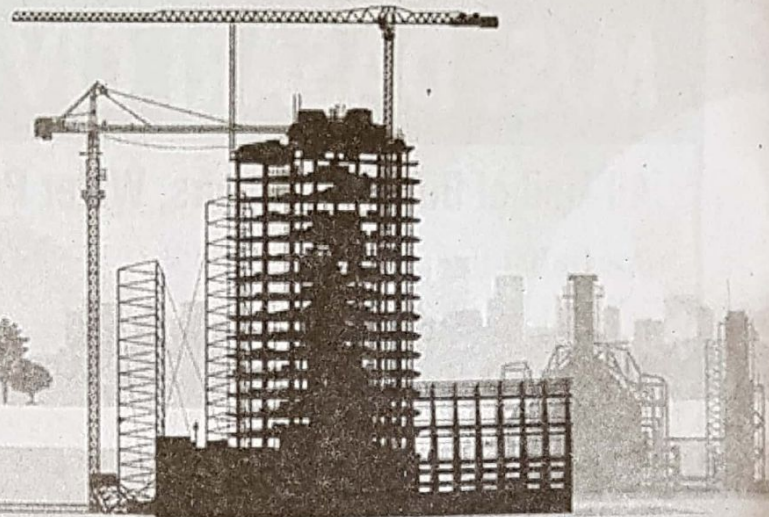


CA. Ramesh Prabhu
Chairman, MahaSeWA



IMPACT OF RERA ON REDEVELOPMENT AND SELF REDEVELOPMENT

1. INTRODUCTION :

Real Estate (Regulation and Development) Act, 2016 is implemented across India effective from 1st May, 2017 to regulate and promote the real Estate Sector. The various provisions of RERA brings accountability and transparency in the sector for improving governance, for protecting consumer interest and speedy mechanism for adjudication of disputes. This is expected to promote professionalism, standardization and orderly growth which will boost private investment in housing sector. RERA is applicable to all the builders, promoters, contractors, cooperative society, NGO, Government or semi government organizations, who involve in the development of real estate sector to market the same. Thus, the Coop Housing societies who redevelop their properties to sell part of its redeveloped area to other than the existing members to raise revenues for its redevelopment, then such CHS will be covered under RERA.

2. EXEMPTION UNDER RERA:

Section 3(2) of RERA lists down the real estate development which are exempted under RERA. As per section 3(2)(c) of RERA, any real estate project consists of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, then such real estate projects are exempted from RERA.

Thus if CHS decides to sell entire its redeveloped area to existing members only, then RERA is not applicable. There should not be any new allottees or the members in the redeveloped society, if the society does not want to be covered under RERA.

3. APPLICABILITY OF THE ACT (SEC 1 TO 3)

The Act is applicable across India effective from 1st May, 2017. The Act is applicable to residential, commercial, plotted and all types of business of development and sale of real estate projects. The registration of real estate project has been made compulsory in the planning area, where the size of land proposed to be developed is more-than 500 sq meters' or where the number of apartments proposed to be developed are more than 8, where there is marketing of any additional units in the redevelopment or the completion certificate of which is received after 1st May, 2017 (after the commencement of the Act). Further the appropriate government (State Government for states and Central Government for Union Territories) has been permitted to bring down the above limits.

Thus, the Cooperative Housing societies who redevelop their properties to sell part of its redeveloped area to other than the existing members to raise revenues for its redevelopment, will be covered under RERA. However, if no area is sold to other than the members, the

society will be exempted from applicability of RERA.

4. OBLIGATIONS OF THE PROMOTER & THE SOCIETY ON REDEVELOPMENT :

Considering the above legal aspects of RERA, the developer jointly with the society under Redevelopment and the society alone under Self Redevelopment will be made accountable and responsible to comply with the following obligations being the promoter of Real Estate Project.

