3)

Partner Details


Designation *	Select Designation ▼	First Name *	<input type="text"/>
Middle Name	<input type="text"/>	Last Name *	<input type="text"/>
PAN Number *	<input type="text"/>	Aadhar Number *	<input type="text"/>

Address Details

House Number *	<input type="text"/>	Building Name *	<input type="text"/>
Street Name *	<input type="text"/>	Locality *	<input type="text"/>
Land mark *	<input type="text"/>	State *	Maharashtra
Division *	Select Division ▼	District *	Select District ▼
Taluka *	Select Taluka ▼	Village *	Select Village ▼
Pin Code *	<input type="text"/>		

First Name	Middle Name	Last Name	Designation	PAN Number	Action
n		p	Partner	#ANNO1234K	 

Click on add member button to add member details, After records are added, updated or deleted click on save button



A. Promoter (3/3)

Promoter Past Experience Details

All * mark fields are mandatory.

Brief Details of Project launched and completed by promoter in last five years:(across India)

Project Name *	<input type="text"/>	Project Type *	Select Project Type ▾
Address *	<input type="text"/>	Land Area(In Sq mtrs) *	<input type="text"/>
Number of Buildings/Plots *	<input type="text"/>	Number of Apartments *	<input type="text"/>
Total Cost(In INR) *	<input type="text"/>	Plot bearing C.N.No./CTS No./Survey no./Final Plot no *	<input type="text"/>
Original Proposed Date of Completion *	<input type="text"/>	Actual Completion Date *	<input type="text"/>

B. Project Details (1/10)

Add Project

All * Mark field are mandatory.

Project Information

Project Status* On-Going Project New Project

Project Name* Project Type*

Proposed Date of Completion* Revised Proposed Date of Completion*

Litigations related to the project?* Yes No

Land Details

Plot Bearing No / CTS no / Survey Number/Final Plot no.* Area(In sqmts)*

Aggregate area(In sqmts) of recreational open space* Total Building Count

Sanctioned Buildings Count Proposed But Not Sanctioned Buildings Count

Boundaries East* Boundaries West*

Boundaries North* Boundaries South*

B. Project Details (2/10)

Add Building

All * Mark field are mandatory.

Project

Project Name *

Building Details

Building Details

Name *	<input type="text"/>	Number of Basement's *	<input type="text"/>
Number of Plinth *	<input type="text"/>	Number of Podium's *	<input type="text"/>
Number of Slab of Super Structure *	<input type="text"/>	Number of Stilts *	<input type="text"/>
Number of Open Parking *	<input type="text"/>	Number of Closed Parking *	<input type="text"/>

Apartments Type Details

Apartment Type *	<input type="text"/>	Carpet Area(In sqmts) *	<input type="text" value="000000.00"/>
Proposed number of apartments *	<input type="text"/>	Number of apartments booked/sold /allotted *	<input type="text" value="000000"/>

First Add Apartment Type Details by using - 'Add Apartment Type', then Click Add Building Button to Save Record.

Current Building Count = 1 | Maximum Building Count = 0

B. Project Details (3/10)

Common Areas and facilities

Project

Project Name * test 1

All Fields are Mandatory.

Project Details

Name	Proposed	Number Of Units Booked	Progress Of Work Done (In %)
Number of Garages (In Numbers)	8787	87	87
Covered Parking (In Numbers)	87	87	8

Development Work

Common areas And Facilities, Amenities	Proposed	Percentage Of Completion	Details
Internal Roads & Footpaths : *	NO	0	NA
Water Supply : *	NO	0	NA
Sewerage (Chamber, Lines, Septic Tank , STP) : *	NO	0	NA
Storm Water Drains : *	NO	0	NA
Landscaping & Tree Planting : *	NO	0	NA
Street Lighting : *	NO	0	NA
Community Buildings : *	NO	0	NA
Treatment And Disposal Of Sewage And Sulfage Water : *	NO	0	NA
Solid Waste Management And Disposal : *	NO	0	NA
Water Conservation, Rain water Harvesting : *	NO	0	NA
Energy management : *	NO	0	NA
Fire Protection And Fire Safety Requirements : *	NO	0	NA
Electrical Meter Room, Sub-Station, Receiving Station : *	NO	0	NA
Aggregate area of recreational Open Space : *	NO	0	NA
Open Parking : *	NO	0	NA

Add Here Common Areas and facilities

Save After any edit or update of data click on save button.

