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# Real Estate Registration under RERA

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## I. WHAT IS REAL ESTATE?

<sup>2</sup>*Cambridge Dictionary* defines **REAL ESTATE** as **property** in the form of

- Land and building;
- Land and building that someone owns;
- The activity of buying and selling land and buildings.

**Property** can be understood as per **Section 2(c)** of the **Benami Transactions (Prohibition) Act, 1988<sup>3</sup>** which means property of any kind, whether movable or immovable, tangible (which can be seen and touched) or intangible (which cannot be seen and touched), and includes any right or interest in such property (Ownership, possession).

To understand the meaning of LAND, we have to first understand **Immovable Property**. According to **Section 3(26)** of The **General Clauses Act, 1897<sup>4</sup>** **immovable property** includes land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth.

**The Transfer of Property Act, 1882<sup>5</sup>** ratifies the same definition with further interpretation that immovable property does not include standing timber, growing crops or grass.

The term “**Land**” includes surface of the earth (plane), surface above the earth (air, atmosphere) and below the earth (minerals or anything put underground by humans like pipelines, building materials).

“Benefits to arise out of the land” include the benefits, fruits, profits and rent which are collected by using the land which benefits the person.

## II. TYPES OF REAL ESTATE:

1. **Residential:** These are the properties which are built and sold solely for living purpose or investment where the end use is staying there. It includes both, newly

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<sup>1</sup> BLS.LLB. (Mumbai University)

<sup>2</sup><https://dictionary.cambridge.org/>

<sup>3</sup>[http://legislative.gov.in/sites/default/files/A1988-45\\_1.pdf](http://legislative.gov.in/sites/default/files/A1988-45_1.pdf)

<sup>4</sup><http://legislative.gov.in/sites/default/files/A1897-10.pdf>

<sup>5</sup><http://legislative.gov.in/actsofparliamentfromtheyear/transfer-property-act-1882>

constructed and resale properties. Eg: Apartments, Condominiums, Villas, Havelis, Second homes, slums.

2. **Commercial:** Commercial properties are the ones which are built and sold to the person who will use it for the purpose of earning income through trade and commerce. It includes Warehouses, factories, Malls, Hotels, Hospitals, Schools.
3. **Industrial: Sec.2 (j) of the Industrial Disputes Act, 1947<sup>6</sup>** defines industry as any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. It includes industrial undertaking used for manufacturing, production, storage and distribution of any of the articles used in trade and commerce for earning income and the process of assembling, processing and fabrication and invention. Eg: Factories, Power Plants, Assembly plants, refineries.

Most often, Industrial and Commercial properties are confused with each other, but the regulations pertaining to FSI, TDR, Conversion and other compliances are different.

4. **Infrastructure:** Infrastructure facilities promote the public health, safety, economic growth and standard of living in the country. It includes Airports, Trains, Energy, Power, Dams, Ports.

### **III. REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016 (RERA)<sup>7</sup>**

The Government of India enacted the Real Estate (Regulation and Development) Act 2016 which came into force from May 1, 2017, which makes it a Central and Special Act.

With this, Maharashtra Real Estate Regulatory Authority (MahaRERA) was established by the Government of Maharashtra vide 23<sup>rd</sup> Notification of 8 March 2017 for regulation and promotion of real estate sector in the State of Maharashtra.

### **IV. OBJECTS OF RERA CAN BE SEEN IN THE PREAMBLE OF THIS ACT:**

- Regulation and promotion of the real estate sector
- Sale in efficient and transparent manner
- Protect the interest of consumers
- Establish an adjudicating mechanism for speedy dispute redressal

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<sup>6</sup>[https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES\\_ACT1947\\_0.pdf](https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf)

<sup>7</sup>[https://maharera.mahaonline.gov.in/Upload/PDF/Real\\_Estate\\_Act\\_2016-26-03-2016.pdf](https://maharera.mahaonline.gov.in/Upload/PDF/Real_Estate_Act_2016-26-03-2016.pdf)

- Establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority
- Appointment of Adjudicating officer

## **V. REGISTRATION OF REAL ESTATE PROJECT AND REAL ESTATE AGENTS IS PROVIDED IN CHAPTER II OF THIS ACT.**

**Section 4(1)** provides for **mandatory registration** by every **promoter** of the real estate project by making an application to the Authority in the form & manner along with such fee as per the regulations made by the Authority.

