The Real Estate (Regulation and Development) Act, 2016

The Kerala Real Estate (Regulation and Development) Rules, 2018
NEED OF THE HOUR

- The real estate sector in India:
  - has grown in the recent years
  - largely been unregulated from the perspective of consumer protection.

- Available consumer protection laws
  - recourse available therein are only curative, but not preventive.

Overall potential growth of the sector affected due to absence of professionalism and standardization.
ACT & RULES

- The **Real Estate (Regulation & Development) Act, 2016**, was cleared by Parliament in March 2016 and came into effect on 01.05.2017.

- Under the act, states had to notify the realty rules and set up Real Estate Regulatory Authority (RERA).

- The **Kerala Real Estate (Regulation and Development Rules 2018** in now force for our state.
OBJECTS AND REASONS

- Ensure **accountability** towards allottees and protect their interest;
- Infuse **transparency**, ensure **fair-play** and reduce frauds & delays;
- Introduce **professionalism** and **pan India standardization**;
- Establish **symmetry of information** between the promoter and allottee;
- Imposing certain **responsibilities** on both Promoters and Allottees;
- Establish **regulatory oversight mechanism** to enforce contracts;
- Establish **fast-track dispute resolution** mechanism;
- Promote **good governance** in the sector which in turn would create **investor confidence**.
MAJOR STAKEHOLDERS

PROMOTER

ARCHITECT

ENGINEER

CHARTERED ACCOUNTANT

REAL ESTATE AGENT

SCHEDULED BANK

..
Promoter

- Who constructs/causes to be constructed building/building containing apartments or converts building/part into apartment for selling apartments (all/some) to others (including his assignees).

- Who Develops land into a project (whether/not constructs structures) for selling to others

- Any public body in respect of allottees

- Apex state level cooperative housing finance society, Primary housing cooperative society who constructs buildings/apartments for its members

- Who acts as a builder/colonizer/developer.../claim to be acting as holder of the power of attorney from the owner

- Who constructs building or apartment for sale to general public
**Allottee**

- Person to whom a plot/apartment/building has been allotted, sold (freehold/leasehold) or otherwise transferred by a promoter.
- Person who subsequently acquires the allotment through sale, transfer or otherwise.

**DOES NOT INCLUDE:**
A person to whom plot/apartment/building is given on rent

**Real Estate Agent**

- Person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building in a real estate project, by way of sale, with another person for transfer of plot, apartment or building, of any other person to him and
- receives remuneration or fees or any other charges for his services whether as commission or otherwise and
- includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen etc
**Architect**
- registered as architect under the provisions of the *Architects Act, 1972*;

**Engineer**
- possessing bachelor's degree or equivalent from an institution recognized by the *All India Council of Technical Education* or any University or any institution recognized under a law or is registered as an engineer under any law for the time being in force;

**Advertisement**
- any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.
SOME DEFINITIONS

Apartment

• Block, chamber, dwelling unit, Flat, office, Showroom, shop, godown, premises, suit, tenement, unit.... Or by any other name.
• A separate self contained part of an immovable property including one/more rooms/enclosed spaces
• located on one/ more floors/ part thereof in a building/on a plot of land
• for residential/commercial use (residence, office, shop, showroom, godown, or for carrying out any business/ occupation/ profession/ trade)
• for any uses ancillary to it.
**Carpet Area**

*Net usable floor area* of an apartment

**excluding:**

area covered by the *external walls*, *areas under services shafts*, *exclusive balcony/verandah area* and *exclusive open terrace area*,

**but includes:**

area covered by the *internal partition walls* of the apartment.
Common Areas

• the **entire land** for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

• the **stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits** of buildings;

• the **common basements, terraces, parks, play areas, open parking areas and common storage spaces**;

• the premises for the **lodging of persons employed** for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

• **Installations of central services** such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
Common Areas (contd..)

