

The Real Estate (Regulation and Development) Act, 2016



Presentation by
CA. Vinay Thyagaraj, B.Com., LLB
Partner, Venu & Vinay
Chartered Accountants
Bengaluru


Discussion on RERA **Important Judicial Pronouncements**

For members of CTC on 20th December 2019 at
FKCCI Auditorium, KG Road, Bangalore



Presentation Overview - Contents

1. RERA Basics –
 - a. Preamble, Extent and Commencement
 - b. Contents, Outline and structure
2. Practices – Pre and Post RERA
3. Important Judicial Pronouncement and reference of provision in the Act
4. Role, Opportunities of Professional under RERA




RERA - Need

1. There is *no separate authority* to regulate Real Estate
2. *Everyone* is in the Business - qualified, capable or not
3. *Time* - Being Immovable property, the transaction initiation and completion time is long. Both the parties may dispute for the terms depends on the situation
4. Easy to *litigate* by paying small fees - undue advantages by both.
5. No *Transparency, Less Accountability, No Standardisation*
6. More *Disputes* - more burden on judiciary
7. No *Financial Discipline*
8. *Clarity* and standardization of agreement / transactions
9. Huge *investment* burden to All stakeholders - Promoter, Financiers, Govt, Buyers, Suppliers

RERA Act – Journey

January 20, 2009	National conference of Ministers of Housing, Urban Development and Municipal Affairs of States and UTs proposing a law for RE sector
June 4, 2013	Union Cabinet approved the Real Estate Bill, 2013
August 14, 2013	Real Estate Bill, 2013 introduced in Rajya Sabha
September 23, 2013	Bill was referred to the Department related Standing Committee
February 2014	Report of the Standing Committee tabled in Rajya Sabha on February 13, 2014 and in Lok Sabha on February 17, 2014
February 9, 2015	Attorney General upheld the validity of central legislation for RE sector and the competence of the Parliament
April 7, 2015	Union Cabinet approved official amendments based on Standing Committee Report
March 6, 2015	Real Estate Bill, 2013 and official amendments referred to the Select Committee of Rajya Sabha
July 30, 2015	Select Committee of Rajya Sabha tabled its Report along with Real Estate Bill, 2015
December 9, 2015	Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of Rajya Sabha for further consideration of the Parliament
March 10, 2016	Real Estate Bill, 2015 passed by Rajya Sabha
March 15, 2016	Lok Sabha passed the Real Estate Bill, 2015
March 25, 2016	The President of India accorded his assent to the Real Estate Bill, 2015
March 26, 2016	Real Estate (Regulation and Development) Act, 2016 published in the Gazette for public information
April 27, 2016	69 Sections (Sections 2, 20-39, 41-58, 71-78, 81-92) of the Act notified by the Ministry of Housing & Urban Poverty Alleviation bringing the Act into force with effect from May 1, 2016
Nov 04, 2016	Draft Rules Notified by Karnataka
April 19, 2017	Sections 3 to 19, 40, 59 to 70 and 79 to 80 Notified to come into effect from 01 May 2017.





RERA Act – No. 16 of 2016 - Preamble

An Act to establish the Real Estate Regulatory Authority for **regulation** and **promotion** of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an **efficient** and **transparent** manner and to **protect the interest of consumers** in the real estate sector and to **establish** an **adjudicating mechanism** for **speedy dispute redressal** and also to **establish the Appellate Tribunal** to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto

RERA Act – No. 16 of 2016 - Preamble

It extends to the whole of India except the State of Jammu and Kashmir



Framework / Structure RERA



Central Act



State Rules



Regulations

Real Estate Regulatory Authority Karnataka
2nd floor, Silver Jubli Block, Unity Building, CSI Compound
3rd Cross, Misson Road, Bengaluru, Karnataka 560027

RERA Act – 92 sections with *10 Chapters*

Chapter I
Preliminary
Section 1 – 2

Chapter II
Reg of RE Projects
and RE Agents *Section*
3 – 10

Chapter III
Functions and
Duties of Promoter
Section 11 – 18

Chapter IV Rights
and Duties of
Allottees
Section 19

Chapter V
The Real Estate
Regulatory Authority
Section 20 – 40

Chapter VI
Central Advisory
Council
Section 41 - 42

Chapter VII The
Real Estate
Appellate Tribunal
Section 43 – 58

Chapter VIII
Offences, Penalties
and Adjudication
Section 59 – 72

Chapter IX
Finance, Accounts,
Audit and Reports
Section 73 – 78

Chapter X
Miscellaneous
Section 79 – 92





Contents

1. Preamble and Applicability of the Act
2. Important Definitions
3. Establishment of Real Estate Regulatory Authority
4. Registration, extension, revocation, transfer of Real Estate Projects
5. Registration, renewal of Real Estate Agents
6. Mandatory Public Disclosure of all project details
7. Functions and Duties of Promoter
8. Compulsory deposit of seventy percent of funds realised from allottees to cover the cost of the project, in a separate bank account
9. Functions of Real Estate Agents
10. Rights and Duties of Allottees
11. Real Estate Regulatory Authority, Advocacy, functions, powers
12. Fast Track Dispute Resolution Mechanism – Dispute Resolution, Adjudication
13. Establishment of Real Estate Appellate Tribunal
14. Establishment of Central Advisory Council
15. Punitive Provisions for non-registration, For continued violation or non-compliance of order the authority

