



# **J B NAGAR CPE STUDY CIRCLE OF WIRC OF ICAI**

## **Professional Opportunities and Landmark Judgments in RERA**

**BY**

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# DISTINCT AND UNIQUE FEATURES OF REAL ESTATE

## ✓ Durability

Real estate investments can be extremely durable and build multi-generational wealth

## ✓ High Risk Area

Large Number of frauds being Highlighted on Periodic Basis

## ✓ High Start - Up Cost

## ✓ Diversion of Funds

✓ illiquid nature industry  
Real estate is considered illiquid because it can't be easily sold

✓ Delay in Delivery  
Of Projects

✓ Lack of Transparency  
Real estate works very differently, when an investor buys a property, there is a risk that the seller is hiding information.

✓ High level of uncertainties  
in Management Estimates

## **LAWS EVOLVED IN PROPERTY TRANSACTION**

- **Contract Act 1872 –General**
- **Transfer of Property Act,1882**
- **Indian Stamp Act, 1899**
- **Registration Act, 1908**
- **Cooperative Societies Act 1912**
- **Mah.Ownership Flats Act, 1963**
- **Madhya Pradesh Prakostha Swamitva Adhiniyam, 1976 (No. 17 of 1976**
- **Consumer Protection Act 1986**
- **Madhya Pradesh Prakoshtha Swamitva Adhiniyam, 2000**
- **Real Estate(Reg & Dev ) Act, 2016**

## **Real Estate Sector Challenges :GOVT INTERVENTION, MARKET SENTIMENTS AND NATURAL CALAMITIES**

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- **DEMONITIZATION IN 2016**
- **RERA 2016**
- **IBC 2016**
- **GST, 2017**
- **FINANCE ACT**
- **NBFC CRISES**
- **LIQUIDITY CRISES**
- **INVESTORS LEFT THE SECTOR**
- **COVID 19.... FOLLOWED BY LOCKDOWN.**

# WORKING OF MOFA 1963

**DUTY OF BUILDER TO DISCLOSE  
VARIOUS DOCUMENT,  
PLANS ETC.**



**Court Orders  
or Punishment**

**State Government  
Direction or Action**



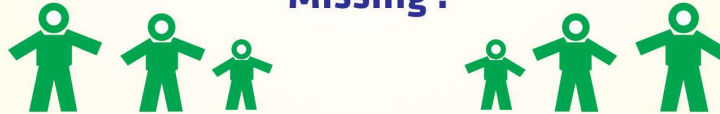
सत्यमेव जयते

1

**Enforcement & Delivery Mechanisms  
are Missing !**

2

**Compliance is  
Missing !**



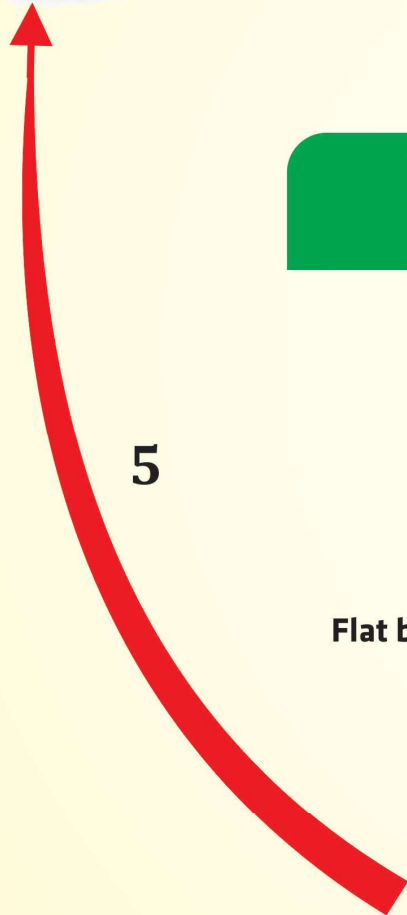
Flat buyer, RTI activist & common man may file RTI applications  
& write complaints to **GOVERNMENT**,  
and struggles to get orders passed against builder.