B. Project Details (4/10)

Cost Details

Project Name *

All Fields are Mandatory.

Sr. No	Particular	Estimated Total Amount (in INR)	Actual Total Amount (in INR)
1	Land Cost :		
a	Acquisition Cost of Land or Development Rights, lease Premium, lease rent, interest cost incurred or payable on Land Cost and legal cost *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
b	Amount of Premium payable to obtain development rights, FSI, additional FSI, fungible area, and any other incentive under DCR from Local Authority or State Government or any Statutory Authority *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
c	Acquisition cost of TDR (if any) *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
d	Amounts payable to State Government or competent authority or any other statutory authority of the State or Central Government, towards stamp duty, transfer charges, registration fees etc; and *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
e	Land Premium payable as per annual statement of rates (ASR) for redevelopment of land owned by public authorities *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
f	i Estimated construction cost of rehab building including site development and infrastructure for the same as certified by Engineer * Actual Cost of construction of rehab building incurred as per the books of accounts as verified by the CA *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
	ii Cost towards clearance of land of all or any encumbrances including cost of removal of legal/illegal occupants, cost for providing temporary transit accommodation or rent in lieu of Transit Accommodation, overhead cost *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
	iii Cost of ASR linked premium, fees, charges and security deposits or maintenance deposit, or any amount whatsoever payable to any authorities towards and in project of rehabilitation *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
2	Development Cost/ Cost of Construction		
a	i Estimated Cost of Construction as certified by Engineer * Actual Cost of construction incurred as per the books of accounts as verified by the CA *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
	ii On-site expenditure for development of entire project excluding cost of construction as per (ii) above, i.e. salaries, consultants fees, site overheads, cost of services (including water, electricity, sewerage), cost of machineries and equipment including its hire and maintenance costs, consumables etc. All costs directly incurred to complete the construction of the buildings /wings of the project registered *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
b	Payment of Taxes, cess, fees, charges, premiums, interest etc to any statutory Authority *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
c	Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders on construction funding or money borrowed for construction *	<input type="text" value="000000.00"/>	<input type="text" value="000000.00"/>
3	Total Estimated Cost of the Real Estate Project	<input type="text"/>	<input type="text"/>

Save

B. Project Details (5/10)

Document Upload

All * mark fields are mandatory.

Project Name*

Documents

Sr. No.	Document Name	Uploaded Document	Action
1	PAN Card *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
2	Copy of the legal title report *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
3	Details of encumbrances *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
4	Copy of Layout Approval (in case of layout) and Building Plan Approval (ODD) *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
5	Signed Proforma of the allotment letter and agreement for sale *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
6	Declaration in FORM B *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
7	Certificates of Architect (Form 1)(Mandatory for only ongoing project) *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/> <input type="button" value="+ Add"/>
8	Certificates of Architect (Form 4)	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/> <input type="button" value="+ Add"/>
9	Certificates of CA (Form 3) *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/> <input type="button" value="+ Add"/>
10	Certificates of CA (Form 5)	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
11	Certificates of Engineer (Form 2)(Mandatory for only ongoing project) *	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/>
12	Commencement Certificates	<input type="text" value="Browse..."/> No file selected.	<input type="button" value="Upload"/> <input type="button" value="+ Add"/>

B. Project Details (6/10)

Project Professional

All * mark fields are mandatory.

Project Name *

+ REAL ESTATE AGENT

- CONTRACTOR

Sr. No.	Name	Address	Aadhaar No.	Contact No.	Action
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="button" value="+"/>

+ ARCHITECT *

+ STRUCTURAL ENGINEER

+ OTHER

B. Project Details (7/10)

All * mark field are mandatory.