RERA Act and Karnataka - Snapshot

1. Central Act came into force with effect from **May 1, 2017**
2. Karnataka Real Estate Regulation and Development Rules, 2017 was approved by Government of Karnataka and notified on **July 10, 2017**
3. Government of Karnataka appoints Principal Secretary to Government of Karnataka, Department of Housing as the Interim Authority - **Section 20 (1)**
4. To appoint one or more **adjudicating officers** to settle disputes and impose interest and computation
5. Government of Karnataka appoints Karnataka Appellate Tribunal as Interim **Appellate Tribunal** - Section 43 (4)



RERA - Karnataka - Snapshot

1. Online – Applications for Registration of projects accepted through website from 24th July 2017
2. Online – Applications for Registration of Agents accepted through website from 24th July 2017
3. Made mandatory filing for ongoing project within 3 months from 1st May 2017 – i.e., by 31st July 2017
 - = 100 % fees as penalty upto 31st Aug 2017
 - = 200 % fees as penalty upto 30th Sep 2017
 - = 300 % fees as penalty upto 31st Oct 2017there after 1 % / 2 % of project cost as penalty as per Sec 59



RERA - Karnataka - So far - India's Top 3

Approved - 3058+

Under Process - 407 +

Registration time for completion lapsed - 1245

Rejected - 171

Agents

Approved - 1735

Under process 280

Projects Under
Investigation-
1023

Judgment by
RERA
KARNATAKA -
1631 +

Total Complaints
Filed in KA
3535

Tribunal Orders -
150



Applicability of the Act

where the area of land proposed to be developed does not exceed five hundred square meters (5382sft) or the number of apartments proposed to be developed does not exceed eight inclusive of all phases.

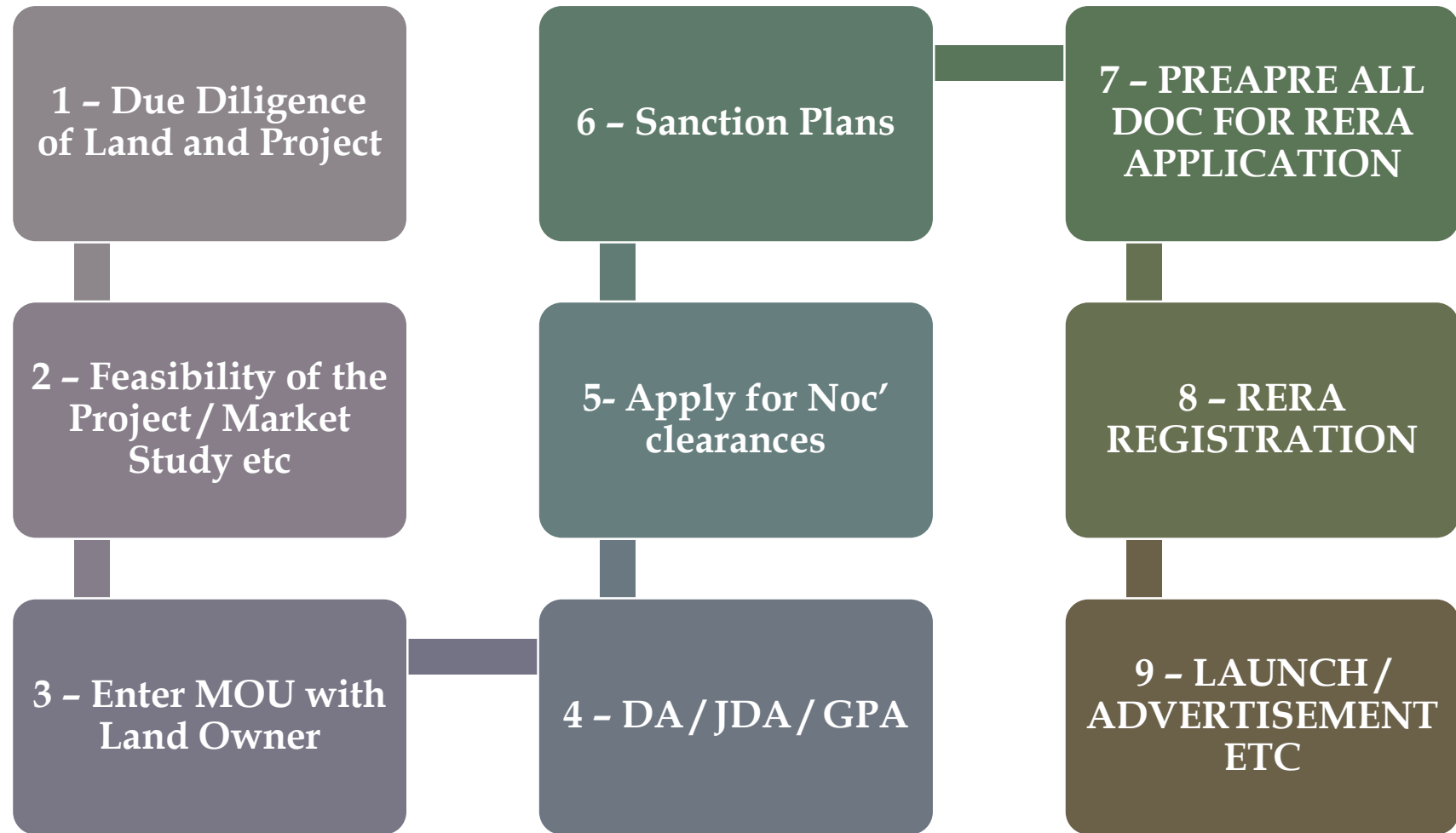
where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

