

Session on
The Real Estate (Regulation and Development) Act, 2016
For Indian Concrete Institute
December 20, 2018

Regulatory developments

Enacted

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 | Benami Property Transactions Act
The Real Estate (Regulation and Development) Act, 2016 | Goods and Service Tax | Indian Accounting Standards (Ind AS)

Regulations

TDS on immovable property | GST on JDA | Focus on Anti-avoidance measures | Stamp Duty | National Green Tribunal | TDR | Comprehensive Development Plan (CDP) 2030
Capital gains on execution of JDA | Section 4 of the Competition Act, 2002

RERA Act and Rules

- Gazetted in 25 March, 2016.

The Act

- Effective from 1 May, 2016.
- Time period of 1 year was granted for the “Appropriate Government” by notification to appoint The Real Estate Regulatory Authority and frame the rules.
- The Karnataka Rules were notified on 10 July, 2017
- 28 states/UT have notified the rules except :

The Rules

- Jammu and Kashmir (as Act is not applicable there).
- 6 Northern States (because of land issue).
- West Bengal has enacted its own Act i.e. Housing & Industry Regulation Act (HIRA), however, the State has been advised to notify the rules under Real Estate (Regulation & Development) Act, 2016.

Status of RERA in Indian States

Fully operational	Interim regulator +portal launched	Interim regulator, no portal	Rules yet to be notified
<ul style="list-style-type: none">• Punjab• Rajasthan• Gujarat• Maharashtra• Madhya Pradesh	<ul style="list-style-type: none">• Himachal Pradesh• Uttarakhand• Haryana• Uttar Pradesh• Chhattisgarh• Andhra Pradesh• Karnataka• Kerala• Puducherry• Tamil Nadu• Bihar	<ul style="list-style-type: none">• Jharkhand• Odisha• Telangana	<ul style="list-style-type: none">• Sikkim• Assam• Meghalaya• Nagaland• Manipur• Mizoram• Arunachal Pradesh• West Bengal

RERA Registration Status

Project applied for RERA Registration	Number of Projects
Total projects processed till date	2,207
Project approved	1,626
Applications under process	246
Applications under query	175
Project Rejected	160

Status as on December 19, 2018; Source: www.rera.karnataka.gov.in

Pre-execution

Business drivers

❑ Pre-launch

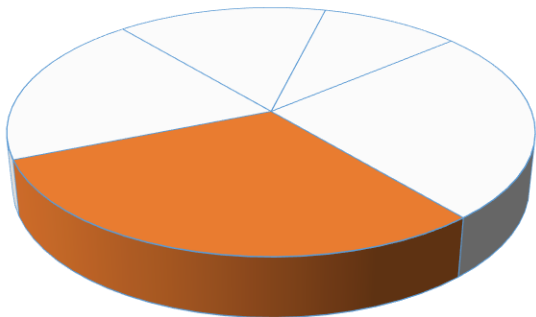
RERA Act

- ❑ Developers not permitted to book, advertise, sell or offer for sale or invite persons to purchase unless:
 - Project is registered with Real Estate Regulatory Authority
 - *Commencement certificate is obtained*
 - Details of approved project plan, carpet area, names of real estate agents is furnished

Impact

- May delay project execution
- Increased cash outflows
- May compel external funding
- Stringent action for non-registration
- Disclosure of existing projects with status, Size of apartment based on carpet area even if sold on the basis of SBUA.
- Create web-page with login /PW

Pre-execution



Pre-execution

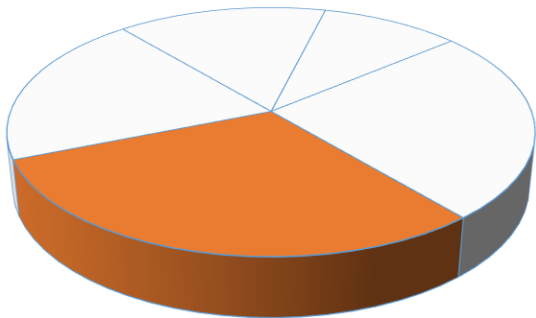
Business drivers

❑ Pre-launch

❑ Exceptions

- Land area is less than 500 sq mtrs
- Number of units does not exceed 8
- Received completion certificate prior to implementation of the Act
- Renovation / repair / re-development which does not involve marketing, advertising, selling or new allotment of any apartment.

