

## FAQs on Real Estate (Regulations and Development) Act, 2016



The [annual report of the Maharashtra Real Estate Regulatory Authority for the financial year 2020](#), records that the real estate sector in India is one of the most important sectors of the Indian Economy. It contributes to about 5-6% of GDP and is the second-largest employment generator (after Agriculture).

Prior to 2016, the real estate sector was unregulated. The [report of the Select Committee on the Real Estate \(Regulation and Development\) Bill, 2013](#), presented to the Rajya Sabha on 30 July 2015, states that the real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has largely been unregulated, with the absence of professionalism, standardization, and lack of adequate consumer protection. Thereafter, the Ministry of Housing and Urban Poverty Alleviation (**Ministry**) vide its [notification dated 26 April 2016](#) appointed 01 May 2016 as the date on which section 2, section 20 to 39, section 41 to 58, section 71 to 78 and section 81 to 92 of the Real Estate (Regulation and Development) Act 2016 (**Act**) were notified. Consequently, Press Information Bureau vide its [press release dated 30 April 2017](#) reported that, Ministry vide its notification dated 19 April 2017 notified the remaining provisions of the Act and came into force from 01 May 2017.

The object of the Act is to ensure accountability towards allottees (homebuyers) and protect their interest; infuse transparency; introduce professionalism; impose certain responsibilities on the promoters and allottees; establish fast track resolution mechanism.

The Real Estate Regulatory Authority and state-level Real Estate Regulatory Authorities are established under Sections 20 and 43 of the Act to regulate transactions related to both residential and commercial projects and ensure their timely completion and handover.

In this primer, we have covered common queries in relation to the Act and key points related to the registration of the real estate project and rights and duties of the 'promoters' of real estate project under the Act. This primer is divided into 2 parts: (i) General FAQs in relation to the Act, and (ii) FAQs on registration of real estate project and the rights and duties of the promoters of the real estate project.

**A. GENERAL FAQs IN RELATION TO THE ACT****1. Applicability of the Act?**

The Act applies to all the promoters, allottees, and real estate agents involved in the real estate project. Further, the Act also applies to commercial buildings, residential apartments, and plots developed for sale.

**2. Who is an allottee for the purposes of the Act?**

The Act defines 'allottee' as person to whom:

- a) a plot, apartment, or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter; or
- b) a person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

**3. Who is a promoter?**

The term 'promoter' under the Act is wide and it covers a person who constructs / causes to construct buildings or apartments or develops / causes to develop land into a project (irrespective of whether any structure is to be constructed on the said land) for the purpose of selling all or part of such building, apartment or project.

It could be developers, builders, a general power of attorney holder, colonizer, contractor, landowner, etc. It also includes any development authority or other public body.

**4. What is a real estate project?**

Real estate project means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights, and appurtenances belonging thereto.





5. **Whether redevelopment of existing buildings and structures can be considered a real estate project under the Act?**

The redevelopment of the existing buildings and structures will be considered a real estate project if it involves the selling of an apartment, plot, or building.

6. **What is an 'apartment' and 'building' for the purposes of the Act?**

An apartment has been defined in the Act as a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified. The term 'apartment' will include block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit, etc.

'Building' has been defined as any structure or erection or part of a structure or erection which is intended to be used for residential, commercial, or for the purpose of any business, occupation, profession, trade, or for any other related purposes.

The terms 'apartment' and 'building' as used in the aforesaid paragraph not only covers residential projects but also cover commercial projects.

7. **Does the Act also apply to industrial units?**

No. It has been reiterated by the authority in various cases that the definition of the term 'apartment', 'building', and 'real estate project' under the Act does not include industrial units / industrial projects within its ambit. Therefore, the provisions of the Act are not applicable to industrial units.



**8. Who is an authority for the purposes of the Act?**

The Real Estate Regulatory Authority established under the provisions of the Act is the authority.