and / or

**Engages LAWYER and fights in  
COURT for several years**

5

3

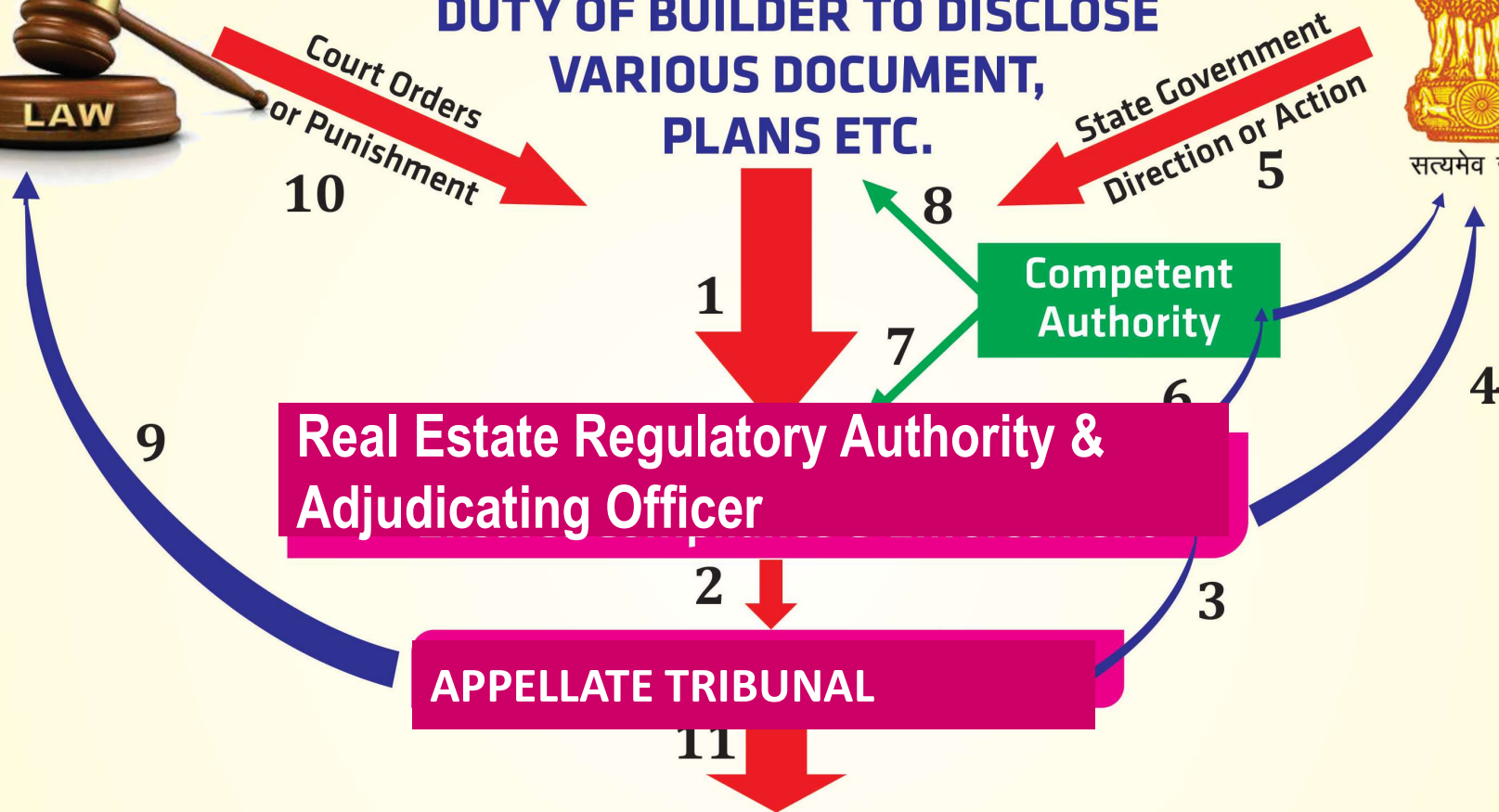


# WORKING OF RERA 2016

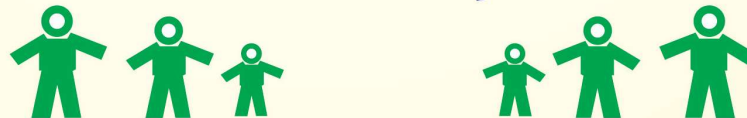
**DUTY OF BUILDER TO DISCLOSE  
VARIOUS DOCUMENT,  
PLANS ETC.**



सत्यमेव जयते



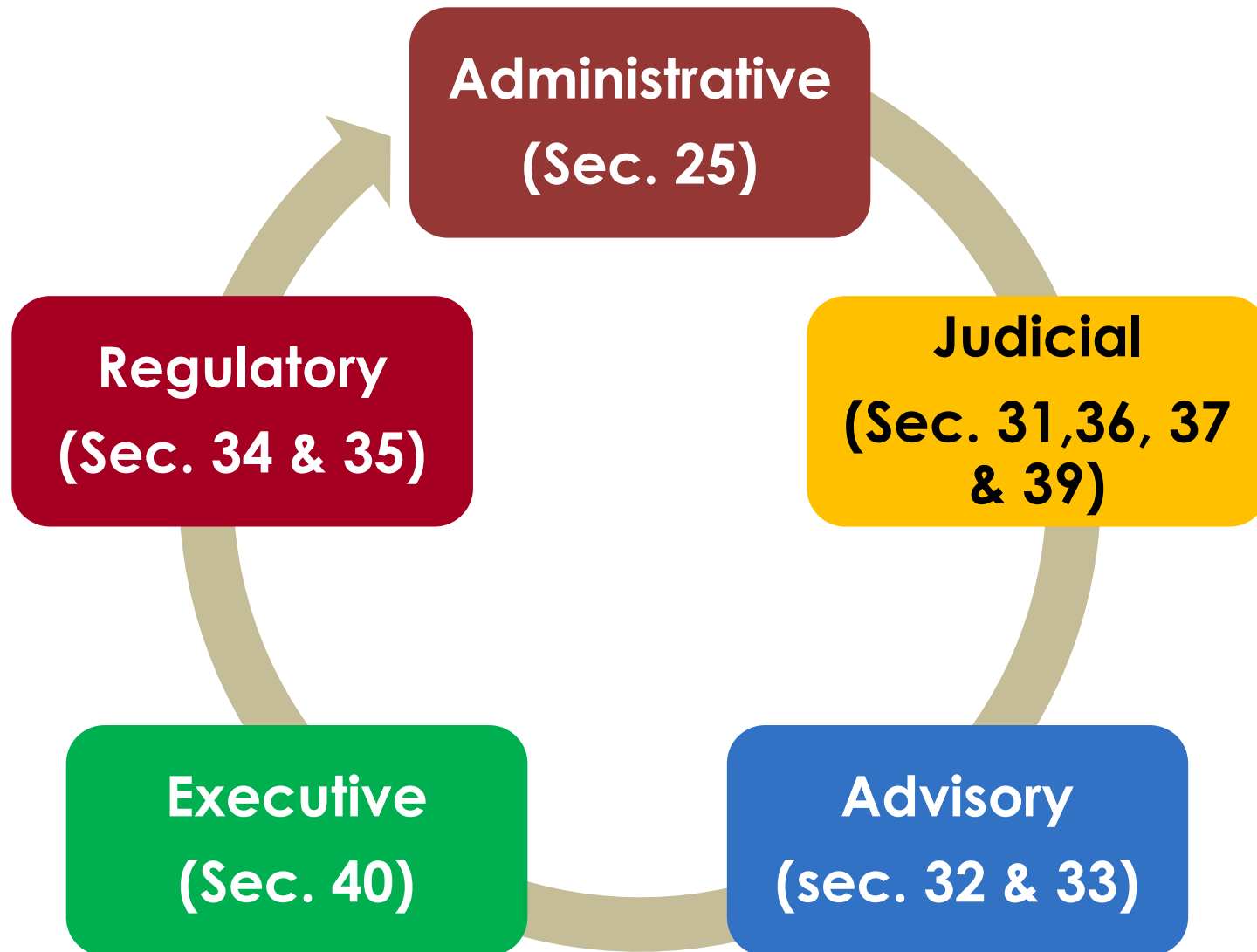
**Compliance & Service delivery as per Agreement  
Rules & Laws is Improved**