- (1) **REGISTER THE PROJECT: Register the project with RERA [Sec.3]** before advertising, marketing or booking, sale of the new project and ongoing projects within three months of commencement of the Act except the projects with less than 500 sqm land or less than 8 units.
- (2) **SUBMIT ALL INFORMATION such as** layout sanction, building sanction, number of flats, common area, title report, promoters past 5 years experience etc at the time of registration and update thereafter for any changes. (Sec 4 and section 11)
- (3) **Separate rera account for 70% of the allottee money: [Sec.4(2)(l)(d)].** This can be withdrawn towards land and construction incurred as per the Certificates issued by an engineer, an architect and a chartered accountant in practice as provided under Section 4(2)(l)(d) of the RERA.
- (4) **Quarterly update on status of booking of Apartments/ plots/ garages/ approvals etc(Sec 11(1)).**
- (5) **Advertisement or prospectus by the promoter [Sec.11 (2)] :** need to mention the RERA registration number and the website address of the Authority.
- (6) The promoter to make available to the allottee and display at site, the sanctioned plans, layout plans and provide the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity (Sec 11(3))
- (7) Promoter responsible for all obligations as per agreement for sale **[Sec.11(4)]** till the conveyance of all the apartments, plots or buildings and the common areas.
- (8) To obtain the completion certificate or the occupancy certificate **[Sec.11 (4)(b)]:**
- (9) To obtain the lease certificate **[Sec.11 (4)(c)]:** If the real estate project is developed on a leasehold land.
- (10) To provide and maintain essential services **[Sec.11 (4)(d)]:** on reasonable charges, till the time the maintenance of the project is taken over by the association of the allottees.
- (11) To form the association or society of allottees **[Sec.11 (4)(e)]:** within a period of three months of the majority of allottees having booked their apartment or building or plot, as the case may be, in the project.
- (12) To pay all outgoings **[Sec.11 (4)(g)]:** until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be.
- (13) Not to mortgage or create a charge after execution of agreement **[sec.11 (4)(h)]:** and if any such mortgage or charge is made or created the Promoter alone shall be responsible to clear the same.
- (14) Cancellation of allotment **[sec.11(5)]:** can be done only in terms of the agreement for sale executed by and between the promoter and the allottee.
- (15) Promoter to ensure veracity of advertisement **[sec.12]** and for any false representation, he shall be liable to compensate as provided under the RERA
- (16) Promoter not to accept any advance or deposit exceeding 10% of cost without executing written agreement for sale **[sec.13]** in the prescribed format.
- (17) To adhere to sanctioned plans and specifications **[Sec.14]** and shall not make amendments to the plan without the previous written consent of at least two-thirds of the allottees.
- (18) Promoter's liability for structural defect **[Sec.14 (3)]:** within a period of five years from the date of handing over possession and the allottee and the aggrieved

allottees shall be entitled to receive appropriate compensation from the promoter in the manner as provided under the RERA..

(19) Promoter not to transfer or assign his majority rights and liabilities to a third party [Sec.15]: without prior written consent from two-third allottees and the approval of the Authority.

(20) Promoter to get the real estate project insured [sec.16] for defective title of the land and the building.

(21) To execute conveyance [sec. 17 and 11 (4)(f)] in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of RERA.

(22) Promoter will be is liable to refund the amount received from the allottee with interest and compensation in case of failure to give possession in time [sec.18] and compensation for non compliance of any other provisions of the act, rules.

5. RISK THAT THE SOCIETY WILL HAVE TO PROVIDE THE APARTMENTS TO THE ALLOTTEES BOOKED BY THE DEVELOPER POST RERA.

On failure of the developer to complete the project within the scheduled time and the society terminates such developer, the society

will have to complete the project their own or by appointing a new developer. Since the RERA provides complete protection to the allottees in the registered real estate project, the liability of handing over the completed flats shifts on to the society who terminates the developer. Therefore, before appointing the developer society need to take enough precautions. Therefore, post RERA, it is better and advisable that society keeps the complete control on the execution and the sale of the saleable area to avoid any risk of fulfilling the third party interest created by the developer.

6. NO APPOINTMENT OF NEW BUILDER WITHOUT RERA APPROVAL AND 2/3RD ALLOTTEE CONSENTS:

As per section 15 of RERA, once the project is registered with MahaRERA by developer and he books the flats, even if the society terminates the developer for his lapses, the new developer cannot be appointed without taking 2/3rd allottees consent including the new allottees and also the approval from the MahaRERA.

Thus even to appoint a new developer, the society need the undergo the above hassles. Therefore, post RERA, it is advisable to undertake self Re-development by the societies to have complete control on the execution and the sales of the project. The society will not be victim of the misdeeds done by the developer.