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.

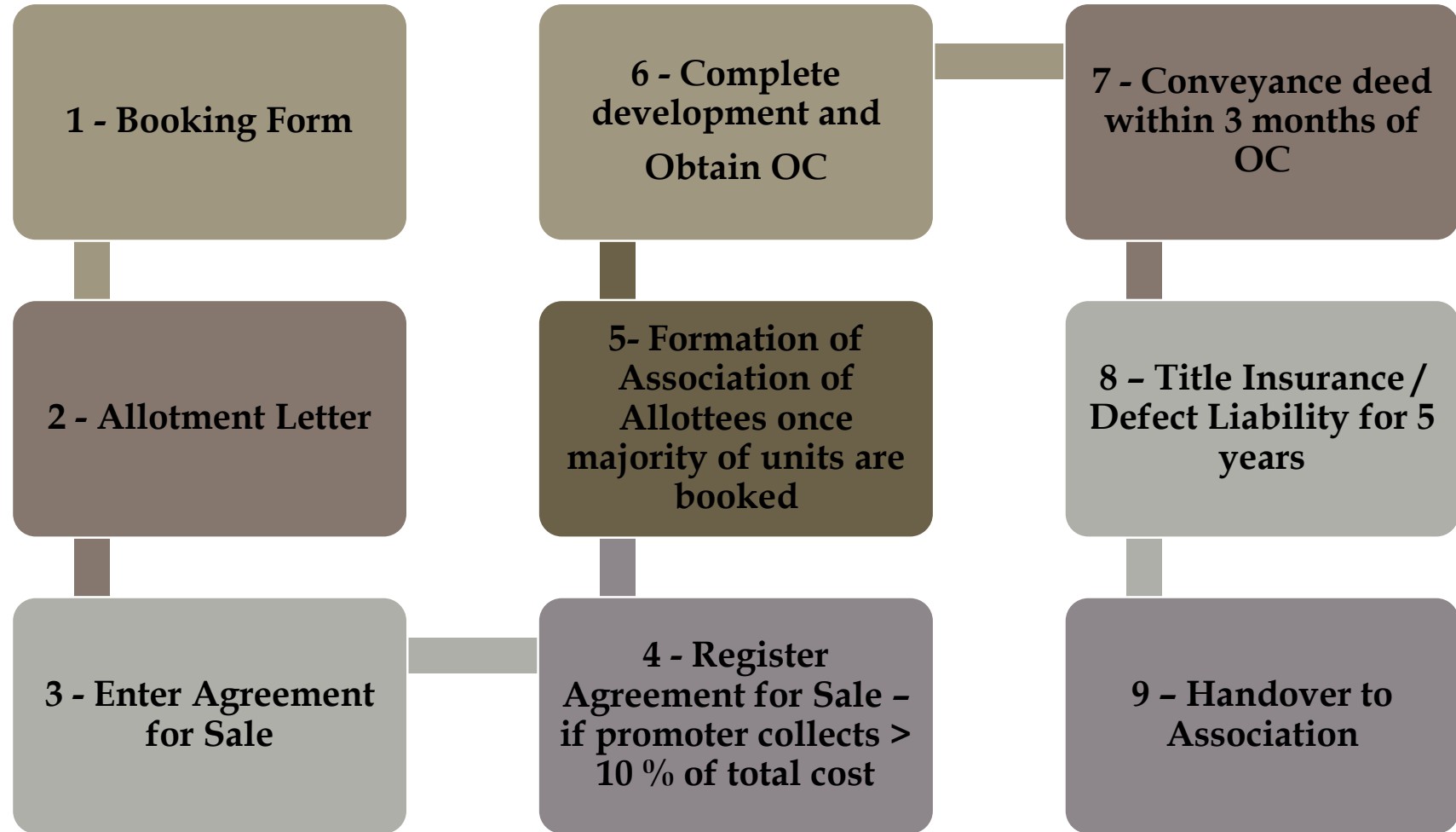
where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.