Pre-execution



RERA Act

Karnataka Rules

Ongoing projects excluded from RERA which fulfill any of the following:

- Layouts: streets and civic amenities sites and other services have been handed over to the local authority
- Apartments: Common areas and facilities have been handed over to RWA
- All development work have been completed /certified by competent authority and sale deed of 60% have been registered
- All development work have been completed / certified by competent authority and application has been filed for issue of CC / OC
- Partial OC is obtained

Registration

Business drivers

Registration

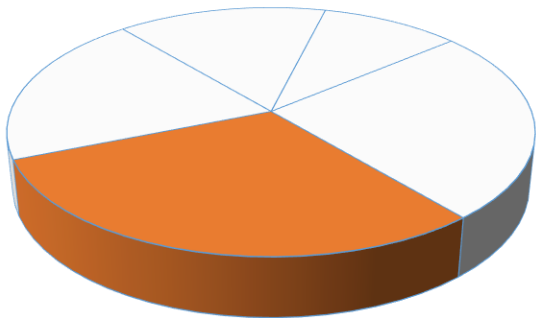
Non Registration

Registration Fee

Project - Type	Upto 1000 sq. mt. (In Rs per sq. mt.)	Greater than 1000 sq mt (In Rs per sq. mt.)	Max limit (in Rs)
Group Housing Project	5	10	5,00,000
Mixed Development	10	15	7,00,000
Commercial	20	25	10,00,000
Plotted	5	5	2,00,000

Agent - Status	Amount in Rs.	Renewal fees*
Individual	25,000	5,000
Other than Individual	2,00,000	25,000

Pre-execution



Note : *The agent registration is valid for five years, renewal shall applied for prior to three months from expiry of registration.

: Renewal fee for promoter is half of the registration fee paid during registration.

Non - Registration

Business drivers

RERA Act and Karnataka Rules

Impact

- Registration
- Non Registration

Promoter

- Advertise, market, book, sell, invite to purchase without registering the project.

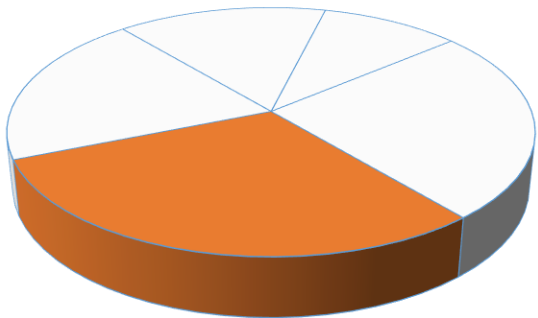
Agent

- Facilitate the purchase or sale prior to registration of project / agent

- Penalty upto 10% of “estimated cost of project”

- Rupees 10,000 per day, not exceeding 5% of the estimated cost of project

Pre-execution



Note: The Karnataka via *Circular dated 1.12.2017*, states that for all ‘ongoing projects’ as on 1st of August of 2017, which are applied for registration from 1st of November onwards, the promoter shall be liable up to 10% of the “estimated cost of project”.

Pre-execution

Business drivers

❑ Pre-launch

Emerging definitions

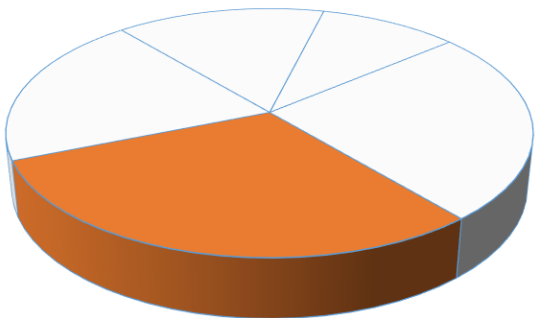
❑ Allottee

- Person to whom a plot, apartment, building has been sold, or transferred by the promoter, and includes the person who subsequently, acquires the said allotment through sale, transfer or otherwise but not does not include a person to whom such plot, apartment, or building is given on rent.

❑ Promoter

- A person who constructs or causes to be constructed....., for the purpose of selling all or some of the apartments to other persons and includes his assignees;
- A person who develops land into a project;
- Any other person who acts himself as a builder, colonizer, contractor, developer, or claims to be acting as the holder of PoA from the owner of land.