Flat buyer, RTI activist & common man may file RTI applications & write complaints to **REGULATORY AUTHORITY & APPELLATE AUTHORITY**, to get orders passed against builder.

# FUNCTIONS OF RERA

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# SALIENT FEATURES & Professional Opportunities

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## Consultancy:

Real Estate Project Registration



Real Estate Agent Registration



Compliance & Financial Discipline :  
Withdrawal certificate and audit



## Complaint Redressal:

Filing of Complaints/Appeal etc



Transparent :Regular Update  
Consumer-oriented



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## Key Impact Areas: Business Practices

### **Registration of Project:**

Registration of all new and ongoing projects and prohibition on marketing and selling before registering the project.

### **Disclosure of Project**

**Status:** Project details to be updated on website of Authority: apartments booked, approvals obtained, Construction progress etc.

### **Utilization of Funds:**

70% of receipts to be used for construction and land cost only and to be deposited in separate bank account.

### **Promoters' Responsibilities:**

Responsibilities towards obtaining completion certificate, maintenance, formation of society, conveyance deed etc.

### **Registered Agreement**

**for Sale:** Mandatory for accepting sum more than 10% of cost of apartment, plot or building as an advance payment or application fee.

### **Rights and Duties of**

**Allottees: Refund along with interest** in case of delay, non-completion of project or non adherence with the terms and conditions.

**Consent of buyer for modifications:** Specific consent of buyer and written consent of two-thirds of allottees for any changes other than minor additions or alterations.