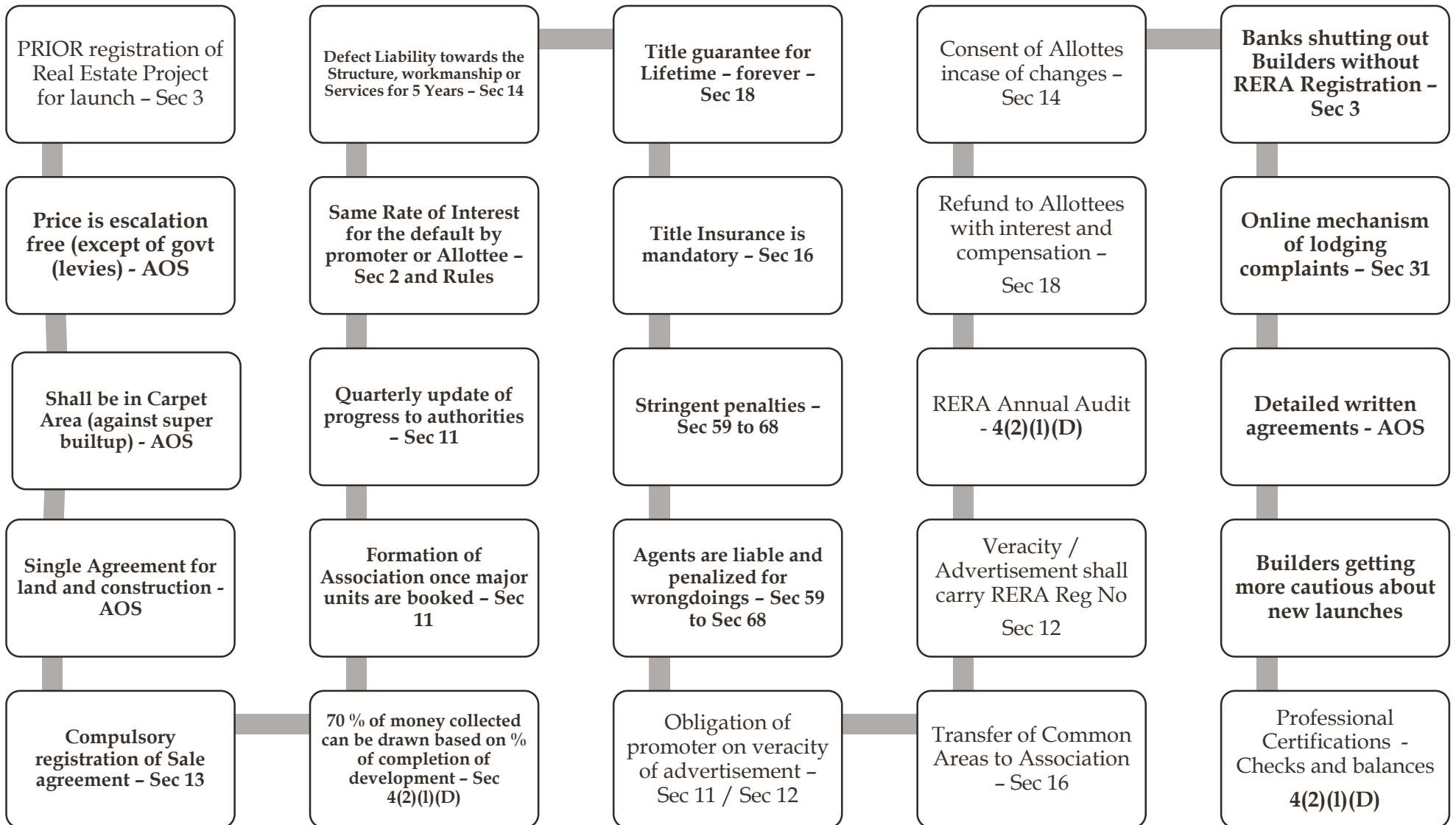
Post RERA - Business Cycle



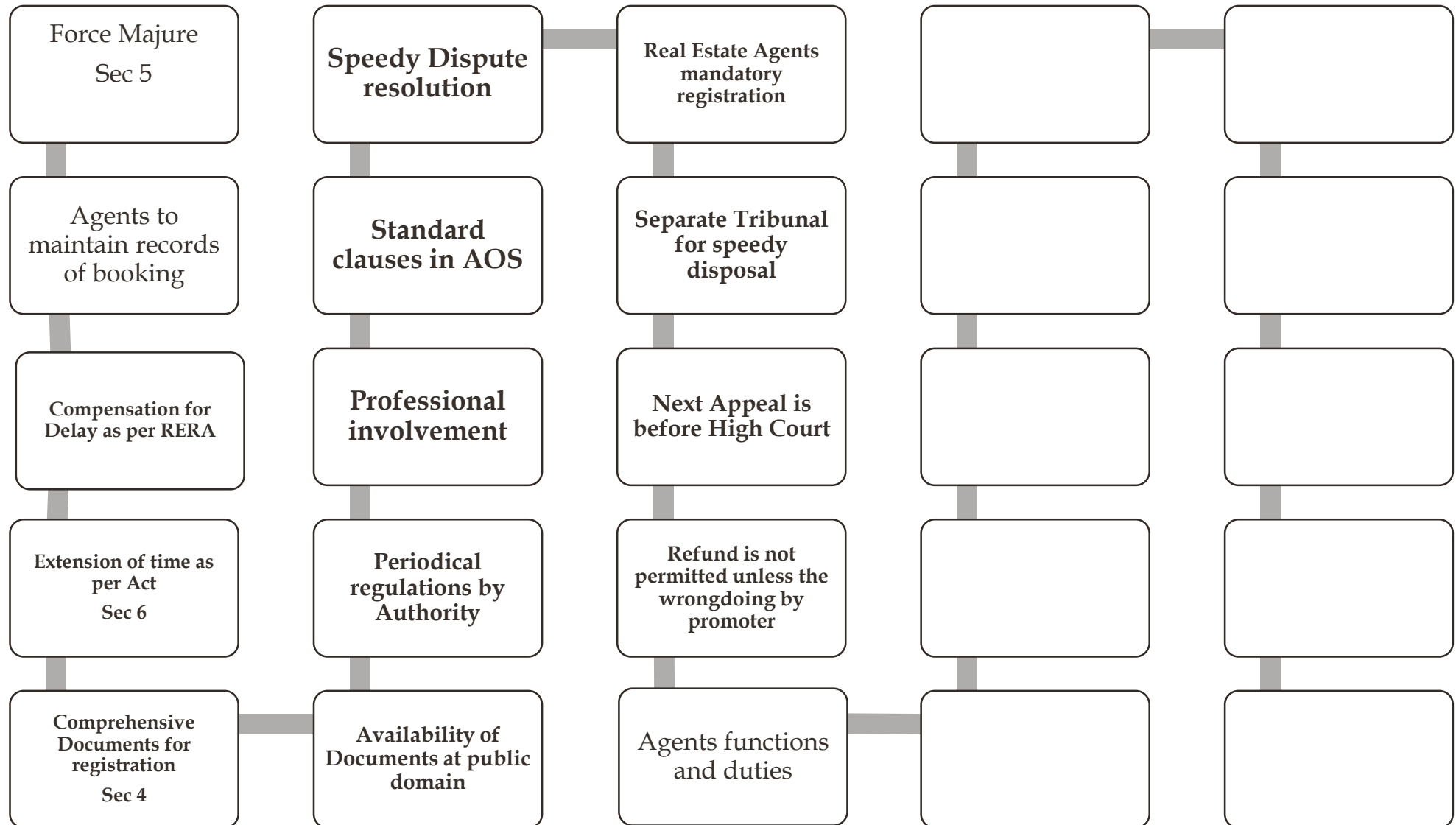
Post RERA - Customer Transactions



Post RERA - Change in Practices - Transformation



Post RERA - Change in Practices - Transformation





Bombay High Court - *batch of Writ Petitions* - Neelkamal Realtors

For the present we feel that it would be appropriate to direct the High Court of Judicature at Bombay to take up the matters i.e. W.P. (L) Nos. 1967, 2010, 2011, 2023, 1965, 2034, 4419, 4692 and 19157 of 2017 along with other connected matters, if any, pending in the High Court, together.

We request the Chief Justice of the High Court of Bombay to assign the cases to a particular Bench for expeditious decisions of the matters. Let matters be decided within two months.

Consequently the Transfer Petitions are disposed of

Is generally known as

Neelkamal Realtors Suburban Pvt. Ltd. and anr



Challenged the legality and constitutional Validity - Neelkamal Realtors

In this batch of Writ Petitions, petitioners had challenged legality and constitutional validity of certain provisions of the Real Estate (Regulation and Development) Act, 2016 (for short “ the **RERA**”) as being violative of the provisions of Articles –

- a. *Art 14 - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*
- b. *Art 19(1)(g) - Right to practice any profession or to carry on any occupation, trade or business to all citizens*
- c. *Art 20 - No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence*
- d. *Art 300-A - No person shall be deprived of his property save by authority of law*



RERA has been broadly challenged on three grounds - Neelkamal Realtors

- (a) Retrospective / retro-active application of certain provisions - Ongoing Projects, Sec 18
- (b) Unreasonable restrictions under Article 19(1)(g) read with Articles 19(6) imposed by certain provisions and arbitrariness of certain provisions (violating Article 14) - Sec 6 lapse, Extension, takeover, Sec 18,
- (c) Mandatory requirement of a Judicial Member in the Authority and on the Appellate Tribunal.