Pre-execution



Note:

1. MahaRERA Circular No. 12/2017 - Land owners and investors having area or revenue share in a real estate project to be treated as promoter.
2. MahaRERA Circular No. 13/2017 - Co-promoter is known as promoter(land owner/ investors).

Pre-execution

Business drivers

Pre-launch

Emerging definitions

Carpet area

- Means net usable floor area of an apartment, excluding the area covered by the external walls, area under service shafts, exclusive balcony or verandah area and exclusive terrace area, but includes the area covered by the internal partition walls.

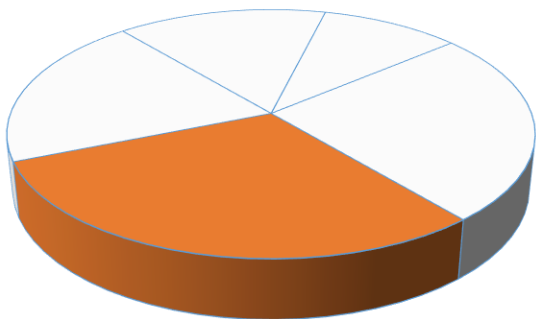
Development includes redevelopment

Interest means the rates of interest payable by the promoter or the allottees

- Rate of interest chargeable from the allottee by the promoter, shall be equal to the rate of interest which the promoter is liable to pay;
- Interest payable to the allottee shall be from the date the promoter received the amount or part thereof till the date the amount and interest thereon is refunded.

Karnataka Rules: Interest shall be the SBI prime lending rate plus 2%; refund within 60 days.

Pre-execution



Pre-execution

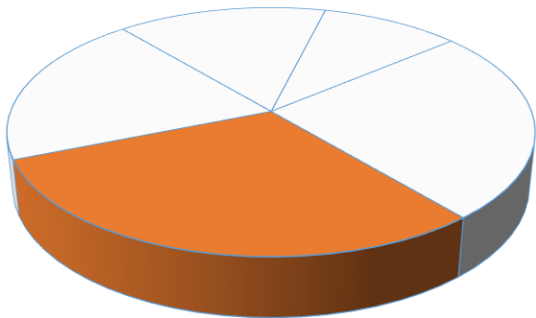
Business drivers

- ❑ Pre-launch

Emerging definitions

- ❑ Other definitions
 - Appellate Tribunal means Real Estate Appellate Tribunal
 - Commencement Certificate
 - Common area
 - Estimate cost of project
 - Garage: includes covered carpark and excludes uncovered car park
 - Occupancy Certificate
 - Real Estate Agent
 - Real Estate Project

Pre-execution



Pre-execution

Business drivers

- ❑ Pre-launch

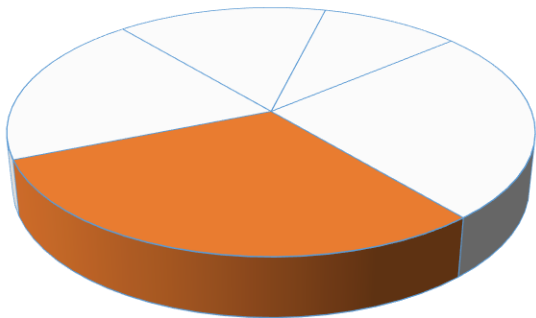
Registration requirements

- ❑ Details to be uploaded in rera.karnataka.gov.in
 - Particulars of registration
 - Names and photographs of the promoter
 - Copy of approvals and commencement certificate
 - Sanctioned plan, layout plan and specifications
 - Type and the carpet area
 - Proforma copies of allotment letters, ATS, Sale Deed
 - Names and addresses of real estate agents
 - Names and addresses of the contractors, architect, structural engineer, and other persons concerned

Karnataka Rules

- Details of open car parking
- Financial statements
- Legal title deed
- JD Agreements
- Declaration not to discriminate against any allottee.
- Declaration / Affidavit in Form-B along with registration fees;

Pre-execution



Financing

Business drivers

- ❑ Deposit
- ❑ Withdrawal

RERA Act

- ❑ 70% of money collected is to be deposited in scheduled banks to cover the “cost of construction” and “land cost” and shall be used only for such purpose.
- ❑ If receivable is less than the estimated cost of balance construction, 100% of the amount collected is to be deposited as prescribed in the Rules.