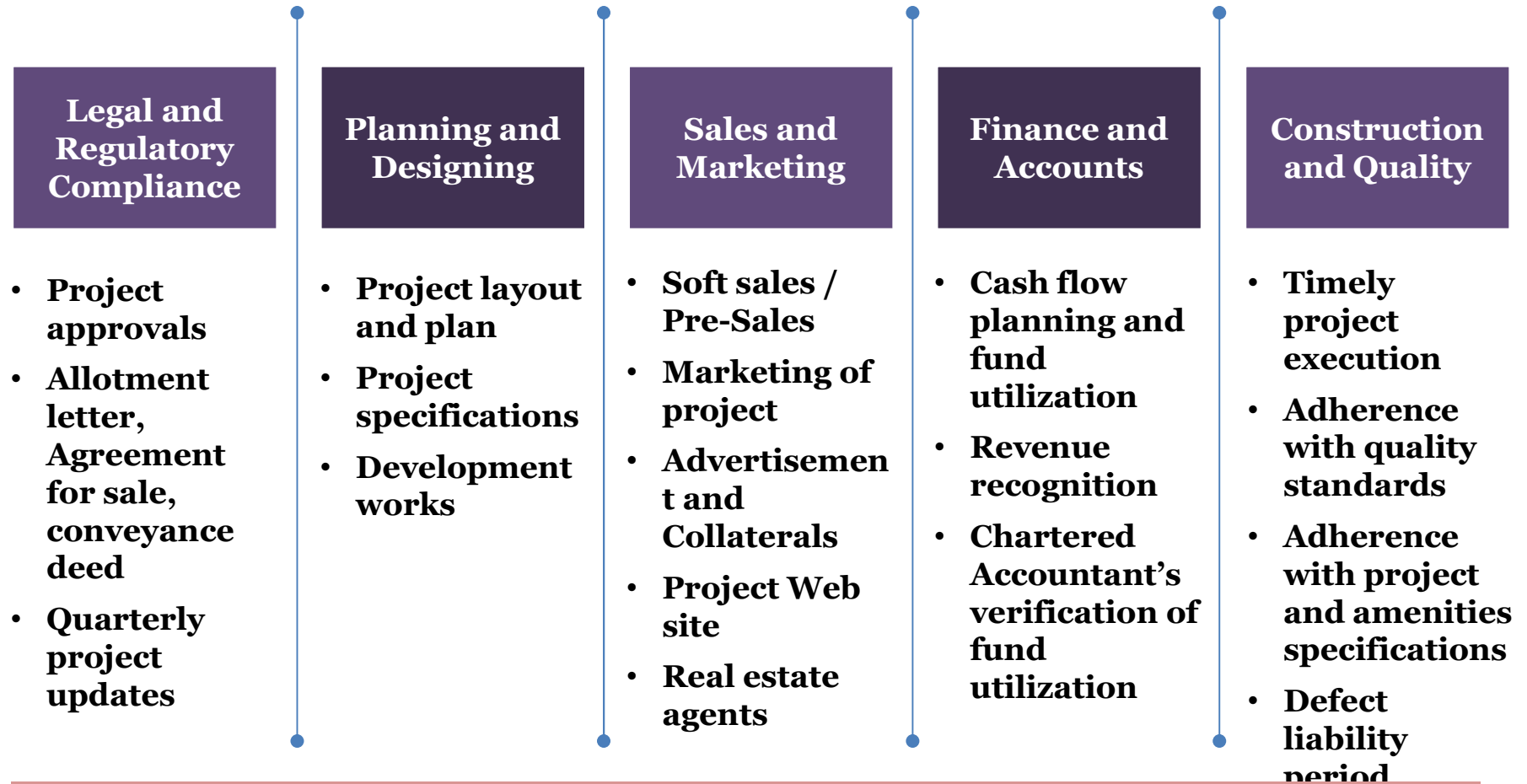
### **Defect Liability Period:**

Rectification of defects or fulfilment of obligation if brought to notice within 5 years from date of possession.

### **Real Estate Agents:**

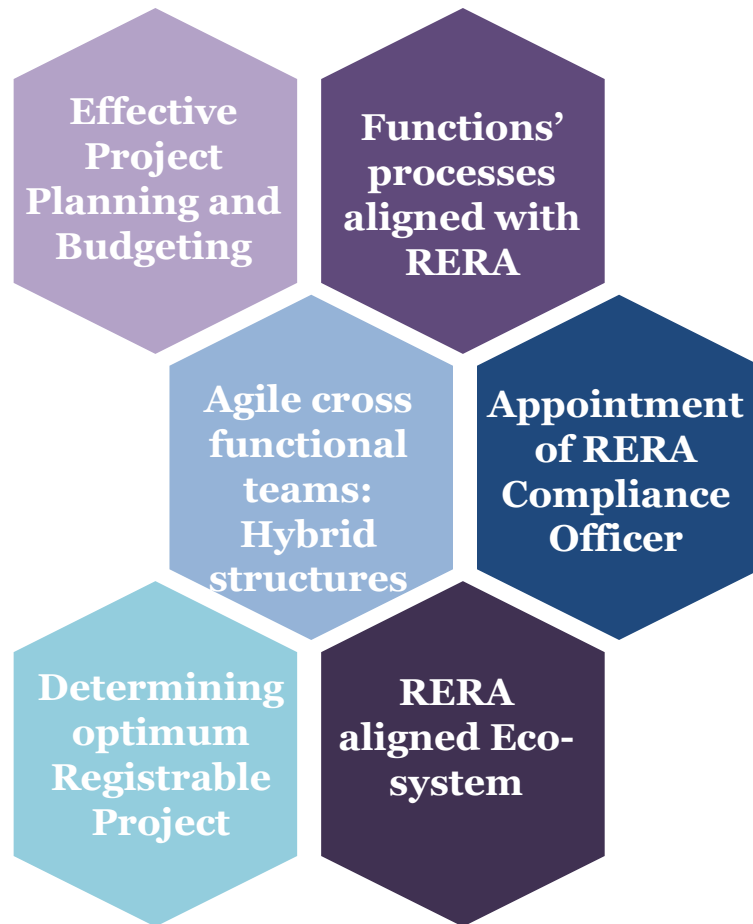
Requirement of registration of RE agents with RERA authority. Registration number to be quoted in every sale facilitated.

# Key Impact Areas: Business Processes



**Adequate co-ordination and deliberations amongst these functions at the planning stage are critical for project execution in line with the Provisions of the Act**

## Imperatives for successful transition from non-regulated to regulated sector:



Developers need to revisit their business practices and operating models to transition and navigate smoothly in regulated environment.

With increasing focus on governance, transparency and customer empowerment, inconsistent approach and arbitrary decisions are