Challenged the Sections - Neelkamal Realtors

Compliance

Sec 3

Sec 4

Sec 5

Sec 7

Sec 8

Sec 11 (h)

Sec 14 (3)

Sec 15

Sec 16

Sec 18

Administrative

Sec 22 *Proviso*

Sec 27 (1)(a)

Sec 40 *Proviso*

Sec 43(5)

Sec 50(1)(a) *Proviso*

Sec 53(1)

Sec 53(3)

Sec 46

Penalties

Sec 59

Sec 60

Sec 61


Sec 63

Sec 64

Supersede

Sec 82

And and Rules 3 (f), 4, 5, 6, 7, 8, 18, 19, 20, 21 of the Maharashtra RERD Rules




Strong Objections on - Neelkamal Realtors

Ongoing Project - It was submitted that it would be illegal, unreasonable, arbitrary and unconstitutional to compel the promoters of the ongoing projects to register their projects under RERA by applying provisions of RERA retrospectively.

***RERA retro-active in nature** - the RERA fails to take into account the past agreements entered into between the promoters and the allottees and the rights and liabilities arising and flowing from such agreements*

*In the view of the learned counsel, the RERA aims at promoting and protecting interest of the allottees alone, while the promoters' rights are totally given a **go-bye** which not only would cause tremendous financial loss and damage, but would seriously jeopardize and hamper the real estate market in respect of the ongoing projects and even the new projects*

***Force Majure - Extension of project completion time** - authority is restricted to **a period of one year**. in the submission of the learned counsel, is unreasonable and arbitrary provision which fails to take into consideration circumstances which are **beyond the control** of the promoter while carrying out the developmental work*



Strong Objections on - Neelkamal Realtors

Revocation of Registration - Sec 8 - *The provisions are vague in nature, lacks clarity and its implementation would lead to further complications in getting the project completed. In that sense, the counsel submitted that it is not in the interest of the allottees too*

Compensation - Sec 18- *The learned counsel submitted that mandate to pay interest and compensation under Section 18 be held to be unreasonable, arbitrary and unconstitutional. In the alternative, the counsel submitted that at the most the promoter may be directed to pay interest in respect of the delay in handing over of possession to the allottee from the date of registration and not from the date of agreement of sale entered into by him and the allottee.*

The provisions of Section 18 are retro-active in nature which affects the past transaction entered into between the promoter and allottee prior to registration of the project under RERA. The counsel submits that the provisions are unworkable.

Force Majure - Extension of project completion time - *authority is restricted to a period of one year. in the submission of the learned counsel, is unreasonable and arbitrary provision which fails to take into consideration circumstances which are **beyond the control** of the promoter while carrying out the developmental work*



Submission on behalf of Union of India - **principle of strict necessity in mind** – Neelkamal Realtors

*A **honest and dedicated** promoter need not worry about the provisions of the RERA. The authority would be manned by a Senior Officers of vast experience. They would certainly look into all the aspects and issue necessary directions to fulfill the objects of the RERA*

*Since last few years it was **felt by the Government** and other agencies that there must be a regulatory authority in the field of real estate development.*

*promoter is left with no other choice but to **face the consequences on expiry** of the period / tenure declared by him is baseless and without any foundation.*

*it is clear that question of constitutionality of a provision is a matter which the courts would venture to examine only for valid, proper and sustainable grounds. We do not see that the provisions of S. 7 of the Act, or any part thereof, **suffer from any legal infirmity, excessive legislative power** or violate any legal right of any person, including the petitioner, much less a constitutional right.*



Submission on behalf of Union of India - **protecting larger interest of allottees** – Neelkamal Realtors

*Sec 18 - It was submitted that after accepting huge amount from the allottees if the promoter for whatever reasons was not handing over possession, then the same would amount to breach and promoter will have to pay interest to the allottee. It **cannot be termed a penal** consequence*

*In all their manifestations, these rights are vested in the State and indeed **without such vesting** there can be no effective **regulation** of various forms of activities in relation to intoxicants.*

*Whenever a statute comes up for consideration it must be remembered that it is not within human powers to **foresee the manifold sets of facts which may arise**, and, even if it were, it is not possible to provide for them in terms free from all ambiguity.*



Forum for People's Collective Efforts (F.P.C.E.) / Fight for RERA

RERA has been introduced in the **public interest of the consumers** and in order to cure existing evils

The requirement to register ongoing projects under the proviso to section 3(1) is not retrospective, **is legal, valid and not arbitrary**

It constitutes a reasonable restriction as contemplated by Article 19(6) of the Constitution of India.