Karnataka rules

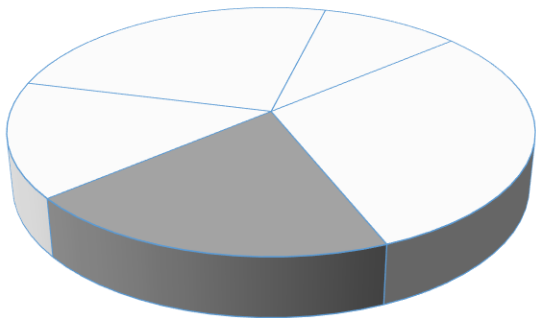
“Land cost” means

- cost of ownership as per land acquisition cost or Guidance value, whichever is higher;
- purchase of TDR; and
- all pre-development costs such as approval, stamp duty ,etc.

“Cost of construction” means

- on-site and off-site expenditure ;
- includes taxes, fees, charges, interest, etc.

Financing



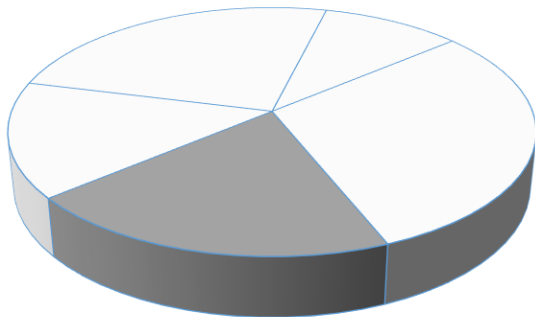
Financing

Business drivers

Deposit

Withdrawal

Financing



RERA Act

- Withdrawal is subject to certification from a Chartered Accountant, an Engineer and an Architect in practice.
- Withdrawal should cover cost of land and cost of construction
- The withdrawal shall be in proportion to the cost of construction.
- Audit shall verify the utilization from the collections is towards the project.
- Promoter shall get his accounts audited within six months after the end of every FY by the Statutory Auditor of the Company**

Karnataka Rules

The amount collected from the allottees cannot be utilized for:

- Payment of penalty, interest or compensation is payable, or any other real estate project;
- Selling and distribution and marketing costs;

Repayment of loan cannot be made out of the 70% of the bank account.

Marketing

Business drivers

- ❑ Contract Compliance

Emerging issues

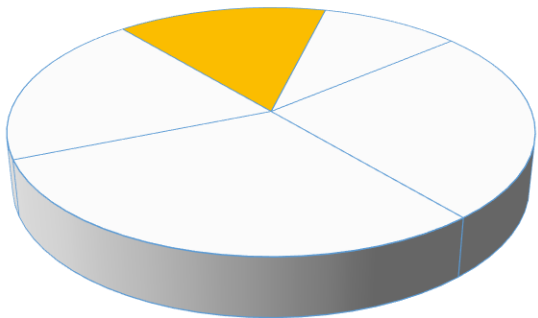
- ❑ Mandatory execution of agreement if advances collected is more than 10% of the cost of unit
- ❑ Brochure, advertisements to mandatorily include the details of website and project registration number
- ❑ Buyers to withhold 1% as Income tax at the time of making payment or credit
- ❑ Not entitled to sell garages or stilt parking areas
- ❑ Compensate the buyers for loss or damages suffered on the basis of information contained in advertisement or prospectus

Impact

- Project life cycle could be extended not beyond one year.
- Extension permitted due to Force Majeure only, which includes natural disasters and Act of God.
- Extension - half the registration fees, only after the competent authority is satisfied with the reasons

Note: Post March 31, 2018, Karnataka RERA rendered 'Provisional Registration Number' invalid for marketing/ sale of the project. Promoter has to obtain on the basis of 'Permanent Registration Number'

Marketing



Execution

Business drivers

- ❑ Contractual Compliance

Emerging issues

- ❑ Accountability with regard to:
 - Terms of the agreement;
 - Regulatory approvals;
 - Regulatory compliance;
- ❑ Developers to engage in fair and non-discriminatory practices in dealings with stake holders
- ❑ Real Estate Regulator has *suo-motu* rights to cancel registrations
- ❑ Obtain project / title insurances