# Overview of Regulatory Provisions: 70:30 Requirement

## Registration of Project

**Declaration  
and Affidavit  
u/s 4(2)(1)(D)**

**Disclosure of:**  
**1. Land cost**  
**2. Construction  
cost**  
**3. Estimated  
cost of RE  
project**

## Enabling Rules

**Withdrawal of  
amounts for  
new projects**

**Withdrawal of  
amounts for  
ongoing  
projects**

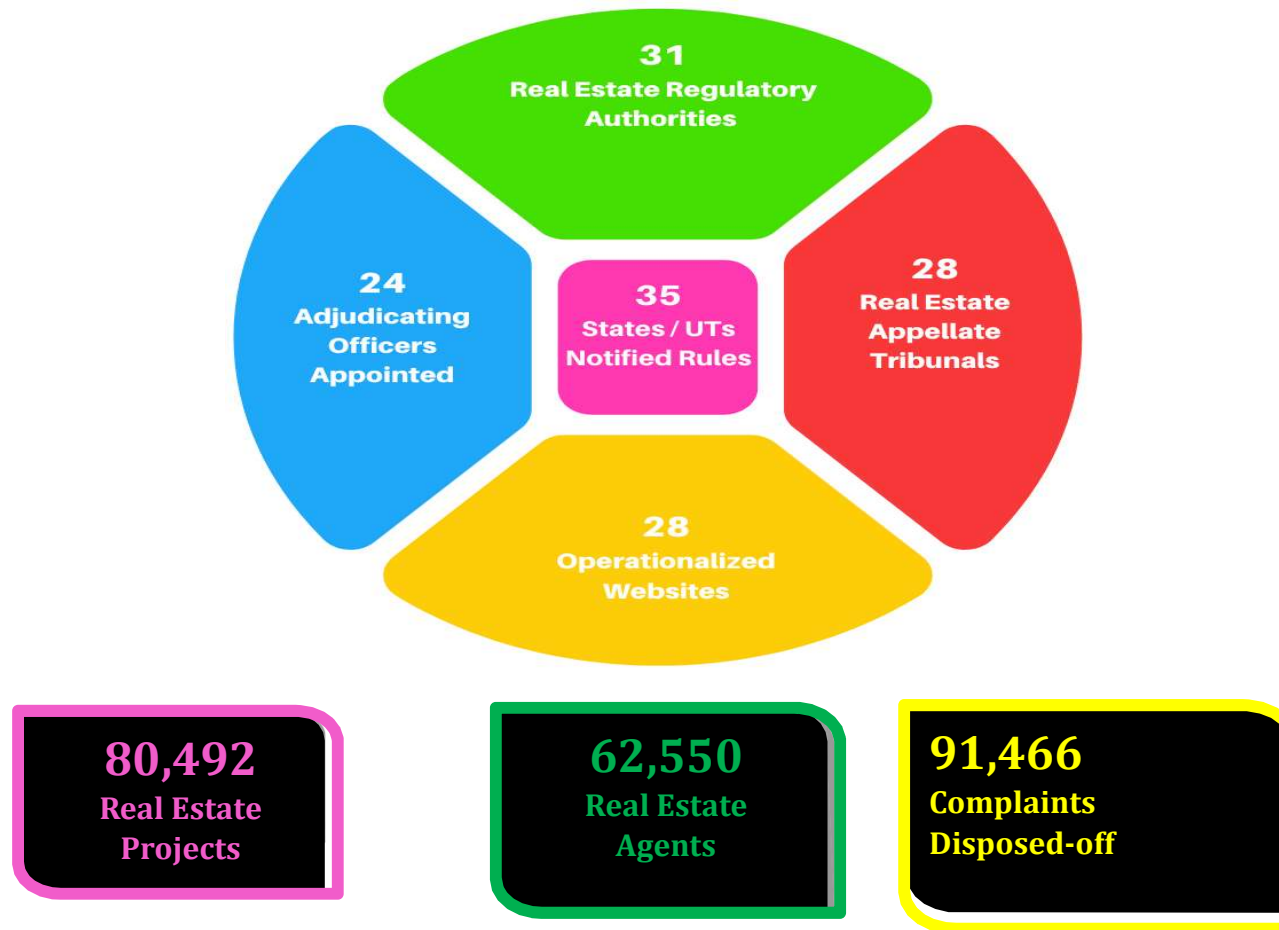
## Relevant Definitions and Guidance

**Guidance for  
determining land  
cost**

**Guidance for  
determining cost of  
construction**

**Estimate cost of RE  
project  
Section 2(v)**

## RERA Implementation Status Report : (As on 07-05-2022)



Source : Ministry of Housing and Urban Affairs:  
<https://mohua.gov.in/cms/implementation-status.php>

## **Auto Extension of registration of real estate projects due to 'Force Majeure' under RERA**

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**On the recommendation of 2nd Central Advisory Council Meeting held on 29<sup>th</sup> April, 2020, Ministry vide Notification dated 13<sup>th</sup> May, 2020 recommended to RERA as under:**

- (1) RERA issue suitable orders/ directions to extend the project completion date automatically by 6 months due to outbreak of COVID-19 (Corona Virus) by invoking force majeure.**
- (2) Further extend the date of completion as per registration for another period upto 3 months, if situation demands.**
- (3) May extend concurrently the timelines of all statutory compliances in accordance with the provisions of**

## **Decisions taken in 3<sup>rd</sup> Meeting of Central Advisory Council held on 12<sup>th</sup> April, 2022 live on social media**

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- (1) A committee for implementation of RERA in WB & Telangana.**
- (2) A committee for effective implementation of RERA orders.**
- (3) Builder needs to provide certification of structurally sound buildings**
- (4) The Developers' Associations were advised for voluntary certification / rating of builders,**
- (5) Under chairmanship of Secretary, MoHUA a smaller group to meet once in 6 months and a regular meeting of CAC once in a year to discuss the progress.**
- (6) The Council observed that, being the custodian of RERA, this Ministry has to aim for non- dilution of RERA.**
- (7) The Council decided to constitute a committee to**



# **SUPREME COURT OF INDIA**

## **on Constitutional Validity of RERA**

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**Nearly 40 petitions in different High Courts challenging the constitutional validity of RERA.**

**To avoid multiple and conflicting orders  
:Union Govt filed a Transfer Petition (Civil)  
Nos. 1448- 1456 of 2017**

**Held :**

- (1) The Bombay High Court to hear all the petitions**
- (2) Decide the petitions within 2 months**

