

MEHTA&MEHTA

Legal and Advisory



Article

New Beginning in the business of Real Estate

Dipti Mehta
Director

June 05, 2017

DISCLAIMER:

While Mehta & Mehta Legal and Advisory Services Private Limited ("Mehta & Mehta") has made every effort and has exercised due skill, care and diligence in compiling this report based on publicly available information, it neither guarantees its accuracy, completeness or usefulness, nor assumes any liability whatsoever for any consequence from its use. This report does not have any approval, express or implied, from any authority, nor is it required to have such approval. The users are strongly advised to exercise due diligence while using this report. This report in no manner constitutes an offer, solicitation or advice to buy or sell securities, nor solicits votes or proxies on behalf of any party. This report is just for the purpose of imparting knowledge and brings to light the impact of the provisions of the statute to reader. Further, this report in no way intends to allege any company, individual or any other person.

This report may not be reproduced in any manner without the written permission of Mehta & Mehta. All disputes are subject to jurisdiction of High Court of Bombay, Mumbai. All rights reserved.

Mehta & Mehta Legal and Advisory Services Private Limited

Address: 201-206, Shiv Smriti Chambers, 2nd Floor, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai – 400018

CIN: U74140MH2006PTC163236

Phone: +91-22-6611-9696

Email: info@mehta-mehta.com

Website: www.mehta-mehtaadvisory.com

Article

New Beginning in the business of Real Estate

History

Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as “RERA”) was first passed by Rajya Sabha on March 10, 2016 and passed by Lok Sabha on March 15, 2016. RERA Bill was first introduced in the year 2013. The Act came into effect from May 1, 2016. RERA has 92 sections, out of which 59 sections got notified and became effective from May 1, 2016. Remaining provision of RERA came into effect from May 1, 2017. RERA was enacted basically to protect the interest of ultimate customers of Real Estate industries. Before RERA, there was no proper mechanism to oversee and control the operation, process and working of real estate business.

RERA will monitor the entire compliance of the real estate businesses, starting with the registration of the new projects, opening of the separate bank account to deposit the advance received from the customer, to upload the progress of the project, to obtain the completion certificate within due date post registration of the project. Prior registration of the project and its approval as well as periodical progress report, will reduce the fear and chances of delay or failure to transfer the property to ultimate customer on time. This will really boost the confidence of ultimate customer and will help Real Estate sector to grow.

Introduction

Key element in the introduction of the RERA is the protection of the buyer, where the regulators will have the continuous monitoring system in place to ensure that the buyer are not cheated at large and their invested monies remains safe and the same are used by the real estate promoters for the purpose they are supposed to be used. Projects are mandated to be registered with the authorities, before the start of the project. Success of RERA is largely depends on the involvement of the Professional in this segment, which widens their scope as well. Interpretation of the Act, effectiveness of the entire procedure (since many things are completely new for the buyer and promoters), understanding of the compliance requirement, this can lead to the success of the RERA at large. Introduction of RERA will reduce the litigation of the property at large and will also bring a reformation and transparency in the new projects.

Registration Mandate

Section 3 of the RERA Act deals with the registration requirement of the projects subsequent to the enactment of the RERA. The projects which are completed as on the date of commencement of the Act, but for which the completion certificate is not obtained, promoters are required to be registered within three months from the date of the commencement of the Act. So, in case if the project is completed and completion certificate is issued to the promoters before the commencement of the Act, the same need not to be registered with the Authorities. No proposal or offer for sale, advertisement, marketing is allowed for the proposed project, unless the same is registered with the authorities.

Following projects are exempted from the mandatory registration with the authorities:

- Where the proposed land is less than 500 sq. meters (Central Government can reduce the threshold limits) / number of apartments is less than 8
- Promoter has received the completion certificate before the commencement of the Act

Article

- For renovation, repair or re-development of the project, where marketing, advertisement, selling or new allotment of the apartment, plot or building is not involved

How RERA will protect the interest of the buyer????

Lot of changes was expected with the reformation of laws governing the Real Estate business. With the move of Government of India towards cashless market, digitalization, even the Real Estate market has geared up to move towards digitalization. One of the biggest relief to the buyer given by RERA, is the mandatory opening of separate bank account by the promoter and to deposit 70% of the amount received from the buyer in the said account. *This is one of the biggest move by the Government while approving this Act.* Promoter can utilize the amount in the bank only for the purpose of construction of the project.

Earlier, the funds accumulated by the promoters were diverted at many places, which caused the delay in the completion of the project on time. Due to the movement of the funds for such activities other than the construction of the project, promoter found it difficult to raise the requisite fund for the completion of the project.

