



Tamil Nadu Real Estate Regulatory Authority

Real Estate (Regulation and Development) Act, 2016

FREQUENTLY ASKED QUESTIONS (FAQs)

1. What is RERA?

RERA is Real Estate (Regulation and Development) Act, 2016.

2. When the Act has come into force?

The Real Estate (Regulation and Development) Act, 2016 has been notified on 26.03.2016 and in full form it has been given effect from 01.05.2017.

3. Is the application for registration of real estate project is online?

Registration of a real estate project is only through online.

CHAPTER I - PRELIMINARY

4. Does the definition of 'promoter' include public bodies such as Development Authorities and Housing Boards?

The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term 'promoter' which includes both private and public real estate promoters. Thus, Development Authorities, Housing Board and other Government Agencies involved in sale are covered under the Act.

5. Does the definition of 'promoter' includes all promoters in case of joint development?

As per the Explanation to section 2(zk) "where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder".

6. What is the rate of interest payable in case of default by the 'promoter' or the 'allottee'? Is the rate of interest payable by either party (promoter or allottee) the same?

As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest is required to be specified by the appropriate Government in the Rules.

7. Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of 'advertisement'?

As per section 2(b), which defines 'advertisement' any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails.

8. Does the term 'allottee' include secondary sales?

As per section 2(d) an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

9. Is 'community and commercial facilities' which are provided in a real estate project are part of 'common areas'?

Section 2(n) defines 'common areas' to include 'community and commercial facilities', thus they are an integral part of the project, to be handed over to the Association of Allottees.

10. What happens in case of jurisdictions (States/UTs) which do not provide for both the 'occupancy certificate' and the 'completion certificate'?

Section 2(zf) and section 2(q) respectively; define 'occupancy certificate' and 'completion certificate'. The two definition are very broad and uses the term 'by whatever name called'. Thus, if in a State/UT only one certificate is issued which provides for both the aspects covered under the two definitions, it would suffice the requirements under the Act. In the State of Tamil Nadu provision is made in Tamil Nadu Combined Development and Building Rules (TNCDBR), 2019 for issue of completion certificate and not occupancy certificate.

11. What is 'estimated cost of the real estate project'?

Section 2(v) defines 'estimated cost of the real estate project', which means "the total cost involved in developing the real estate project and includes the land cost, development cost, taxes, cess, and other charges".

12. What is the definition of 'real estate project'? Does the term 'project' connote a 'real estate project'?

The term 'real estate project' has been defined under section 2(zn) and the term 'project' has been defined under section 2(zj), which have been interchangeably used under the Act.

13. Are real estate agents covered under the Act? Does the term 'real estate agents' include web-portals engaged in selling of apartments or plots?

Section 2(zm) defines the term 'real estate agents', which is a very broad and inclusive definition and covers all from of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or apartments are also covered under the Act and are required to comply with

the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

CHAPTER II - REGISTRATION OF PROJECT AND AGENTS

14. Does the Act cover both residential and commercial real estate?

The Act covers both residential and commercial real estate. Section 2(e) defines 'apartment' and section 2(j) defines 'building' which include both residential and commercial real estate. It also covers industrial plots.

15. Does the Act cover ongoing / incomplete projects?

As regards the ambit of the Act, there is no distinction between an ongoing project and a future project, i.e. both ongoing / incomplete projects and future projects are covered under the Act.

Section 3(1) first proviso provides that promoters of 'all ongoing projects which have not received completion certificate will need to register their project with the Regulator Authority, within 3 months of its commencement'.

16. Does the Act cover all projects in urban areas and in rural areas?

Yes, it includes both planning and non-planning areas.

17. Which projects are exempt from the ambit of the Act?

As per section 3(2) the following projects do not require to be registered under the Act:

- (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;
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

18. At what stage can a promoter start to advertise his project for sale?

The promoter can advertise his project for sale after the project has been registered with the Regulatory Authority as provided in Section 3(1). The advertisement/prospectus/Photos published by the promoter in any media should mention the TNRERA registration number and website address of TNRERA in a prominent place of the advertisement and it should be readable.