- water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- all community and commercial facilities as provided in the real estate project;
- all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;

Completion Certificate

- certificate issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

Occupancy Certificate

- certificate issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;
Garage

Place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

Sanctioned Plan

the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

Advertisement

any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.
### PROJECT REGISTRATION

**REGISTRATION REQUIRED FOR ...**

Projects **before starting any of the procedure for sale** (advertise, market, book, sell, or invite persons in any manner)

**ongoing projects** for which the completion certificate has not been issued, (the promoter to apply for registration within 3 months from the date of commencement)

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**EXCEPTIONS ...**

The Projects:

- with **land** to be developed - **not exceeding 500sq.m**
- where the **no. of apartments** - **not exceed 8**
- which has **received Completion Certificate**
- for the purpose of **renovation/repair/re-development** which **does not involve re-allotment, marketing, advertisement, selling, etc.**

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If the development is in different phases, every phase shall be considered as a standalone real estate project & needs registration.
PROJECT REGISTRATION

NEW PROJECTS
(statutory approvals/permits not obtained before the said date)

- In FORM-A

ONGOING PROJECTS
(Occupancy certificate not obtained)

- In FORM-A1

Application shall be submitted in Triplicate until the procedure is made web based.
REGISTRATION FEE

**PLOT**
- Rs. 10/- per sq.m of plot area

**BUILDING**
- Ongoing Residential: Rs. 25/- per sq.m of total floor area
- New Residential: Rs. 50/- per sq.m of total floor area
- Commercial or others: Rs. 100/- per sq.m of total floor area

Project with construction and sale of building:

Registration Fee = fee for plot + fee for buildings.

In case of withdrawal of application for registration before the expiry of 30 days, 10% of the fee paid or Rs. 50,000/- whichever is more, shall be retained by the Authority and remaining amount shall be refunded within 30 days from the date of withdrawal.
Documents to be submitted for Registration

Duly filled Application Form
details of enterprise/address, etc
details of previous projects (last 5 years) status, delay if any, cases pending, type of land, payment pending etc.
copy of approvals/permit, sanctioned plan + specifications
location/ demarcation of land/boundaries
proforma of allotment letter, agreement for sale, conveyance deed

Number, type and carpet area of apartments, exclusive balcony/verandah/terrace & Number & areas of garages for sale

Name & addresses of real estate agents, if any
Name & addresses of contractors, architects, structural engineers & other persons concerned with the development of the project
Details regarding exclusive open terrace/exclusive balcony
**Documents to be submitted for Registration** (contd..)

**Declaration with Affidavit in Form B**

signed by the Promoter or any person authorized by the promoter

A  He has legal title to the land along with legally valid documents with authentication of title, if the land is owned by another person

B  Land is Free from encumbrances or details, if any..

C.  Time period within which he undertakes to complete it

D.  **70% of the amount realized from allottees** from time to time, shall be deposited in a separate a/c in a scheduled bank to cover the **construction cost and land cost** - Shall be used ONLY for that purpose;

   Provided that:
   - Promoter shall withdraw the amount in proportion to % of completion of work
   - Can withdraw it only after certified by an engineer, architect and a chartered accountant in practice that withdrawal is in proportion to the percentage of completion.
   - Accounts should be audited within 6 months after every financial year by a C A in Practice & duly signed and certified statement of accounts shall be produced
Documents to be submitted for Registration (contd..)

Declaration with Affidavit in Form B

E. He shall take all pending approvals on time

F. That he has furnished such other documents prescribed by Rules & Regulations made under this Act

G. Other documents stipulated in Rule 4
   • Authenticated copy of PAN card of Promoter
   • Audited balance sheet of the Promoter for preceding financial year & IT returns for 3 preceding financial years
   • No. of parking areas available in the project
   • Copy of legal title deeds and authentication of title if land is of another person
   • Details of encumbrances on land
   • If the land is of another person, details such as consent of the owner, copy of Joint development agreement, and other documents reflecting title over the land.
   • Other information and documents specified in the respective Forms as well as Regulations made by the Authority.
Disclosure by promoters of existing projects

- **Status of the project & extent of completion**

- **Size of the apartment** based on carpet area even if earlier sold on any other basis (super built up, etc.) which shall not affect the validity of agreement between promoter and the allottee.

- In case of **plot development**, the Promoter shall disclose the **area of the plot being sold** to allottees.
Withdrawal of sums from the separate account

- **Land cost** shall be the cost incurred by the Promoter, whether as outright purchase or lease charges, etc.

- **Construction cost** shall be the cost incurred towards on-site expenditure and off-site expenditure for the physical development of the project.

Web based online system

- Authority shall operate **web based online system** for applications for regn. **within a period of one year** from the date of its establishment.
GRANTING/REJECTING APPLICATION

• Registration shall be granted/rejected **within 30 days**.

• If grants, the Registration **Certificate/Number** will be given.

• If the Authority fails to grant or reject within the period, the project shall be deemed to have been regd.