Impact

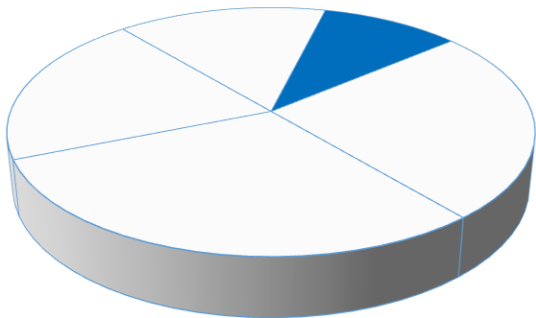
Refund along with interest and compensation

Revocation of registration certificate could

- debar the promoter to access the website;
- include the name in the list of defaulters;
- Freeze the bank account;

Business continuity

Execution



Post Execution

Business drivers

- ❑ Contractual Compliance

Emerging issues

- Create website and enter all the details
- Quarterly update of progress, units sold, garages booked
- Make available all documents to allottees
- DLP - 5 years from date of transfer of possession
- Cannot assign the project without seeking prior approval from 2/3rd allottee
- Compensate for delays with interest

Impact

Refund along with interest and compensation

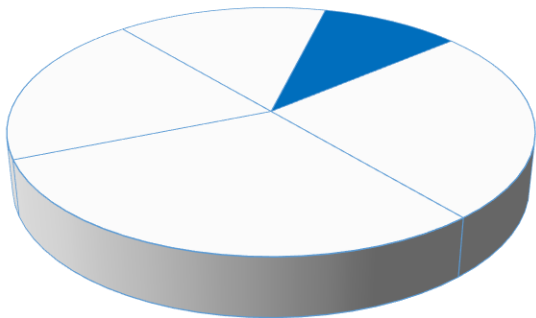
Revocation of registration certificate could

- debar the promoter to access the website
- Freeze bank accounts

Revocation of registration certificate PLUS Penalties

- 5 to 10% Total Project Cost
- Upto 3 years imprisonment

Execution



Post Execution

Business drivers

- ❑ Contractual Compliance

Emerging issues

- Enable formation of society / association
- Execute conveyance deed
- Transfer property documents to association
- Property (land and building) held as stock in trade and the property or part of the property is not let during the whole or any part of previous year, annual value shall upto a period of one year from the end of the financial year in which occupancy certificate is obtained shall be taken to be *Nil*

Impact

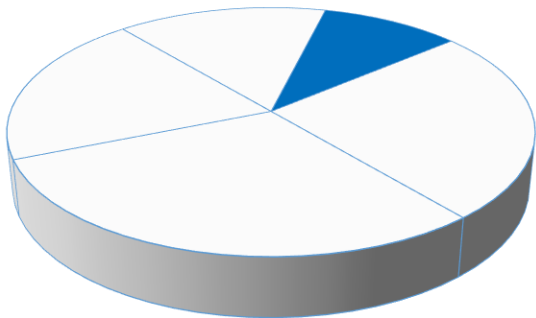
Refund along with interest and compensation

Revocation of registration certificate
PLUS Penalties

- 5 to 10% Total Project Cost
- Upto 3 years imprisonment

Business continuity

Execution



Post Execution

Business drivers

❑ Contractual Compliance

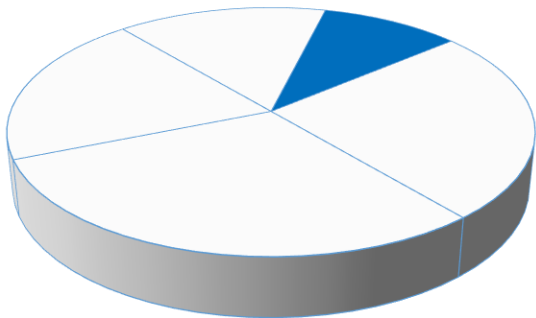
- Real Estate Regulatory - Authority Powers and functions
 - Protect interest of allottee
 - Creation of single window system
 - Encourage investment in real estate sector
 - Measure to encourage grading of projects / promoter
 - Facilitate amicable settlement
 - Digitization of land records
 - Advice the Central Government
 - Register and regulate real estate projects
 - Publish and maintain a website of records
 - Compliance with the provisions of the Act.
 - Power to issue interim order restraining promoter / RE Agents