Every Real Estate Project must be registered except<sup>8</sup>

- Property where the area of land proposed to be developed does not exceed 500 sq. mt. or the number of apartments proposed to be developed does not exceed 8 inclusive of all phases. The appropriate Government may reduce the threshold.
- 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 property. Eg: Self Redevelopment by members of society.

## **VI. APPLICATION PROCEDURE**

- Visit <https://maharera.t.mahaonline.gov.in/>. and click on New Registration. Select the entity as whom you are registering:
  - **Promoter: Section 2 (zk)** explains Promoter as the person who constructs or converts a building into apartments. It includes the one who develops a plot for sale and who sells apartments or plots. They are both different persons but are individually considered as promoters and are jointly liable in law.
  - **Real Estate Agent: Section 2 (zm)** person who negotiates or acts on behalf of one person in a transaction of transfer of his property in a real estate project with another person. He receives remuneration for his services whether as commission or otherwise. It also includes a person who introduces in any way the prospective buyers and sellers.

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<sup>8</sup>Section 3 (2)

- **Citizen**

- It asks for creating a Username, password and contact details. Verification is sent on the email id of the applicant.
- After verification, the account can be logged in. It will ask for the profile details like whether applicant is an individual or otherwise. After selecting the entity, Full Name, Aadhar card No. and PAN card details must be entered.
- After entering Official address and contact details for communication, it will ask the applicant to upload the photograph in JPEG or PNG format having size of 200 -212 x 160 px.
- Profile details must be filled.
  - If applicant is an individual, Select INDIVIDUAL option. Fill the full name of a person and address details
  - If it is an organization select OTHER THAN INDIVIDUAL. Fill the full name of the organization and address details. It will also be necessary to fill the Designation of the person filling it on behalf of the organization with Aadhar card No. and PAN card details as well as personal address of that person.
- After uploading the photo, the profile is saved. It can be amended or deleted.
- The promoter should fill the past experience details if he has undertaken any projects in previous 5 years anywhere in India by giving the name and type of the project, complete address and land measurement and CTS or Survey No. of it. He must also mention number of buildings and apartments he had built in that project and the cost of project. To see the efficiency and speed of the developer/builder, it is also asked to fill the proposed date and completion date of that project. It is saved, but can be amended or deleted.
- Entering project details is of utmost importance.

The status of the project must be entered:

- **On-going project:** It is a project where development is going on and completion certificate has not been issued by the authorities. The promoter is obligated to apply to the Authority for registration of the said project within a period of three months from the date of commencement of RERA.
- **New Project**

- It will ask for the Name and type of the project, Number of buildings, Survey No. and area measurement of the plot, Boundaries (Survey no. of adjoining properties in East, South, North and West) and whether litigation is going on in any court. Proposed FSI, Approved FSI (after sanction) and Full FSI to be utilized.
  - FSI is the coefficient achieved by dividing total covered area on all floors by Total plot area.
  - FSI varies from schemes and area.
  - FSI in Mumbai Suburban area is up to 2.5
  - Mumbai Island City is 0.5 but for Cessed buildings it is 1.83,
- Details of Separate bank account such as Bank name, Address. Branch, Account No. and IFSC Code must be mentioned.
  - It is mandatory to deposit 70% of the amounts of the real estate project received from the allottees in a separate account made in a scheduled bank.
  - It must only be used for covering the cost of that project in proportion to the percentage of completion of the project.
  - It can be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant.
  - It is also must to get the accounts audited within 6 months after the end of every financial year by a chartered accountant in practice and obtain a statement of accounts duly certified and signed by him.
  - The schedule bank is a bank mentioned in the Second Scheduled to the Reserve Bank of India Act, 1934.
  - The indirect taxes collected by the Promoter from the Allottees as GST or Service Tax can be deposited in any other bank account and will be governed by indirect tax laws.<sup>9</sup>
- To add details of the building click on add building. Fill the details of building like number of plinth, basement, podium, stilt, slab of super structure, open parking and closed parking. Add Apartment details like Apartment type (duplex, triplex, studio), carpet area, No. of apartments booked/sold/allotted and then click on Add building and the form will be saved.