• Registration shall be **valid for the period** declared by the Promoter for completion.
EXTENSION OF REGISTRATION

• Application to be submitted not less than 30 days prior to the expiry of registration granted -due to force majeure (flood, draught, war, fire, cyclone, earthquake or any other calamity caused by nature)

• on payment of fee equivalent to half of the registration fee along with explanation as to reasons for the delay need for the extension and supported documents.

• In reasonable circumstances without default of the promoter, it may be extended, for a period not exceeding one year.

• Extension shall not exceed a period of one year.
REVOCATION OF REGISTRATION

• On receipt of an application or suo motu or on the recommendation of a competent authority,

• After being satisfied that the promoter makes any default in doing anything required under the Act / violates any of the terms or conditions of the approval given by the competent authority OR done any Unfair practice/fraudulent activities or irregularities (false representation as to standard/affiliation/services/false advertisement or prospectus)

• 30 days notice will be given stating the grounds for revocation

• Instead of revoking Authority may permit to remain in force imposing certain terms & conditions
REVOCATION OF REGISTRATION

Upon revocation:

• debar from accessing the website & specify his name in the list of defaulters & display his photograph on website & inform RERA of other States & UTs
• shall facilitate remaining development works
• shall direct the bank to freeze the account
• issue directions to protect the interests of prospective buyers/public

Further Obligation of Authority

• Authority may consult the appropriate govt. to carry out remaining development works by competent authority or by the Association of allottees

• No such direction until the expiry of period of appeal

• In case of revocation, the association shall have first right of refusal for carrying out the works.
Real estate agent shall **obtain registration** prior to:

- facilitating the sale/purchase or
- act on behalf of any person to facilitate sale/purchase anything in the project without obtaining registration.

**Renewal**: Application shall not be less than 30 days prior to expiry.

Renewal shall be for another 5 years.

### FEE: NEW REGISTRATION

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<tr>
<td>Other than individual</td>
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### RENEWAL

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<td>Individual</td>
<td>Rs. 5,000/-</td>
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<tr>
<td>Other entities</td>
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</tbody>
</table>
REAL ESTATE AGENTS
FUNCTIONS

- Shall not facilitate sale/purchase of any plot/apt: in any area/project which is not registered with the authority.
- Maintain books of account, records & documents
- Not involve in any unfair trade practices (false representation as to standard/affiliation/services/false advertisement or prospectus)
- Facilitate possession of all the information and documents to the allottee
- Provide assistance to enable the promoter and allottees to exercise their rights and fulfill their obligations at the time of booking.
PROMOTER
FUNCTIONS & DUTIES

Upon receiving login id & password, he shall create his web site & enter all details for public including:

- Details of registration,
- Quarterly update no. & type of apartments booked
- Quarterly update list of no. of garages booked
- Quarterly update list of approvals taken & pending approvals
- Quarterly update status of project
- Such other information prescribed by the regulations made by the authority
PROMOTER
FUNCTIONS & DUTIES

Advertisement/prospectus issued shall mention the website address details of the Project, Regn. Number, etc.

Give information to the allottee (at the time of booking & issue of allotment letter)

- **Sanctioned plan**, layout plans along with specifications approved by the competent authority by display at the site or such other places specified by the regulations made by the authority,

- **Stage-wise time schedule of completion** of the project including provisions for civic infrastructure like water, sanitation and electricity.
(a) Responsible for all the obligations, responsibilities and functions to the allottees as per the agreement for sale or the association of allottees

- till the conveyance of all the apartments/plots,
- till 5 years after the conveyance deed is executed for structural defect/any other defect (sec. 14(3) -)

(b) Responsible to obtain completion certificate/occupancy certificate from the authorities concerned

(c) Responsible to obtain the lease certificate where the land is leasehold
(d) responsible for providing and maintaining essential services on reasonable charges till it is taken over by the association

(e) enable formation of an association under the law applicable, provided that Association Shall be formed within 3 months of the majority of allottees having booked their apartments

(f) execute a registered conveyance deed in favour of the allottee
g) **pay all outgoings until transfers physical possession** to allottees /association, which he has collected from the allottees such as land cost, ground rent, municipal & other taxes, water & electricity charges, maintenance charges, mortgage loan etc. payable to authorities concerned

provided that **where** any promoter **fails** to pay any of such outgoings collected by him, he shall continue to be liable even after transfer of the property to pay them and penal charges to the authority and be liable for the cost of any legal action that may be taken by such authority or person.

h) after execution of agreement, **not mortgage** or **create any charge** on the property and if any such mortgage/charge is created, it shall not affect the right and interest of the allottee who has taken or agreed to take the apartment/property.
The Promoter may **cancel the allotment** only in terms of agreement for sale, provided that the allottee may approach the authority for relief if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of agreement, unilateral and without sufficient cause.