Authority Powers and Functions

Karnataka Rules

- Authority may call any such promoter/agent/allottee for to furnish information or give explanation
- Produce such documents within such time given
- May call upon any person to assist the authority in conduct of inquiry or proceedings.
- Enquire about utilization of money collected

Execution



Post Execution

Business drivers

- ❑ Contractual Compliance

Emerging issues

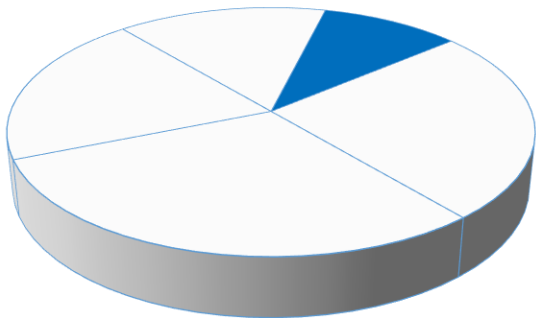
Promoter:

- Advertise, market, book, sell, invite to purchase without registering the project
- Non compliance with the orders, directions or decisions issued
- False information
- Other contraventions

Impact

- Fine upto 10% of the estimated cost
- Imprisonment upto 3 years / 10% of the estimated cost **and** further upto 10% of the estimated cost or both
- Fine upto 5% of the estimated cost
- Fine upto 5% of the estimated cost
- In case of companies, principal officers liable.

Execution



Post Execution

Business drivers

Emerging issues

Impact

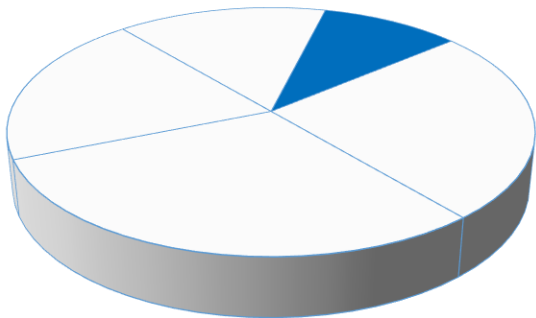
Allottee

Contractual Compliance

- Non compliance with the orders, directions or decisions issued by the Authority

- Upto 5% of the cost of plot or apartment or building.

Execution



Penalties - Promoter

Offence	Penalty
Contravention of Section 59	Penalty up to 10% of estimated cost of the project
Contravention of Section 60	Penalty up to 5% of estimated cost of the project
Contravention of Section 61	Penalty up to 5% of estimated cost of the project
Failure to comply with the directions/order of the Regulatory Authority Section 63	Penalty for every day of the default which can cumulatively go up to 5% of the estimated project cost
Failure to comply with the orders, decisions of the Appellate Tribunal Section 64	Imprisonment up to 3 years or with fine for every day of default which can cumulatively go up to 10% of the estimated cost of the project, or with both.

Penalties - Promoter

Offence	Penalty
Failure to comply with order or direction of the Authority Section 65 & 67	Penalty for every day of the default which can cumulatively go up to 5% of the estimated cost of the building / apartment or plot
Failure to comply with order or direction of the Tribunal Section 66 & 68	Punishment with imprisonment up to one year or with fine for each day of default which can cumulatively go up to 10% of the cost of the building/apartment or plot, or with both

Penalties – Agents

Offence	Penalty
Failure to comply with order or direction of the Authority Section 65	Penalty for every day of the default which can cumulatively go up to 5% of the estimated cost of the building / apartment or plot
Failure to comply with order or direction of the Authority Section 66	Punishment with imprisonment up to one year or with fine for each day of default which can cumulatively go up to 10% of the cost of the building/apartment or plot, or with both

Penalties - Allottees

Offence	Penalty
Failure to comply with order of the Authority Section 67	Penalty for every day of the default which can cumulatively go up to 5% of the estimated cost of the building / apartment or plot
Failure to comply with order of the Authority Section 68	Punishment with imprisonment up to one year or with fine for each day of default which can cumulatively go up to 10% of the cost of the building/apartment or plot, or with both

Registration Process

Business drivers

❑ Approach

- Ensure that registration process is not commenced until all the documents are adequate, legible and approved by the authorities;
- The declaration/affidavit in FORM B shall be contain a stamp for Rupees 20.
- Once the application is submitted for registration, the details can be changed in the temp login of the website.

