



MAHARERA Transition and Compliance: Promoter's Tribulations

The Real Estate (Regulation and Development) Act, 2016 (RERA) was enacted by the Central Government to consolidate laws relating to real estate within the country by (i) ensuring accountability, transparency and fair play; (ii) reducing frauds and delays in real estate projects; (iii) imposing responsibilities and obligations on promoters, real estate agents and project consultants to protect the interests of home buyers and (iv) to make each and every development project (be it small or big) undertaken by the promoters to be transparent such that the promoters are accountable for their acts of commission and omission. Maharashtra has ratified RERA and formed the Real Estate Regulatory Authority (Authority), as also framed and notified the rules for the State of Maharashtra (MAHARERA) to align itself with the Central enactment.

Accountability in the Real Estate Sector

MAHARERA ensures that the promoters do not make fantastical representations to lure the home buyers to purchase flats/apartments with a tall promise to provide a multitude of amenities and facilities, however at the time of delivery fall short of

delivering the same.

The development and construction of a project in a phase wise manner must be registered phase wise, and permissions and sanctions/approvals thereof must be clearly updated, so that home buyers are aware of the facilities and amenities when they purchase the flat/apartment. The promoter, at the time of registration of the project has to estimate and declare the time lines for completing the project, and failure to complete the project on time or within extended time (as maybe allowed by the Authority in certain case) attracts penalties.

If the promoter collects more than 10% of the cost of the flat/apartment from the homebuyer, then the agreement for sale must compulsorily be registered with the office of concerned Sub-Registrar of Assurances, so that neither party wriggles out of their commitment in terms of the parameters of the agreement.

The concept of co-promoter has been introduced to include any person or organisation who (under an agreement or arrangement with the promoter) is entitled to a share of the total revenue generated from the sale of apartments or a share of the total area to be developed in the project. Thus the co-promoter (in most cases, the land owner) is equally liable to the



Key Changes

- Registration of individual projects (on-going and new projects) exceeding 500 square meters or if the number of apartments exceeds eight apartments.
- Stage wise progress update of the project, including necessary documents, sanctioned plans and permissions to be uploaded online.
- Compulsory registration for real estate agents (Agent).
- Deposit of 70% monies received towards the project cost in a separate designated bank account.
- Annual audit of the project accounts.
- The concept of co-promoter introduced.
- Advertisement of projects in whatever form, cannot be done without registering the project.
- Promoter to provide the tentative date for completing the project.
- Penal provisions in case of misrepresentation, false information or delay in handing over possession to the home buyers.

extent of the agreement (in most cases, the clear and marketable title of the land owner in relation to the subject land) between promoter and co-promoter.

The monies collected from home buyers for sale of flats is bifurcated, such that 70% of such monies is deposited in a designated bank account and becomes available to the promoter only after it is sanctioned by the project engineer, architect and chartered account in proportion to the percentage of work completed, thus the dedicated use for the project is secured thereby ensure timely completion and handover of possession of flats to home buyers.

Advertisement of the project or buildings in the project in any manner, form or through any medium can only be done if the project is registered and all information disseminated in the form of advertisements must be accurate and not misleading or misguiding as false representations and assurances are liable to strict action under MAHARERA.

The new legislation has brought about a lot of procedural and compliance mechanisms to cast obligations and responsibilities on all stakeholders involved in the entire project inter-alia the promoter, real estate agent, engineer, architect, chartered account and the home buyer too.

Strict action for breach

If the promoter fails to perform its obligations or is in breach of the legal provisions, then the Authority is at liberty to impose a penalty, which depending on the nature of the offence may vary between 5%-10% of the estimate cost of the entire project or imprisonment;

Under the MAHARERA regime promoters have been given time until July 31 to register all their on-going and to register the new projects before commencing marketing and sales, and failure to register the project by the promoter would attract penalties which may extend up to 5% of the estimated cost of the project, as determined by the Authority.

If an Agent is in contravention of the legal provisions or fails to register under MAHARERA, the Authority is at liberty to impose a penalty on the Agent as well. In case of failure on the part of the Allottee to comply with orders of Authority, then the Allottee becomes liable to a penalty for a period during which the default continues which may cumulatively extend upto 5% of the plot, apartment or building cost, as the case maybe.

The Authority has also been vested with powers to take stringent action against an engineer, architect



or chartered accountant who misrepresents or manipulates data and information pertaining to the project inter-alia lodging formal complaints with the regulatory bodies of such professionals which may result in disqualification of such professionals.

Agents brought under a tighter regulatory net

Prior to MAHARERA, Agents would lure unsuspecting home buyers into purchasing flats/apartments in cahoots with the promoter and charge heavy premiums for assisting home buyers to purchase their dream home. MAHARERA now mandates registration of Agents and captures essential details inter alia identity documents, local address, income tax returns, previous experience to create accountability of the Agent. The license granted to the Agent is valid for a period of five years and can be subsequently renewed.