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<sup>9</sup><https://maharera.mahaonline.gov.in/Upload/PDF/UT%20circular.pdf>

- Next is the description of common area facilities.
  - **Section 2(n)** gives the list of **common areas** including facilities the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings, the common basements, terraces, parks, play areas, number of garages and parking, installations of central services such as electricity, gas, water and sanitation and all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use
  - Such facilities whether proposed or booked (in case of parking) and progress of the work done must be entered. Promoter can click on Add more if he wishes to add new item to the list.
- Entering Estimated project cost after consulting CA and Engineers must be entered.
  - It involves total cost required for the development of project, Expenses of Premium FSI, Acquisition cost of TDR, Expenses paid to the authorities for clearance, taxes, stamp duty, registration charges, etc.
  - Cost under Rehabilitation scheme must mention the cost of construction area which is to be handed over to Slum dwellers as per scheme and to tenants under redevelopment of tenanted properties. Cost incurred in providing alternate accommodation to apartment owners of the building under redevelopment.
  - After completing the form, save the details by clicking on SAVE.
- Next step is uploading the documents by scanning them. Click on upload and select files from the device. Documents required are
  - ✓ PAN card
  - ✓ Legal title report of a Lawyer (of previous 30 years)
  - ✓ Deeds of encumbrances (Mortgage deed. Lease deed, etc.)
  - ✓ Copy of Layout approval and IOD Approval sanctioned by authorities
  - ✓ Signed allotment letter and agreement for sale
  - ✓ Certificate of Architect<sup>10</sup> in (Form 1) whereby he certifies the percentage of completion of construction work of each of the building/wing of the project to

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<sup>10</sup>Section 2(h) RERA "Architect" means a person registered as an architect under the provisions of the Architects Act, 1972;

be submitted at the time of Registration of Ongoing Project and for withdrawal of Money from Designated Account

- ✓ Certificate of Architect (Form 4) whereby he certifies completion of each of the building/wing of the real estate project
  - ✓ Certificate of CA<sup>11</sup>(Form 3) for depositing 70% amount in Scheduled bank.
  - ✓ Certificate of CA (Form 5) certifying the annual report on statement of accounts.
  - ✓ Engineer's Certificate<sup>12</sup> (Form 2) consisting of Estimate of cost and cost incurred for the purpose of withdrawal of money from the designated account. It is mandatory in case of on-going projects.
  - ✓ Commencement Certificate.
- Add Professional's (Real Estate Agent, Architect, Contractor, Engineer) details such as Name, Address, Pan Card and Aadhar Card details and his action.
  - Add details of Litigations if any consisting of information about the type of case and Court name, whether any injunctions are ordered or decreed, Case No., Petition, Year and present status.
  - Finally, the filling of Activity details in % of work done such as excavation, Nos. of plinth, podiums an basements, stilt, sanitary and electrical fittings, staircases, lifts, lobbies, fire fittings and overall percentage of work completed.
  - After filling all the forms correctly without mistake, Confirm and Proceed to payment. The minimum fee for registration of RERA project in Maharashtra is Rs. 10885/- and or Rs. 10 per sq. mt. whichever is higher.
  - As per the act, the RERA certificate will be issued in 30 days by the RERA department, subject to variations. The authority may at its discretion reject the application, but have to give reasons in writing if such application does not conform to the provisions of this Act, rules or regulations. The applicant must be given an opportunity of being heard.

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<sup>11</sup> Section 56(a) RERA: Section 2(1)(b) Chartered Accountants Act, 1949 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

<sup>12</sup> Section 2(u) RERA: "Engineer" means a person who possesses a bachelor's degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force



- If the Authority fails to communicate the registration the project is deemed to be registered.
- The Authority must provide a registration number, Login Id and password to the promoter for accessing the website of the Authority within a period of 7 days before the 30 days period is over. All the information of the project is filled on the webpage so as to achieve transparency objective of the Act.
- **Section 9** of the Act provides that the real estate agent cannot facilitate the sale or purchase of the property in the Real Estate Project being sold by the promoter which is not registered.

## **VII. CHAPTER VIII PROVIDES FOR PENALTIES FOR NON-REGISTRATION.**

- If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to **10 % of the estimated cost** of the real estate project as determined by the Authority.<sup>13</sup>
- If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he is punishable with **imprisonment** for a term which may extend up to **3 years** or with **fine** which may extend up to a further **10% of the estimated cost** of the real estate project, or **with both**.<sup>14</sup>
- If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to **5 % of the estimated cost** of the real estate project as determined by the Authority.<sup>15</sup>

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<sup>13</sup>Section 59(1)

<sup>14</sup>Section 59(2)

<sup>15</sup>Section 62