**BOMBAY HIGH COURT WP 2737 of 2017**  
**on Constitutional Validity of RERA**

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• **Neelkamal Realtors Suburban Pvt. Ltd.**

**Vs.**

**Union of India and ors.**

• **Held on : DECEMBER 06, 2017**

**Challenged :**

**(1) RERA violative of the provisions of Articles 14, 19(1)(g), 20 and 300-A of the Constitution of India.**

**(2) Most of the sections of RERA**

# **BOMBAY HIGH COURT WP 2737 of 2017**

## **on Constitutional Validity of RERA**

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- **Held :**
- **All the provisions of RERA constitutionally valid and directed to register the on going projects and comply with RERA.**
- **Section 6 regarding extension of the registration as against one year, the RERA to decide on case to case basis.**
- **Appellate Tribunal U/s 43 to have two judicial members as against earlier one.**

## SC: Directed Union Govt to prescribe Uniform Agreement and uniform state Rules across India as per RERA.

- Hearing a PIL by Ashwini Upadhyay seeking a uniform model builder-buyer agreement across India, a bench of Justices D Y Chandrachud and Surya Kant directed the Union ministry of housing and urban poverty alleviation
- To threadbare scrutiny of all state notified rules modelled under the RERA.
- To identify the provisions which did not conform to the central model law and put flatbuyers at the mercy of builders.
- To coordinate with amicus curiae Debashish Bharuka in examination of the state Rera provisions, especially focussing on the general rules and agreement for sale rules.

# **SUPREME COURT :WP (C) 116 OF 2019**

- **Forum for People's Collective Efforts (FPCE) & Anr. Versus The State of West Bengal & Anr. ...**
- **Order dated: May 4, 2021**
- **Challenged The constitutional validity of the West Bengal Housing Industry Regulation Act, 2017 ("WB-HIRA"/the "State enactment") under Article 32.**
- **Held :**
- **WB-HIRA is repugnant to the RERA, and is hence unconstitutional.**
- **Parliament having legislated on a field covered by the Concurrent List, it is constitutionally impermissible for the State Legislature to enact a law over the same subject matter by setting up a parallel legislation.**

# **SUPREME COURT :WP 43 OF 2019**

- **Newtech Promoters and Developers Pvt Ltd. Vs**
- **UP State RERA& Others**
- **Order Dated: 11<sup>th</sup> November, 2021**
- **Challenged by the Promoter on various aspects of RERA working including :**
  - **(1)Retroactive application of RERA,**
  - **(2)Jurisdiction of Authority or Adjudicating officers for granting refund or interest,**
  - **(3) Proviso to section 43(5)-pre-deposit 100% before admitting appeal of promoters,**
  - **(4) Whether single member of RERA may be delegated powers of RERA to pass orders.**
  - **(5) Execution of orders, etc.**

# **SUPREME COURT :WP 43 OF 2019**

## **ISSUE 1: RETROACTIVE APPLICATION OF THE ACT**

**Whether the Act has retroactive or retrospective effect and what will be its legal consequences if tested on the anvil of Constitution of India?**

**It was observed by the Court that the Act is not retrospective in nature because it affects the existing rights of the persons mentioned in the Act like promoters, allottees etc. The intent of the legislature was to bring all "ongoing projects"<sup>2</sup> which commenced prior to the Act and for which the completion certificate had not been issued, under the ambit of the Act.**



# **SUPREME COURT :WP 43 OF 2019**

## **ISSUE 2: POWERS VESTED WITH THE AUTHORITY**

**Whether the Authority has power to pass an order directing the builders to refund the amount to the allottees under Sections 12, 14, 18 and 19 of the Act or does such a power exclusively vest with the adjudicating officer under Section 71 of the Act?**

**In view of the legislative intent of the Act, the Court held that the power is vested with the Authority to deal with issues relating to refund of the investment amount or interest on such refund.**

# **SUPREME COURT :WP 43 OF 2019**

## **ISSUE 2: POWERS VESTED WITH THE AUTHORITY**

**However, if any complaint pertains to compensation and interest thereon, the adjudicating officer under the Act will have the power to deal with such cases. If adjudication other than compensation as envisaged under Sections 12, 14, 18 and 19 of the Act is extended to the adjudicating officer, it may expand the ambit and scope of powers and functions of the adjudicating officer under Section 71 of the Act, and that would be in contravention of the Act.**

# **SUPREME COURT :WP 43 OF 2019**

## **ISSUE 3: POWER OF AUTHORITY UNDER SECTION 81 OF THE ACT**

**Whether the Authority under Section 81 of the Act has the power to delegate its function of hearing of complaints under Section 31 of the Act to a single member?**

**If the power under Section 81 of the Act has been delegated by the Authority, then such action, if being exercised by a single member cannot be said to be outside the provisions of the Act.<sup>3</sup> However, the same power to delegate under Section 81 shall exclude making regulations under Section 85 of the Act.**

# **SUPREME COURT :WP 43 OF 2019**

## **7. ISSUE 4: VALIDITY OF PRE-DEPOSIT UNDER SECTION 43(5)**

**7.1 Whether the pre-condition of pre-deposit mentioned under Section 43(5) of the Act for dealing with substantive right of appeal is valid in the eyes of law?**