19. What are the details to be furnished at the time of application for registration of real estate project with the Regulatory Authority?

Section 4 of the Act provides for details / information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the fees to be paid etc. are to be determined by the Rules made by the appropriate Government.

20. What are the formalities for the registration of a real estate project with the Regulatory Authority?

The promoter is required to make an application as per Form and fees prescribed by the Rules made by the appropriate Government, along with the documents / information and undertaking specified in section 4 to the Authority for registration of the project. In addition, the promoter is also required to append other / additional documents / information as specified in the Rules.

21. Whether GPA holder shall apply for project registration?

Yes, provided the GPA holder should have sale power by way of registered GPA executed by the landowner

22. In how many days is the Regulatory Authority required to register the real estate project?

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

23. What in case the application for registration of the real estate project is incomplete?

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made there under, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

24. What is the period of validity of registration granted to a real estate project by the Regulatory Authority?

As per Section 4, the validity of the registration granted to a project shall be the period declared by the promoter under section 4(2)(I)(C), at the time of making the application for registration, within which he would complete the project.

25. Is the promoter required to maintain an 'escrow account' or a 'separate account'? Is a 'separate account' to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?

Section 4(2)(I)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal.

Section 4(2)(I)(D) clearly provides that the funds can only be used for construction and land cost.

26. On what basis is the promoter required to withdraw the money from the separate account?

As per section 4(2)(I)(D) first and second proviso, the promoter is required to withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project. In addition, the promoter is permitted to withdraw from the separate account after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

27. Is the promoter required to get his accounts audited?

As per section 4(2)(I)(D) third proviso, the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

28. Can the period of registration granted to a real estate project by the Regulatory Authority is extended? What is the definition of force majeure?

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstances, without the fault of the promoter, which shall not be more than a maximum period of 1 year.

Explanation to Section 6 has defined force majeure to mean 'a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project'.

29. What are the terms and conditions for extension of registration?

The terms and conditions, the application form and the fees payable for extension of registration shall be in the manner as prescribed by the Authority. Check list is uploaded in the website of TNRERA.

30. Can the registration of a project be revoked?

As per section 7 the Authority has the powers to revoke registration of a project, for violations specified under the said section. However, revocation of registration of a project is envisaged as a last resort and can only be done after providing a reasonable opportunity of being heard.

31. What are the next steps that can be taken for project completion in case of revocation of a project?

In case a project is revoked, section 8 provides for various mechanisms in which the project can be completed. However, in such a scenario, the association of allottees shall have the first right of refusal for carrying out the remaining development works.

32. Does the Act also cover real estate agents? What are the duties and responsibilities of the real estate agents?

Section 9 of the Act provides that real estate agents which engage in selling projects registered under the Act, can only do so after registering themselves with the Authority. The mechanisms for registration, the fees payable, the period of registration, subsequent renewal etc. are matters to be detailed vide the Rules.

Section 10 of the Act provides for detailed functions and duties of real estate agents.

CHAPTER III - FUNCTIONS AND DUTIES OF PROMOTER

33. What are the important functions and responsibilities of the promoter after registration of the project with the Authority?

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

34. What should a promoter do after obtaining the project registration?

After obtaining the project registration, the promoter has to file Quarterly Project Report (QPR) every quarter as per the format prescribed in the web portal of TNRERA. Apart from the QPR, the promoter has to submit Form-7 Annual Report on statement of accounts every September for the preceding financial year.

35. What should a promoter do after completion of the real estate project (building)?

The promoter has to furnish Form-4A, form-4B, Form-7, site photographs and other details as per the check-list available in TNRERA web portal. The Authority will issue completion report and the bank will be intimated to close the separate account.

36. Is the responsibility is over once the promoter has obtained completion report?

No, the promoter is bound by the Act and Rule provision.

37. What are the disclosures to be made on the website of the Regulatory Authority?

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, the detailed list is required to be specified in the Rules.

38. What is the promoter's obligations regarding veracity of the advertisement or prospectus?

As per section 12 the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus. In case of any loss sustained by any person due to false information contained therein, the promoter is liable to make good the loss sustained due to the same.