**9. What is the estimated cost of the real estate project?**

The Act defines the term 'estimated cost' as, the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development, and other charges. The promoters must arrive at the estimated cost of the real estate project after considering all possible risks and costs associated with the development of the real estate project.

**B. FAQs ON REGISTRATION OF THE REAL ESTATE PROJECT AND RIGHTS AND DUTIES OF A PROMOTER OF THE REAL ESTATE PROJECT****1. Who is required to register the real estate projects?**

The promoter of the real estate project is required to register the real estate project.

**2. Whether registration of real estate projects mandatory under the Act?**

Yes, it is compulsory to register all real estate projects involving the selling of a plot, building, or apartment.

**3. Projects which require mandatory registration under the Act?**

Every real estate project which has a land area of more than 500 sq. meters or has more than 8 apartments, is required to be mandatorily registered if it involves selling a plot, building, or apartment. In the event, that the promoter has received the completion certificate prior to the commencement of the Act, then such real estate projects are exempted from registration under the Act.





**4. Whether promoters can sell / advertise flats or units to any person without registering the real estate project?**

No, the promoters are not permitted to advertise, market, book, sell or offer for sale, or invite a person to purchase in any manner any plot, apartment, or building in any real estate project without registering the real estate project with the authority.

Further, the Act restricts advertising of the project, prior to registration, through any medium including SMS and emails.

**5. Is it mandatory for a promoter to obtain permissions (Intimation of Disapproval (IOD) and Commencement Certificate) for the real estate project before applying for registration?**

Yes. The Act stipulates the requirement of submission of commencement certificate and copy of other approvals along with the application form for registration of real estate project.

**6. What is commencement certificate (CC) and occupation certificate (OC) in the Act?**

The term 'commencement certificate' and 'occupation certificate' are defined under the Act as:

Commencement Certificate	Occupation Certificate
It is a certificate issued by the competent authority to allow or permit the promoter to begin development works on immovable property, as per the approved sanctioned plan.	It is a certificate issued by a competent authority certifying that a building has provision for civic infrastructures such as water, sanitation, and electricity and permitting occupation of the same.

7. **Whether registration is required for each phase of a real estate project when it is developed in phases?**

The Act stipulates that, when a real estate project is developed in phases, then each such phase is considered a stand-alone project and the promoter must obtain registration under this Act for each phase separately.

8. **Is the promoter required to give any undertaking for completing his project within a specified period?**

Yes. The promoter while applying for registration of the real estate project is required to give a declaration, supported by an affidavit, indicating the time period for completion of the real estate project.

The promoter is also required to provide details to the authority in case of any delay or change in the completion date of the real estate project.

9. **Is it compulsory to deposit 70% of the amount realized from the allottees for the real estate project in a separate bank account?**

Yes. The Act mandates the promoters to declare in the undertaking (as mentioned in point B98) above) that 70% of the amount so realized from the allottees deposited into the designated project bank account, to cover the cost of construction and the land cost and shall be used only for that purpose.





10. **Whether the promoter can withdraw monies from the bank account as mentioned in point B (9) above?**

Yes. The promoters can withdraw the amounts from the account as mentioned in point (B (9)) above, to cover the cost of the real estate project, in proportion to the percentage of completion of the real estate project. Prior to withdrawing any amount from the designated project bank account, the promoter is required to obtain a certificate from an engineer, an architect and chartered accountant in practice, certifying that the promoter requires fund to complete the development and construction of the real estate project.

11. **What is the timeline for issuance of the registration certificate for a real estate project?**

The authority is required to grant or reject the application for registration of real estate project within 30 days. In the event, that the authority fails to respond within 30 days of the filing of the application then the real estate project is considered deemed registered.

Usually, the authority responds within 30 days with objections or requirements for further clarification. The process of the registration may extend to 90 days from the date of the application.

12. **What is the validity period of the registration certificate issued under the Act?**

The registration certificate issued under the Act is valid for the period within which the promoter undertakes to complete the real estate project as declared by him in the application form for registration.