Overview

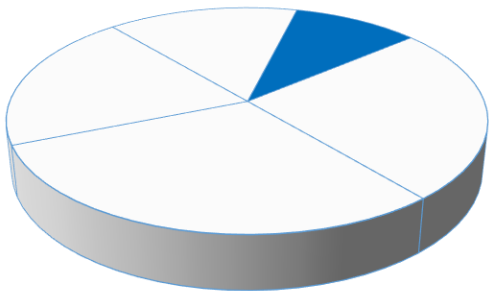
Issues

The delay in approval of project registration happens due to the following.

- The Authority scrutinizes the details mentioned in the application with the documents uploaded. In case of inconsistencies project shall be under Query
- The documents uploaded are not legible and clear.

Further changes cannot be made if the project is taken under process.

Execution



Registration- Forms

Forms relevant to promoters

Form B	Declaration/ Affidavit
Form C	Certificate of Registration of project
Form D	Rejection or Revocation of project
Form E	Application for extension of project
Form F	Certificate for extension of project
Form S	Annual Statements of Accounts

Forms relevant to Agents

Form G	Application for Real Estate Agent
Form H	Certificate of registration for Real Estate Agent
Form I	Rejection or Revocation of Real Estate Agent
Form J	Application for renewal of Real Estate Agent
Form K	Certificate for registration of Real Estate Agent

Forms that can filed by promoters/agent/allottee

Form N	Complaint to Regulatory Authority
Form O	Application to Adjudicating Officer
Form R	Appeal to Appellate Tribunal

Real Estate Regulatory Authority - Karnataka

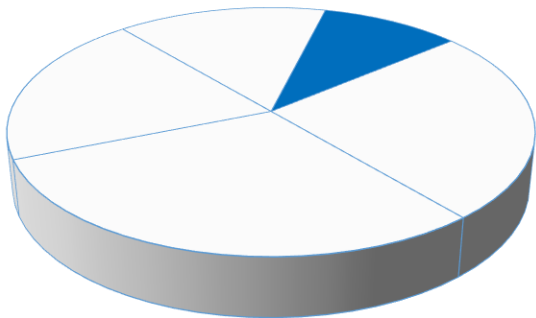
Business drivers

❑ Approach

Composition and the Other Details

- Housing Minister - Sri U T Abdul Khader
- Secretary Housing - K.S. Latha Kumari, IAS
- Interim Real Estate Regulatory Authority - Dr. J. Ravishankar, IAS
- **Address** : 2nd floor, Silver Jubli Block, Unity Building, CSI Compound 3rd Cross, Mission Road, Bengaluru, Karnataka 560009
- **Official Website**: rera.karnataka.gov.in
- **Helpline**: 080 - 22249798,22249799
- **Email ID**: info.rera@karnataka.gov.in , karnataka.rera@gmail.com

Execution



The Real Estate Appellate Tribunal

Business drivers

- ❑ REAT

Emerging issues

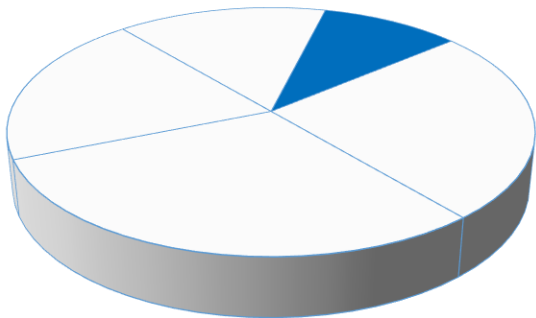
- ❑ Appeal

Aggrieved by direction or order made by the Authority or by an adjudicating officer under the Act may prefer an appeal

Impact

Promoter can prefer an appeal after pre-depositing 30% of the penalty, or such higher percentage as may be determined by the REAT, or the total amount to be paid to the allottee including interest, and compensation.

Execution



Post Registration and Quarterly Update

Post Registration

Quarterly Update

- All RERA registered projects have to comply.
- Submission of Post Registration details is a onetime process and data provided herein cannot be revised. *(Any revision, if required, will have to be routed through submission of manual application).*
- Upon submission of Post registration details, list of quarterly updation will appear.
- Due date for submission of Post Registration and Quarterly Update details – December 31, 2018 (extended from December 15, 2018 on request of promoters).
- Period to be considered for updating details of Quarter 1- From the date of the start of the project till September 30, 2018.
- Subsequent updation regarding the progress of the project shall be provided with 15 days from the close of quarter (Q2- Oct-Dec, Q3- Jan-Mar and so on).