Litigations Related to the Project

Project Name	<input type="text" value="Select Project"/>	Name of the Court *	<input type="text"/>
Type Of Case *	<input type="text" value="Select Case Type"/>	Petition *	<input type="text" value="Select Petition"/>
Case Number *	<input type="text"/>	Year *	<input type="text" value="Select Year"/>
Whether any Preventive/Injunction /Interim Order is Passed *	<input type="radio"/> Yes <input type="radio"/> No	Present Status *	<input type="text"/>

B. Project Details (8/10)

Activity Details

All Fields are Mandatory.

Project

Project Name * Pro5 Nagpur project 1 Building Name * po

SR NO.	Tasks / Activity	Percentage of Work
1	Excavation *	<input type="text"/>
2	X number of Basement(s) and Plinth *	<input type="text"/>
3	X number of Podiums *	<input type="text"/>
4	Stilt Floor *	<input type="text"/>
5	X number of Slabs of Super Structure *	<input type="text"/>
6	Internal walls, Internal Plaster, Floorings within Flats/Premises, Doors and Windows to each of the Flat/Premises *	<input type="text"/>
7	Sanitary Fittings within the Flat/Premises, Electrical Fittings within the Flat/Premises *	<input type="text"/>
8	Staircases, Lifts Wells and Lobbies at each Floor level connecting Staircases and Lifts, Overhead and Underground Water Tanks. *	<input type="text"/>
9	The external plumbing and external plaster, elevation, completion of terraces with waterproofing of the Building/Wing *	<input type="text"/>
10	Installation of lifts, water pumps, Fire Fighting Fittings and Equipment as per CFO NOC, Electrical fittings to Common Areas, electro, mechanical equipment, Compliance to conditions of environment /CRZ NOC, Finishing to entrance lobby/s, plinth protection, paving of areas appurtenant to Building/Wing, Compound Wall and all other requirements as may be required to Obtain Occupation /Completion Certificate *	<input type="text"/>
11	Overall Percentage of Completion of the work done For the entire Building /Wing *	<input type="text"/>

B. Project Details (9/10)

Withdrawal

Withdrawal Details

Project Name *

Refund Details

Project Name	ProS Nagpur project 1	Registration No.	REA50900000017
Payment Date	Apr 28 2017 8:04PM	Paid Amount(exclusive of Service Charges & Taxes)	42500.00

Refund Calculations

Paid Amount(exclusive of Service Charges & Taxes)	42500.00	Withdrawal Administrative Charges	5000.00
Service Charges	1250.00	Service Tax Amount	187.50
Final Refund Amount	36062.50		

IFSC Code *

Bank A/c Number *

Bank Name *

Branch Name *

Bank Address *

Remark *

B. Project Details (10/10)

Withdrawal

Withdrawal Details

Project Name *

Refund Details

Project Name	ProS Nagpur project 1	Registration No.	REAS0900000017
Payment Date	Apr 28 2017 8:04PM	Paid Amount(exclusive of Service Charges & Taxes)	42500.00

Refund Calculations

Paid Amount(exclusive of Service Charges & Taxes)	42500.00	Withdrawal Administrative Charges	5000.00
Service Charges	1250.00	Service Tax Amount	187.50
Final Refund Amount	36062.50		

IFSC Code *

Bank A/c Number *

Bank Name *

Branch Name *

Bank Address *

Remark *

Benefits to Promoters under RERA

- Impose Penalty on defaulters
- Provision for extension of Project registration
- Relaxation of penalty in genuine cases
- Regulation a positive change in increasing demand
- Promoters can also approach authority for disputes
- RERA Certificate is a certificate of authenticity
- Assists in having transparency with home buyers