13. **Scenarios in which extension for registration of real estate project can be granted?**

The authority, in the event of any force majeure event (war or calamities caused by nature affecting the regular development of the real estate project), may extend the validity of the registration certificate on receipt of application from the promoter and subject to payment of fees as may be prescribed. Further the authority may, in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

The [Ministry of Housing and Urban Affairs issued an advisory on 13 May 2020](#), to the State Governments, advising them to treat the COVID-19 pandemic as an event of 'Force Majeure' in terms of section 6 of the Real Estate (Regulation and Development) Act, 2016.

14. **When can the certificate of registration be revoked?**

The authority may on receipt of (i) complaint against the promoter; (ii) on its own motion; or (iii) recommendation of the competent authority, revoke the registration certificate on account of the following reasons:

- a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made there under;
- b) the promoter violates any of the terms or conditions of the approval given by the competent authority; or
- c) the promoter is involved in any kind of unfair practice or irregularities.







**15. What is the obligation of the authority on the lapse of or the revocation of the registration?**

In the event, that the certificate of registration is lapsed or revoked under the Act, then the authority may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by the competent authority or by the association of allottees or in any other manner, as maybe determined by the authority.

Illustration: In the State of Maharashtra, Maharashtra Real Estate Regulatory Authority will consult the Maharashtra State Government, which is the appropriate Government, for carrying out the remaining development works.

**16. What are the duties of the promoter after registration of the real estate project?**

The promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, Till the conveyance of all the apartments, plots, or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority.

In addition, the promoter is also responsible with respect to the structural defect, or any other defect shall be extended for a further period of 5 years from the date of handover of the possession after the issuance of occupation certificate.

**17. When does the promoter need to form society, association, etc.?**

The Promoter must ensure that an association or society of allottees should be formed within 3 months from the date majority of allottees have booked their plot / apartment / building in the real estate project.

**18. Whether promoter can accept more than 10% of the cost of the apartment / plot / building as an advance or an application fee from the homebuyers?**

No. The Act prohibits the promoter from accepting more than 10% of the cost of the apartment/plot/building as the case may be, as an advance or application fee from a person without first entering into a written agreement for sale.

**19. Whether the promoter can change the sanctioned plans of subsequent phases after registration of phase 1?**

The promoter is not authorized to make any changes to the sanctioned plan without the prior written consent of the allottee. The Act further clarifies that no alteration or addition to the sanctioned plan, layout plans of the entire project, or common areas of the building can be made unless the developer obtains the prior written consent of 2/3rd of the allottees / persons who have agreed to take apartments in such project, excluding the promoter. As a result, a developer is legally obligated to follow the approved blueprints during construction and cannot depart from them.



**20. Is it mandatory for a promoter to take an insurance policy against a real estate project?**

Yes. The Act mandates the promoter to obtain all such insurance as notified by the State Government. The Act mandates insurance for the following items:

- a) Title of the land and building as part of the real estate project.
- b) Construction of the real estate project.

**21. What is the penalty prescribed for non-registration or for any violation of any of the provisions of the Act?**

Offences	Penalties
Non-registration of a real estate project	10% of the estimated cost of the real estate project. On continued violation, punishable with imprisonment for a term which may extend up to 3 years or with a fine which may extend up to a further 10 % of the estimated cost of the real estate project, or with both.
False information	If false information is provided, the penalty is 5% of the estimated cost of the real estate project.
Other offences	5% of the cost of the estimated cost of the real estate project.

The Act specifies that if any of the above offences are committed by a body corporate such as a firm, association of individuals or a company, every person who was responsible for the conduct and business of such a body corporate at the relevant time will be deemed to be guilty of the offence and will be liable for punishment along with such body corporate. Further, where it is proved that the offence has been committed with the consent / connivance or due to the negligence of any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of the offence and will be liable for punishment along with the body corporate.

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