The section 18 is not at all penal in nature and in fact is compensatory, object and intent of provision is to recompense an allottee for depriving him the use of the funds paid by him.

The **absence of any single sectoral regulator** to regulate the real estate sector in totality, so as to ensure adoption of transparent & ethical business practices and protect the consumers, has only made the situation in the real estate sector worse



Forum for People's Collective Efforts (F.P.C.E.) / Fight for RERA

Sec 6 - *just because law prescribes aggregate period of extension of one year, a provision need not to be held to be arbitrary and constitutionally invalid* - that in case the promoter fails to complete the project in the prescribed time declared by him or the extended time under Section 6, then it shall not mean that the only outcome would be to oust the promoter from the project - *authority shall hear the associations of allottees in case the same promoter is to be continued without revoking the registration, in case of promoter failing to complete the project under the extended time under second proviso to Section 6*

The provisions of Section 19 prescribe that the allottee shall be responsible to make necessary payment in the manner and within the time as specified in the agreement for sale. In case the allottee fails to pay the amount to the promoter in time, then **he shall be liable to pay interest** at such rate as may be prescribed for any delay.

Order / Decision - Neelkamal Realtors

1. Provisions of RERA are **prospective** in nature.
2. The penalty under Sections 18, 38, 59, 60, 61, 63 and 64 is to be levied on account of contravention of provisions of RERA, **prospectively** and not retrospectively.
3. These provisions, therefore, cannot be said to be violative of Articles 14, 19(1)(g), 20(1) and 300-A of the Constitution of India
4. We hold that challenge to constitutional validity of first proviso to Section 3(1), Section 3(2)(a), explanation to Section 3, Section 4(2)(1)(C), Section 4(2)(1)(D), Section 5(3) and the first proviso to Section 6, Sections 7, 8, 18, 22, 38, 40, 59, 60, 61, 63, 64 of the Real Estate (Regulation and Development) Act, 2016 fails. These provisions are held to be constitutional, **valid and legal**.



Order / decision – favorable - Neelkamal Realtors

1. One of the qualifications for appointment of a Judicial Member prescribed in Section 46(1)(b) as, “or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post,” is severed and struck down
2. We hold that two member Bench of the Tribunal **shall always consist of a Judicial Member**. We hold that in the constitution of the Tribunal, majority of the members shall always be judicial members.





Magic Bricks

Mumbai Grahak Panchayat


Magic Bricks and others

MahaRERA - Suomoto Enquiry

If portals activities simply confined to advertisements as defined in 2(b) - need not to register and comply with Real Estate Agent as per RERA - mention the disclaimer

Otherwise

If the activities are beyond advertisement, then the portals shall register as real estate agents under the Act and comply with all provisions of the Act




Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors. (Supreme Court) – 9th Aug 2019

The amendment of IBC in regards to the status of homebuyers being treated as financial creditor was introduced in August, 2018

More than 180 real estate companies filed petitions challenging the constitutional validity of the inclusion under Section 5 (8) (f) of the IBC

Order / Judgement


1. The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India
2. The RERA is to be read **harmoniously** with the Code, as amended by the Amendment Act. It is only in the event of conflict that the **Code will prevail** over the RERA. Remedies that are given to allottees of flats/apartments are therefore **concurrent remedies**, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code
3. Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law



Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Supreme Court) – 9th Aug 2019

Several Petitions filed under the Code

1. who had entered into **assured returns / committed returns** agreements with these developers
2. upon **payment of a substantial portion of the total sale consideration upfront** at the time of execution of the agreement
3. The developer **undertook to pay a certain amount to allottees on a monthly basis** from the date of execution of the agreement till the date of handing over of possession to the allottees
4. That amounts raised by developers under assured return schemes had the commercial effect of a borrowing, which became clear from the developer's annual returns in which the amount raised was **shown as commitment charges under the head financial costs.**



Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Suprme Court) – 9th Aug 2019


Definitions

Sec 5 (8) financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes -

(f) any amount **raised** under any other transaction, including any forward sale or purchase agreement, **having the commercial effect of a borrowing**; Explanation - For the purposes of this sub- clause


(i) any amount **raised from an allottee under a real estate project** shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, allottee and real estate project shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);



Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Supreme Court) – 9th Aug 2019


1. The constitutional legality was established by the Bench and it clarified that, not all forward sale or purchase are financial transactions, but if they are **structured as a tool or means for raising finance**, there is no doubt that the amount raised may be classified as financial debt under section 5(8)(f)
2. Drawing the similarity, in the case of home buyers, the amounts raised under the contracts of home buyers are in **effect for the purposes of raising finance and are a means of raising finance**.
3. Bench deemed it prudent to clarify that such amounts raised under a real estate project from a home buyer fall within entry (f) of section 5(8)



Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Suprme Court) – 9th Aug 2019

Clarification on other statutes

1. The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the **Code will prevail** over the RERA
2. Remedies that are given to allottees of flats/apartments are therefore **concurrent remedies**
3. The fact that RERA is **in addition to and not in derogation** of the provisions of any other law for the time being in force
4. Remedies under RERA to allottees were **intended to be additional and not exclusive remedies**



Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Supreme Court) – 9th Aug 2019

Directions of Supreme Court to Center and States

1. The Supreme Court has asked the **Centre to file an affidavit taking corrective measures** in this regard
2. Supreme Court has directed the **Centre** to fill up vacancies in the National Company Law Tribunal and Appellate Tribunal so that they are adept in handling the rising number of cases filed against erring companies under IBC - with in 3 months from the date of judgement
3. Direct that in those **States** in which the needful has not been done, in that, only **interim** or no adjudicating officer/Real Estate Regulatory Authority and/or Appellate Tribunal have been appointed/established, such States/Union Territories are directed to **appoint permanent** adjudicating officers, a Real Estate Regulatory Authority and Appellate Tribunal within a period of three months from the date of this judgment - with in 3 months from the date of judgement
4. Bench has also **instructed the Chief Secretaries of the States and Union Territories** to file compliance affidavit within three months

Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Supreme Court) – 9th Aug 2019

RERA and NCLT

1. Insolvency and Bankruptcy Amendment Bill (IBC), 2019, **at least 100 or 10% of the total buyers**, whichever is lower, in a project will have to come together to initiate the corporate insolvency resolution process against a developer in the National Company Law Tribunal (NCLT)
2. NCLT – if consider as financial creditors, cannot be superior than other Financial Creditors, means –
 - a. Part of CoC
 - b. Wait for the Resolution process
 - c. Outcome to be accepted
 - d. Haricut

Pioneer Urban Land and Infrastructure Limited & Anr.
Vs. Union of India & Ors. (Suprme Court) – 9th Aug 2019

RERA and NCLT

3. RERA –

- a. Will be heard like a complaint
- b. Dispose with in 60 days
- c. In case of refund, full money is guaranteed
- d. Compensation along with delay interest
- e. Under Sec 8 of RERA, first right or refusal to take over of the project is with Allottees (means lenders will have 2nd preference)



Mantri Developers Private Limited - KAT

Buy Back schemes

Karnataka Appellate Tribunal has passed the order stating, Buyback customers are Investors and not covered under the Ambit of RERA



RERA Applicability on Industrial Units

Maha RERA

Techno Drive Engineers Pvt Ltd
Renaissance Indus Infra Pvt Ltd

8 After perusing this definition, I find that the apartments, plots or buildings are included in the definition. Since the industrial units do not come into the definition of apartment as discussed above, I find that the building consisting of the industrial units or part thereof will not amount to Real Estate Project defined by RERA.



RERA Applicability on Industrial Units

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RERA

Applicability on Industrial Units

- Tamilnadu REAT
- GMR Krishnagiri SIR Limited
- Vs
- TNRERA - Chairman

Industrial units are covered under RERA – liable to register the Projects

respondent, Real Estate Regulatory Authority, has rightly pointed out that the act has not differentiated plots into housing plots, commercial plots or industrial plots. So there is no infirmity on the findings of the respondent. Hence in such circumstances, this Tribunal comes to the conclusion that this appeal has no merits and not deserved to be allowed.

Professional Opportunities -

Section 3	Registration of RE projects with RERA (CA/ CS/ CWA/ Legal Practitioners)	Structuring of Real Estate Project under RERA Details there on based on Structuring
Section 4	CA Certification for withdrawal of funds	Based on POC
Section 4	Audit under RERA	Annual Audits
Section 56	Representation Services	Before AO, Tribunal
	General Consultation	Training, Impact Study etc



Professional Opportunities -

Training / Education / Aware of provisions including penal consequences - to All departments in an organization

Communication and Compliances -

Documentation - Operation, DLP, Customer conversations,
Agreements - Development, Vendors, Customers

Review /
Outsource



Professional Opportunities -

1. Viability Study of the Projects - critical factors

Availability of Funds to complete the project without customers advances

Cost of capital would go up (may be a short-term trend)

No recourse to interest free liquidity of the upfront payments received on pre-launches etc

Promoters may look for equity or Debt (mix of debt and equity)

Stressed Balance sheets

Operating cost of the Promoters would increase



Professional Opportunities - Compliances

Added cost of compliances may also indirectly impact pricing:

Disclosures and Transparency

Registration costs

Insurance – Construction and Title

Structural defect liability period – 5 years

Ongoing compliance costs

Restricted utilisation of funds to specific projects

Certifications and Audits



So, we say

**RERA is not Just an Act -
It is a Practice**



Thank
you



vinay@vnv.ca

www.vnv.ca