Post Registration

- ❑ Post Registration
 - Project Details
Project name, type, status, brochure, advertisement, website/URL etc.
 - Promoter Details
Org chart, director details, HOD details, authorized signatory details, member details.
 - Plot/Building Details
Plot- Number, size, type, stage, phase, area, dimension, schedule dimension.
Building- Number of towers, floors, units, parking lots, carpet area, UDS etc.
 - Project Schedule
Provide estimated date of completion of sub-structure, superstructure, finishing work, civil work, common area to be relinquished with authority etc. (to be selected as/if applicable).
- ❑ Quarterly Update

Post Registration

- Post Registration
 - Quarterly Update
- Cost Details
 - Land Cost Details

Land cost, updated land cost (if applicable), JDA- agreement, number of promoter and owners, land approval cost details.

Note: If land cost needs to be revised, a request has to be sent to the authority for approval.
 - Construction Cost Details

Provide estimated cost of construction supported by CA, engineer and architect certificate.

Format of certificate in Forms 1, 2 and 3 available online.

Quarterly Update

Status of Construction of Tower

- Post Registration
 - Provide percentage of completion (POC)- Tower wise and floor wise.
- Quarterly Update
 - Upload actual photograph of construction site.
 - Parking details- Total, booked and available.
 - Floor Details- Floor wise percentage of completion.
 - Apartment Details- Apartment type (1/2/3/4BHK/others), total, booked and available.

...Continued

Quarterly Update

Status of Construction of Tower

- Post Registration
- Quarterly Update
 - Provide estimated start and completion date, actual start and completion date and POC for the following:
 - Civil work
 - Superstructure
 - Finishing Works (Fitting and Fixtures)
 - Provide percentage of completion for the following:
 - Construction of Internal Infrastructure
 - Construction of External Infrastructure
 - Amenities Details
 - Construction of Common Areas

Status of Approval/NOCs required for the project

- Provide status of approval, Date of Application and Upload the document.

...Continued

Quarterly Update

- Litigation details
 - Modification, Amendment or Revision to License, Permit or Approval
 - Association of Allottees
 - Construction Workers Welfare Fund Registration
 - Bank Details-
 - Percentage of Completion of project.
 - Total amount collected from prospective purchaser (INR) in the quarter.
 - Amount withdrawn from bank for the purpose of the project (INR) in this quarter.
 - Upload CA, engineer and Architect Certificate (Form 4,5 and 6 available in website).
 - Annual Audit Report- If Not Applicable, attached NA as pdf/Jpg format.
 - Construction Cost Details
- Post Registration
- Quarterly Update

Note:

- *The actual construction cost must be entered every quarter. The estimated cost of construction will be available for reference. If the project is 100% complete, then a message asking to fill the project summary and Final approvals will be displayed.*

Project Extension

- Online application for extension can be preferred 3 months prior to the date of completion of project (*checklist is available on the website*).
- Renewal fees- 50% of registration fees paid.
- Application has to be supported with:
 - Chartered Accountant Certificate- Fund required
 - Chartered Accountant Certificate- Fund utilized
 - Architect Certificate- Work Completed
 - Architect Certificate- Work Pending
 - Engineer Certificate- Work Completed
 - Engineer Certificate- Work Pending

Change Request

- RERA portal has been enabled to update any changes, that may have taken place in respect of registered project.
- The following items can be updated by providing relevant documents (like reason for change, board resolution, affidavit etc.)
 - Project Name
 - Bank Account Details
 - Promoter Name
 - Email ID

Dashboard

External

- Infrastructure bottlenecks
- Approval holdups
- Stable policies (SEZ etc.)
- Access to free capital and funding
- Title insurance
- Industry status
- Interest rate
- High tax regime

Internal

- Over trading
- Poor financial management
- Overleveraged
- Operational inefficiencies
- Sector unaffordability
- Governance, transparency and standard operating procedure
- Enterprise Risk Management
- Centralized control

Thank you!

Reach out to us at vinay@sduca.com

Accretive SDU

Bangalore | Mumbai