Each proposed project of the promoters is to be registered with the concerned authorities. This means that the entire compliance procedure of the respective projects will be separate with the compliance of the other project and the non-compliance of one project will not have any consequence on the other ongoing projects of the promoter.

Further, promoter should get his financial statement audited within six months after end of every financial year and the same to be certified by the Chartered Accountant in practice. Auditor has to verify the project for which the promoter has received the amount, and the same has been used for the purpose it is received. Earlier, the sole proprietor was not required to carry out the audit of its financial statement. However, even if real estate agent is registered as a sole proprietor, he will be covered under the ambit of the audit and has to carry out the audit of the financial statement.

Further details which are required from promoters while registering the projects, which will also be the safeguard measures for the buyer:

- Brief details of the promoter, his business, type of the business, registered address, complete name and the photograph of the promoter
- Brief details of the projects launched by him
- Location of the projects with clear demarcation of the land dedicated for the project
- Proforma of the allotment letter, agreement for sale and the conveyance deed as proposed
- Brief details of the contractors, architect, structural engineer for the development of the project.

Article

Above mentioned are few of the mandatory details to be submitted by the promoter while making an application for registration of the project.

RERA Rules

Pursuant to the section 84 of RERA, it is the responsibility of the state government to enact and notify the rules on RERA for their respective states. Central Government has also released their general rules “Real Estate (Regulation and Development) (General) Rules, 2016” on October 1, 2016 and this rule will be applicable to the five Union Territories of India.

Quick highlights of this rules are laid down below:

- 70% of the amount collected and unused amount should be deposited in separate account
- For Registration, developers are required to submit the PAN, audited annual report comprising profit and loss of the firm, balance sheet, cash flow statement, auditor report for immediate preceding three years, copy of legal title deed, copy of collaboration agreement (incase if the promoter is not the owner of the plot)
- Promoter to upload within 15 days after each quarter on the webpage of the project, status of the project completed
- Adjudicating officer and Appellate Tribunal shall dispose of the complaints within 60 days.

Objectives of RERA

Following are the quick highlights on the main objectives of formation of RERA:

- To safeguard the interest of the customer in the real estate sector
- To increase the trust and confidence of the customer
- To establish and ensure the speedy dispute redressal to the complaints of the buyer
- To establish the tribunals for the hearing against the order, directions as passed by the Real Estate authority
- To ensure the transparency of the development of the project
- State Government and UT are required to form its own rules and regulators to govern the functioning of the regulators
- Registration Certificate granted by the authority will be valid till the period as declared by the promoter in the application for the completion of the project. However, extension can be subject to the examination of the facts of each case. Authority will not reject any application for the extension of the Registration Certificate without giving an opportunity of hearing to the promoter.
- Encouragement of timely delivery of the project, as promised

Article

Registration by Real Estate Agent

Pursuant to the section 9(1) of RERA, real estate agents are mandatory to get themselves registered under the act. This is one of the biggest reformation in the real estate sector, as real estate agents are the backbone of this industry and most of the population approach them for the purchase of the property. Involvement of the Real Estate agents in this sector also resulted to many of the fraudulent events which had risked the investment of the buyer. Due to registration and monitoring system of the Authorities, this will reduce the number of disputes and will surely safeguard the interest of the buyer in the real estate sector.

The Registration Certificate to be granted to these agents will be valid for the stipulated period, which will be prescribed in the state rules, and the same are subject to the renewal. Thus, this will ensure the compliance by the real estate agents, because renewal procedure will again subject to the various documents to be submitted with the application for the renewal of the registration certificate.

There are few responsibilities on the real estate agents:

- To maintain and preserve books of accounts, records and documents for the period as may be prescribed under the rules
- Not to involve into any unfair trade practices
- Publication of the advertisement which gives wrong false information
- To facilitate with all the necessary information and documents to the allottees, at the time of booking the projects

Conclusion

With the enactment of the RERA, the confidence of the buyer will grow in the real estate market. Prior to the RERA, there was Civil Procedure Code which was governing the operation of the real estate business. However, with the enactment of RERA, all the areas in real estate will be streamlined. Most of the financial sector are governed by the government bodies for e.g. RBI looks after the compliance of Non-Banking Financial Companies, Insurance Regulatory and Development Authority monitors the compliance of Insurance companies, Securities Exchange Board of India monitors the compliance of the listing companies. Hence, Government of India found it necessity to bring such laws, regulation, Regulator and Jurisdiction Authorities in place which will govern the real estate sector. This sector is one of the biggest source of finance for the country.

To read our other articles: [Click here](#)

To view daily news updates: [Click here](#)

To view important circulars and notifications: [Click here](#)