Agents who propose to sell flats/apartments to home buyers must quote their registration number prominently on all advertising and promotional material pertaining to the flat, building or project.

The Agent are mandated to maintain detailed accounts by way of account statements, records and documents pertaining to sale of flats/apartments in the project or building and produce them for inspection, if required.

Any Agent knowingly making false statements or representations shall be liable for suspension or cancellation of the registration of the license granted to the Agent.

If any real estate agent fails to comply its obligations, then he becomes liable to a penalty of ₹ 10,000/- per day during which default continues cumulatively which may extend to 5% of the cost of the property of which sale/purchase has been facilitated by him. If any real estate agent fails to

comply with directions of the Authority, then he becomes liable to a penalty of any amount per day during which default continues cumulatively which may extend to 5% of the cost of the property of which sale/purchase has been facilitated by him.

If any real estate agent fails to comply with or contravenes the orders or directions of the Appellate Authority, then he becomes liable for of (i) Imprisonment up to 1 year; or (ii) Fine for every day during which default continues, which may cumulatively extend up to 10% of estimated cost of the property as determined by the authority, or (iii) With both.

The above offence is compoundable by the court under the provisions of Section 70 of RERA.

Registration and modification of information uploaded

Documents uploaded on the website must be clear and legible and where any document is not applicable or available, a self-declaration may be uploaded to complete the necessary information. Also a declaration as required in the format of Form B must be provided and all necessary documents and updates must be uploaded on the website atleast once in three months.

Any modifications (either due to error or due to updates in the information provided earlier) to the information already updated on the website can be done by making an application to the Authority along with the prescribed fees on the online portal.

Role of Project Managers post RERA

A project manager's role is to make sure that the project stays on track based on the planned deadlines, allotted budget and the vision of developer.

The RERA Act has come into force since 1st May followed by The Goods and Services Tax

(GST) which came into effect July 01, 2017. Both these reforms are revolutionary aiming to change the un-organized real estate sector into an organized one.

The role played by a project manager has become mandatory for the developer to achieve the targets of delivery commitments within the stipulated time and plans committed to the home buyers, which can be implemented well within the budget. GST ensures that developers only use organised vendors and suppliers, in order to get the input tax credit, which will also improve the efficiency in delivering projects.

Project management under RERA has now become an essential aspect of the development process. Integration of various departments and teams is now important to ensure RERA compliance. Project management enables the promoter to outline the scope of the project, determine the timeline for delivery with the associated cost for effective cash flow management, ensure optimal management of vendors and quality control in the procurement and construction processes. Project management practices also help streamline communication across all the relevant teams/ departments in line with the requirements of MAHARERA.

GST and RERA

Generally the chunk of costs for construction projects can be segregated as manufacturing costs and service costs, where materials procured for construction would ordinarily attract tax for value addition and the services thereafter would attract additional taxes. However, the segregation of each component of tax under the two broad categories is a complex process and often the lines are blurred making it difficult to understand and pay multiple taxes based on different structures.

GST provides unified system of taxation and replaces the complex taxation structure. Under the GST regime, buildings that are already complete with Occupation Certificate and Building Completion Certificate will not attract GST as there are no indirect taxes applicable to completed projects, however those under construction and on-going construction will attract GST @ 18% on the two-third of the total value of the property. Therefore, if the value of the property is ₹ 60 lakhs, the developer will have to compute GST @ 18% on ₹ 40 lakhs (being the two-third value). This would

then make the effective rate of GST as 12% on the total value of the property i.e. ₹ 60 lakhs with no refund of accumulated input tax credit as per the current status of GST levy.

Also tax on certain input materials such as steel and cement has increased, however due to input tax credit available, the overall impact will not be too steep. The end consumer will only bear the GST charged by the last link in the supply chain with set-off benefits at all the earlier stages. Although GST is an encompassing tax, stamp duty and registration on immovable properties shall continue to subsist. In the current scenario, costs of affordable and medium housing projects may see a slight reduction in prices, however the luxury segment might not see any reduction or change in prices of properties.

Conclusion

In conclusion, RERA has been a largely procedural and beneficial legislation to cast greater responsibilities on the promoter, co-promoters and agents by setting out stringent conditions under which monies collected, promises made and expectations of home buyers must be met, whereas, on the other-side, the home buyers are also brought under the stringent provisions of RERA in case of default on the part of the allottee. RERA, coupled with GST structure might exert considerable pressure on sale of apartments, since the GST legislation is in its nascent stage, and home buyers are cautious and concerned about the impact of this new tax regime to the total price of their apartment. Overall RERA has been a benevolent legislation for transparency and accountability, however some rigid provisions and a steep GST in the real estate sector may prove to be a bumpy ride for promoters and as well as home buyers at this initial stage.

EPCWorld



ARADHANA BHANSALI
Partner
Rajani Associates



AMIT KOLEKAR
Associate Partner
Rajani Associates