Benefits to Home buyers under RERA

- Impose Penalty on promoters/ builders for project delays
- Utilizing the funds provided to builders for the specified projects under RERA only
- Rights to recover the amount including interest in case of default by promoter
- Liability to rectify structural defects or defects in workmanship for a period of 5 years from the date of handing over possession
- Payment of only 10% of cost of apartment/plot/building while booking
- Refund of amount and compensation if allottees wish to withdraw from project due to delay
- Title insurance mandatory under RERA securing the association of allottees
- Standard format for Agreement for Sale hence no scope of arbitrary clauses
- Transparency in existing and future litigation on the project thus assisting in decision making
- Standardized definition of Carpet Area
- Price correction due to increased transparency

Judicial Hierarchy under RERA and its alternative mechanism

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Judicial Hierarchy

- File complaint to RERA Authority
- Appeal to RERA Tribunal
- Appeal to High Court
- Appeal to Supreme Court

Judicial Hierarchy - Alternative Mechanism

- File complaint to Consumer Forum
- Appeal to Supreme Court

Comparison of the regulations at a glance

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Comparison of the regulations at a glance

MOFA Stands for Maharashtra Ownership(Regulation of the promotion of construction, Sale, Management and Transfer) Act, 1963 (MOFA)	RERA Stands for The Real Estate (Regulation and Development) Act,2016
The objective was to regulate the promotion of the construction, sale and management and transfer of flats, on ownership basis.	Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute Redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.
MOFA came into existence on 16 th December 1963.	RERA came into existence on the 1st May 2016.
Section 7(2) of the MOFA covers the structural defects in a building or any defective material used or unauthorized construction done within a period of 3 years from the date of handing over of possession.	Section 14(3) covers the structural defects along with defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the Allottee from the date of handing over possession.
There was no requirement for registration under the MOFA Act which has become mandatory under the RERA Act.	Registration is Compulsory for Promoters and Developers under the RERA Act.
Carpet area is defined differently under MOFA as which includes balcony	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.

Case Assessment

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Avinash Saraf, Nega Duggal Saraf vs Runwal Homes Pvt Ltd

The RERA Tribunal in Maharashtra had given a landmark judgement in the above mentioned case

Facts - The complainants had paid 97% of total consideration of the flat and the date of possession of the flat was promised to be August, 2016, as per agreement of sale executed in November 2014. However, the respondents failed to give the Possession in time. Hence the complainant demanded the amount of consideration with interest @ 21% p.a.

Point of Contention – Whether RERA will have jurisdiction over the agreement entered into before enactment of RERA and whether the complainant was entitled to get back the amount paid to respondent with interest and compensation under RERA

Order -

As the cause of action survived even after the date of introduction of RERA, MahaRERA gets jurisdiction over all such cases requiring registration under section 3 of the RERA Act. Considering the above, RERA is assumed to be retroactive.

Section 18 of RERA imposes liability on the promoter to return the amount received by it in respect of apartment of which he fails to give possession. In light of the above section, the Builder was asked to compensate the amount paid by the allottees and due to the delay caused by the builder the allottees cannot be made to pay interest to banks for loans availed by them and therefore the builder was asked to compensate the amount along with interest to the allottees.

Suresh V Swamy vs Larsen and Toubro

The RERA Tribunal in Maharashtra had clarified certain questions of law which are enumerated below for ease of reference

- jurisdiction of the Authority is not lost only because of the receipt of the OC or on the completion of the project or when the possession is offered
- Provisions of RERA are applicable to the agreements for sale though they have been entered into prior to the registration of project under RERA.
- the Arbitration and Conciliation Act and the Arbitration Clause in the agreement cannot be delegated as Section 18 of the Act constitutes a special forum provided by RERA and hence, the jurisdiction lies with the Authority
- The word 'shall' under Section 18 indicates that this provision is mandatory and it is the absolute right of the allottee to recover interest for delay in obtaining possession
- Builder is liable to pay interest under Section 18 of RERA even though the date of completion has been revised on the RERA Portal

THANK YOU

Study Circle Session arranged by V.P. Shintre & Associates, Advocates
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