39. Can the promoter collect any amount of money towards booking of the apartment / plot?

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment / plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

40. Can the promoter modify/amend the sanctioned plans or project specifications after having been approved by the competent authority and disclosed to the allottees?

As per section 14 of the Act the promoter can only modify / amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification / alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

41. What is the period for which the promoter is liable for any structural defects etc. in the project / apartment etc.?

As per section 14(2) the promoter shall be liable for 5 years from the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

42. What is the obligation of the promoter as regard transfer of the project to a third party?

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two-third of allottees and the Regulatory Authority.

In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

43. What is the obligation of the promoter as regards transfer of title of the apartment / plot?

As per Section 17 (1) of the Act, The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

44. What is obligation of the promoter towards return of amount and compensation to the allottee?

Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

CHAPTER IV - RIGHTS AND DUTIES OF ALLOTTEES

45. What are the rights and duties of the allottees under the Act?

Section 19 provides for the various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered into with the allottees, namely — stage-wise schedule of completion of the project and the services, claim timely possession of the apartment / plot, entitlement to necessary documents and plans etc.

Section 20 provides for the various duties of the allottees, which provide for matters relating to payment regarding the apartment / plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association etc.

CHAPTER V - THE REAL ESTATE REGULATORY AUTHORITY

46. How can a complaint be filed with the Authority for any violations under the Act?

Section 31 of the Act provides for filing of complaint by an aggrieved with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are available in the website of TNRERA.

CHAPTER VII - THE REAL ESTATE APPELLATE TRIBUNAL

47. What are the important responsibilities of the Appellate Tribunal?

The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

48. Can an appeal be filed against the decision or the orders of the Appellate Tribunal?

Any person aggrieved by the decision or order of the Appellate Tribunal can file and appeal with the High Court.

49. What is the time period within which the Appellate Tribunal is required to dispose of the appeal?

Section 44 provides that the Appellate Tribunal should endeavor to dispose of the appeal as expeditiously as possible as but not later than sixty days from filing the appeal. However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same.

CHAPTER VIII - OFFENCES, PENALTIES AND ADJUDICATION

50. What is the punishment prescribed for non-registration of a project under the Act?

As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project.

However, in case the promoter consistently defaults or does not comply with the directions / orders of the Authority as regards registration of the project with the Authority, he shall be liable to additional fine of ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.

51. What is the punishment prescribed for violation of section 4 which provides for application for registration of the project?

As per section 60 if the promoter defaults as regards matters covered under section 4, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

52. What is the punishment prescribed for violation of other provisions of the Act by the promoter?

As per section 61 if the promoter defaults any other provision of the Act or the Rules and Regulations made thereunder, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.

53. What is the punishment prescribed for non-compliance of the orders of the Authority by the promoter?

As per section 63 if the promoter fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the estimated cost of the real estate project.

54. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the promoter?

As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend upto three years or with both.

55. What is the punishment prescribed for non-registration of by a real estate agent under the Act?

As per section 62, where under the Act, it is obligatory for the real estate agent to register himself with the Authority, and the real estate agent fails to do the same, he shall be liable to a penalty upto of rupees ten thousand per day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

56. What is the punishment prescribed for non-compliance of the orders of the Authority by the real estate agent?

As per section 65 if the real estate agent fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

57. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the real estate agent?

As per section 66 if the real estate agent fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment, for which the sale has been facilitated by him or with imprisonment for a term which may extend upto one year or with both.

58. What is the punishment prescribed for non-compliance of the orders of the Authority by the allottee?

As per section 67 if the allottee fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment.

59. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the allottee?

As per section 68 if the allottee fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment or with imprisonment for a term which may extend upto one year or with both.

60. Can an offence which provides for imprisonment be compounded?

As per section 70 if any person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions which may be prescribed by Rules made by the appropriate Government. In addition, the fine payable in lieu of imprisonment needs to be specified by the said Rules, which cannot be more than the maximum fine payable for that offence.