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RERA: REGISTRATION OF REAL ESTATE PROJECTS- A BRIEF OVERVIEW

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The real estate sector has been one of the top-most contributors to the country's Gross Domestic Product (GDP) and employment creation. Surprisingly, inspite of being such an important part of the economy, the real estate sector was unregulated for numerous years. In order to regulate the aforesaid unorganized sector, the Indian Parliament passed a legislation called as The Real Estate (Regulation and Development) Act, 2016 ("**RERA**") which was made effective on May 1, 2016.

A batch of writ petitions was filed by real estate developers and individual plot owners in the Bombay High Court. They claimed that RERA is unconstitutional as its state-wise implementation and appointing state-level authority is arbitrary. They also challenged Section 3 of the RERA which mandates developers to register their new and ongoing real estate projects.

The Bombay Court held that RERA is constitutional. A bench of justices consisting Rajesh Ketkar and Naresh Patil stated that "*RERA needs to be closely monitored in years to come. RERA is not a law relating to only regulatory concerns but its object is to develop realty sector particularly incomplete projects.*"

RERA is a central legislation though land is a state subject on which only the state government is empowered to frame laws. Hence, RERA being a central legislation, is adopted by each state government in India in its respective state assembly and has also framed its respective rules and regulations to implement RERA in its territory.

Registration under RERA

One of the salient features of RERA is the requirement of registration of the real estate project **by the 'Promoter'** with the Real Estate Regulatory Authority ("**Authority**"), which falls within the planning areas. In the absence of such registration, the Promoter of a real estate project is not permitted to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner in any real estate project or part of it.

RERA defines promoter as ("**Promoter**"):

1. Builder;
2. Developer;
3. Development Authority;
4. Society; or
5. Holder of Power of Attorney from the owner of the land on which building / apartment is constructed or plot is developed for sale.

A “**real estate project**” is defined as the development of a **building**, converting an existing building or a part in **apartments**, development of land into apartments / plots for the purpose of selling and includes common areas, development works, all improvements and structures thereon and all easement, rights and appurtenances belonging to such building or land or structure.

The terms “**apartment**” and “**building**” as used in the aforesaid definition which is defined under the Act not only covers residential projects but also covers commercial projects.

In terms of Section 3 of RERA, the following real estate projects are not required to be registered:

1. Where the area of the land does not exceed 500 square meters or number of apartments does not exceed 8 (eight);
2. Where the Promoter has received completion certificate for a real estate project prior to commencement of RERA; and
3. Where the work involved is limited only to renovation or repair or re-development and does not involve marketing, advertising, selling or new allotment of any apartment, plot or building.

In addition to the registration of real estate projects, every Real Estate Agent is also required to get itself registered before facilitating the sale / purchase of any real estate project or part of it, by making an application along with requisite information / documents and fee.

Application for registration under RERA

In terms of Section 4 of RERA, an application required to be made by every Promoter along with the prescribed fee for registration of its real estate project and shall be *inter alia* accompanied with the prescribed documents including:

1. An authenticated copy of the approvals and commencement certificate obtained from the competent authority;
2. Sanctioned plan, layout plan and specifications of the proposed real estate project as sanctioned by the competent authority; and
3. A declaration by the Promoter supported by an affidavit *inter alia* stating:
 - 3.1. that the Promoter has a legal title over the land on which development is proposed;
 - 3.2. the details of all encumbrances on such land;
 - 3.3. the time period within which the Promoter undertakes to complete the real estate project;

- 3.4. that the Promoter would deposit 70% of the amount realized for the real estate project from the allottee(s) from time to time in a separate bank account.

Validity of registration under RERA

The registration granted shall be valid for a period declared by the Promoter for completion of the real estate project or phase thereof as submitted in the affidavit along with the application for registration.

The registration granted by the Authority may be extended by it upon receipt of application from the Promoter in this regard in the following circumstances:

1. **Force Majeure:** war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.
2. **Other than force majeure:** The Authority may extend the registration to a maximum period of one year if it feels that the circumstances and reasons for extension of the case are reasonable.

Revocation of registration

RERA stipulates various compliances with respect to a real estate project. If the same are not complied with, the registration of an already registered real estate project may get revoked. The Authority may revoke a registration on the basis of a complaint received or *suo motu* by the Authority by giving 30 days' notice in writing to the Promoter of such real estate project stating grounds of proposed revocation and instructing him to show cause as to why the registration should not be revoked. On the basis of the Promoter's reply to the show cause notice, the Authority may allow the real estate project to be registered or alternatively, may cancel the registration.

A show cause notice proposing the revocation may be issued on the following grounds:

1. If the Promoter defaults in doing anything required under RERA;
2. If the Promoter violates any terms and conditions of the approval granted by the Authority;
3. If the Promoter is involved in any kind of unfair practice or irregularities such as any misrepresentation or false representation and / or publication of any advertisement / prospects of services that are not intended to be offered; and / or
4. If the Promoter indulges in any fraudulent practices.

Consequences of non-registration

In case of non-registration of the real estate project, Section 59 stipulates a penalty of up to 10% of the estimated project cost and in case of continued default, an additional fine up to 10% of the estimated project cost or imprisonment up to 3 (Three) years or both.

In terms of the provisions of Section 31 of the RERA legislation, any aggrieved person may file a complaint with the Authority against the Promoter for violation of the provisions. The Authority has been entrusted with very wide powers under RERA in relation to any non-compliance on the part of the Promoter including levy of penalty as well as taking such other remedial measures or safeguards as may be deemed fit by the Authority. The same may include granting of interim order(s), refund of consideration amount received by the Promoter from various allottee(s), change in the developer / Promoter, etc., on a case to case basis.

Lending by Financial Institutions / Banks

In the event, any bank / financial institution decides to lend money to retail buyers under the real estate project, which is not registered or registration of the same has been cancelled, such decision may be a conscious call on the part of such bank / financial institution since such lending will involve high risk factors and uncertainties regarding the completion of the real estate project or actions to be taken by the Authority in relation to such real estate project / Promoter at a later stage, which may be detrimental to the interest of such bank / financial institution or other stakeholders. Hence, the Banks / Financial Institutions have also been insisting upon registration of real estate projects under RERA before sanction of the loan or approval of the real estate project in order to protect their interest.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.