**The Court held that the question of discrimination between allottees and promoters does not arise as they fall under distinct and different categories or classes. The deposit of amount equivalent to 30 percent of penalty by the promoter while preferring an appeal shall avoid uncalled litigation at the appellate stage and shall further safeguard the amount to be recovered for the allottee in case the appeal fails at a later stage. The intention of the legislation is that the promoters ought to show their bona fide intentions by depositing the amount so contemplated and avoid frivolous appeals**

# **SUPREME COURT :WP 43 OF 2019**

## **8. ISSUE 5: POWER OF AUTHORITY TO ISSUE RECOVERY CERTIFICATE**

**8.1 Whether the Authority has been conferred power under Section 40(1) of the Act to issue recovery certificate for retrieval of the principal amount?**

**The Court observed that there exist visible inconsistencies in the powers of the Authority regarding refund of the principal amount under Section 18 of the Act and the text of the provision by which such refund can be referred under Section 40(1) of the Act. If Section 40(1) is strictly construed, it would defeat the purpose of the Act. The Court held that there exists ambiguity in Section 40(1) of the Act and the same must be harmonized with the purpose of the Act. It was further clarified that the amount which has been determined and refundable to the allottees is recoverable within the ambit of Section 40(1) of the Act.**

# **SUPREME COURT :WP 43 OF 2019**

- **Pioneer Urban Land and Infrastructure Ltd**
- **Vs**
- **Union of India & Others**
- **Order Dated: 9<sup>th</sup> August, 2019**
- **Challenged Home Buyers as Financial Creditors under IBC, 2016 while RERA in place.**
- **Held :**
- **The Amendment to the Code include Home Buyers as financial creditor u/s 5(8)(f) does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.**

# **SUPREME COURT : WP 43 OF 2019**

- **Held :**
- **The RERA is to be read harmoniously with the Code**
- **In the event of conflict that the Code will prevail over the RERA.**
- **Concurrent remedies to Allottees:**
  - (a) Consumer Protection Act, 1986,**
  - (b) RERA**
  - (c) Triggering of the Code.**
- **Directed the Chief Secretaries of all the states/ UT to appoint Permanent Authority/Tribunal in 3 months as per RERA.**



**MAHAREAT Appeal in Complaints No. SCI 0000672**  
**Regn of RERA on plot size or number of apartments or both.**

- **M/s Geetanjali Aman Constructions Vs**
- **Hrishikesh Ramesh Paranjpe & others**
- **Appellants had not registered the project.**
- **The area of plot is 382 sq.mtrs. and project consists of twenty two flats and nine shops**
- **Two members held: The exemption is for projects of 500 sq.Meters or 8 units ..Need not register the project with MahaRERA.**
- **Other member held: 500 sq.Meters is for plots and units are for buildings... so liable for regn.**

## **Bombay High Court: WP (St) No. 1118 of 2021 on 1-03-2021 Macrotech Developers Ltd Vs State of Maharashtra and Others**

- Petitioner is not required to register the phase of the project “Lodha Dioro” upto 40<sup>th</sup> Floor under the provisions of Section 3 of the Act in view of the part occupancy certificate in respect thereof having been obtained/issued by the MMRDA prior to 1.8.2017.(i.e before the date fixed for registration of ongoing projects which was upto 3 months of commencement of the Act, 2016)
- Adjudicating Officer had no jurisdiction to determine the registration of the project or phase thereof under Section 3 (1) of the Act. This was solely within the sphere of powers of the Authority to pass the necessary orders and directions pertaining to aspects of registration of the project or part thereof in terms of Section 3 read with Section 31 of the Act, being one of its functions under Section 34 of the Act.

**BOMBAY HIGH COURT :CIVIL APPLN .683 OF 2018:  
RERA apply to long leased under construction  
flats.**

- **Lavasa Corporation Limited**

**Vs.**

- **Jitendra Jagdish Tulsiani & others**

- **Held that: Long term lease of '999  
years', it would definitely amount to  
sale and is thus covered under RERA.**

# **MAHARERA Complaint No: -78620**

## **Applicability of RERA to industrial Units**

- **Techno Dirive Engineer Pvt Ltd**
- **Vs**
- **Renaissance Indus Infra Pvt Ltd**
- **Coram: Hon'ble Shri. B.D.Kapdanis**
- **Date: 26<sup>th</sup> November, 2019**
- **MahaRERA regn No. p51700010971**
- **Held :**
- **RERA is not applicable to Industrial units as the definition of apartment in RERA does not include industry as against definition flats under MOFA which includes industry.**

- **BOMBAY HC :2<sup>nd</sup> APPEAL 13781 OF 2018**
- **Accountability of Professionals upheld**

- **M/s Sea Princess Realty ] Vs Allottees**
- **Project : Gundecha Trillium**
- **Possession Date : 31st December, 2016**
- **MahaRERA order: 16.01.2018,**

**Decided : Int for 6 months**

- **MahaREAT order : 4th April, 2018,**

**Decided : (1)Conducted joint inspection &  
(2) allowed interest for 1 year and  
(3) Action against Architect for  
issuing wrong certificate of completion.**

**2<sup>nd</sup> Appeal order : 7th JUNE, 2018 BY HC.**

**2<sup>nd</sup> Appeal only on Question of law and not on facts.**

- **Relied on SC : Surat Singh-vs- Siri Bhagwan and ors [(2018)**
- **Ratio : “ As per para 20. of the considering CPC section 100 of CPC, the 2<sup>nd</sup> appeal would be only if the High Court is "satisfied" that the case involves a "substantial question of law“.**
- **The entire appeal is based on the facts discovered in the First appeal**
- **Dismissed the appeal**
- **Confirmed: Interest on Delayed possession for 1 year and actions against architect.**

## **BOMBAY HC : WP(L) 908 OF 2018.**

### **Complaints of Un-registered Projects to be heard**

- **Mohd Zain Khan Vs MahaRERA**
- **Order Date : 31<sup>st</sup> July, 2018.**
- **MahaRERA was not entertaining complaints of unregistered projects.:**
- **In HC MahaRERA gave an undertaking to modify the software and register the complaints of unregistered projects in 15 days:**
- **Held :**  
**MahaRERA to hear complaints against unregistered projects and dispose of the complaints as per the procedure set for registered projects.**

**SC: CIVIL APPEAL NO(s) 9064 & 9065 of 2018**

**Plans need to be Displayed at site By SC**

**Ferani Hotels Pvt. Ltd. V / s SIC Mumbai & others**

**Order Dated : 27th September 2018**

**Challenge : Appeal raises the issue of disclosure under the R T I , seeking information regarding the plans submitted to public authorities by a Signature Not Verified Digitally signed by developer of a project. The SIC had allowed it.**

**SC Held : No merit in the appeal and consider it a legal misadventure & imposed cost of Rs.2.5 Lakhs**



**SUPREME COURT OF INDIA :  
CIVIL APPEAL NO(s) 9064 & 9065 of**

**Ferani Hotels Pvt. Ltd. <sup>2018</sup> v /s SICr Mumbai & others**

**Order Dated : 27th September 2018**

**Held : To display Sanctioned plan; Layout plan; along with the specifications approved by the Competent Authority at the site apart from any other manner provided by the regulations made by the Authority. This aspect should be given appropriate publicity as a part of enforcement of RERA**

**MahaRERA Circular 20/2018 Dated 9<sup>th</sup> Aug, 2018**

**SC :CIVIL APPEAL NO(S). 3533-3534 OF 2017**

**Int & Refund on Delayed Possession beyond 3 years**

**M/S. FORTUNE INFRASTRUCTURE (NOW KNOWN AS  
M/S. HICON INFRASTRUCTURE)**

**VERSUS**

**TREVOR D'LIMA & ORS.**

**Held: Upheld the decision of NCDRC that in the absence of date of Possession in the Agreement is not mentioned, 3 years will be reasonable time from the date of booking.**

**Authorities/ Appellate Tribunals have relied upon this and passed number of decisions.**

# **MAHAREAT Appeal No. AT-10802**

- **M/s. Unique Shanti Developers**

**Vs**

**Mrs. Malaika Monis & others:**

**Date : 19<sup>th</sup> November, 2019**

**The promoter had challenged the order refund of principle amount with interest to allottees by Adjudicating officer due to delay in handing over the possession as per agreement for sale.**

# MAHAREATAppeal No. AT-10802

- **WP: 2737/2016, Neel Kamal Realtor case, the Hon'ble Bombay High Court has laid down that, -**
- **"Provisions of RERA Act do not rewrite the clause of completion or handing over possession in agreement for sale."**
- **S.4(2) (I)(C) enables the Promoter to give fresh timeline independent of the time period stipulated in agreement for sale so that he is not visited with penal consequences laid down under RERA.**

# **MAHAREAT APPEAL NO. AT -10679**

**RERA to supersede of one side Agreement**

**Mr. Sandeep Shivram Jadhav**

**Vs**

**Rahul Excellence,**

**Challenged the order of MahaRERA for allowing the deduction of 20% of the agreement value by the promoter as per the registered agreement.**

**Appeal Order Date: 15<sup>th</sup> March, 2019**

## **MAHAREAT APPEAL NO. AT -10679**

**Held : (1) Adjudicating officer committed error in deducting 20% as per deduction clause in an agreement while allowing exit.**

**(2) Section 18(1)(a) of RERA Act 2016 will prevail over said deduction clause of agreement which took place prior to application of provisions of RERA.**

**(3) Any term or condition in an agreement which are against the spirit of provisions of RERA cannot be implemented as parties are governed by obligations and duties as per RERA.**

# **SC:CIVIL APPEAL NO 12238 OF 2018**

**Complaints can be filed even after receiving  
OC**

**Pioneer Urban Land & Infrastructure Ltd. ...**

**Vs**

**Govindan Raghavan ...**

**SC Decided on : 2<sup>nd</sup> April, 2019**

**Builder challenged the NCDRC order which had allowed the allottee to exit with interest as the even though OC was received before the complaint was decided as OC was delayed by two years against the agreed possession date.**

# **SUPREME COURT OF INDIA :**

## **CIVIL APPEAL NO 12238 OF 2018**

**Held : One side contract not binding on Parties.**

- (1) A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.**
- (2) when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.**
- (3) Confirmed the order of NCDRC for exit with interest though OC was received during trial.**



## Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented. -----

CA. Ramesh S. Prabhu



**Thank you for Getting involved in  
the discussion!**

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**CHAIRMAN**

**MAHARASHTRA SOCIETIES WELFARE ASSOCIATION, MEMBER OF TASK FORCE FOR NPOS & CO-  
OPS OF MAHARASHTRA, CONVENER TO PREPARE GUIDANCE NOTE ON AUDIT OF DISTRICT AND STATE  
CO-OP BANKS –PUBLISHED BY PDC OF ICAI, CO-OPTED MEMBER OF CO-OP COMMITTEE  
(MAHARASHTRA) OF WIRC OF ICAI.**