The Promoter shall prepare and maintain all such other details specified by Rules/Regulations made by the authority.
Details to be published on the website

a) Details of promoter / group profile-
b) Track record of the promoter
c) Litigation details
d) Details of the project /advertisement/prospectus
e) Compliance of RERA regn.
f) Apartment & garage details
g) Details of parking areas
h) Details of Regd. Agents/consultants/contractors/
   Engineers/other persons associated with the project.
Details to be published on the website

i) Location details
j) Development Plan
k) Amenities
l) Charts & Project Schedule
m) Financial details of the promoter
n) Status of the project
o) Status of the approvals
p) Legal documents-Title deeds/sanction from banks
q) Contact details, etc...........
Obligation of Promoter on veracity of advertisement /prospectus

• If any person makes any payment believing the false statement/information in any advtsmt/prospectus & sustains any loss or damage – he shall be compensated by the Promoter.

If such person affected intends to withdraw from the project, he shall be returned his entire investment along with interest and the compensation.
Deposit / Advance

- Max deposit /advance received by the promoter - 10% of the total consideration amount only before entering into an agreement for sale and registering the said agreement.

Adherence by the Promoter to sanctioned plans and specifications

- The Project shall be completed according to the sanctioned plans, layout plans & specifications approved by the competent authorities.
Adherence by the Promoter
to sanctioned plans and specifications (contd...)

- Agreement/contract- after the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings, amenities, and common areas as approved by the comp. authority, are disclosed/furnished to the person who agree to take the apartment, the Promoter shall not make the following...
Adherence by the Promoter
to sanctioned plans and specifications (contd...)

(a) any addition/alterations in the said plans without consent of that person-

Promoter may make minor additions/alteration as required by the allottee, or necessary due to architectural/structural reasons recommended by the authorized architect/engineer after intimation to the allottee.

Explanation: Minor Alteration/addition excludes structural changes including addition to area/change in height/removal of part of a building /change to structure such as:

• construction/removal or cutting of:
  • any wall or part of it,
  • partition, column, beam, joist,
  • floor including a mezzanine floor or
  • other support,
  • change to closing of any required means of access, ingress/egress or
  • a change to the fixtures or equipment, etc.
Adherence by the Promoter to sanctioned plans and specifications (contd...)

b) any other alterations or additions in the said plans & specs without the previous consent of at least two thirds of the allottees, other than the promoter.

Explanation:
Here the allottees, irrespective of number of apartments, booked by him, considered as one allottee only

In case of structural defect or any other defect (in workmanship, quality or provision of services or any other obligations of the promoter as per agreement relating to development) is brought to the notice of the promoter within a period of 5 years by the allottee from the date of handing over, the promoter shall rectify them within 30 days, and if fails, allottee shall be entitled to get compensation as provided in the act.
Obligation of Promoter in case of Transfer of the Project

- The Promoter shall not transfer /assign his majority rights in the Project to a third party:
  - without obtaining prior written consent from two-third allottees, except the promoter and
  - without prior written approval of the Authority.

- Such transfer shall not affect the sale of apartments in the Project, made by the erstwhile promoter.

- Explanation: The allottee means- irrespective of no. of apartments he booked in his name or in the name of his family- shall be considered only one allottee
Obligation of Promoter in case of Transfer of the Project

- On such transfer, the **intending promoter shall comply with all the obligations** under the Act and pending ones by the erstwhile promoter.

- Provided that such transfer **shall not result in extension of time to complete the project** and if defaults, intending promoter shall be liable to consequences of breach or delay, etc.
Obligation of Promoter as to Insurance of the Project

• The Promoter shall obtain all insurances including but not limited to insurance in respect of a) title of the land and building as a part of the Project and b) construction of the project.

• Promoter shall pay the premium and charges for insurance before transferring the insurance to the association of the allottees.

• Insurance shall stand transferred to the benefit of the allottee or association of allottees at the time of promoter entering into the agreement for sale.

• On formation of association, all documents relating to the insurance shall be handed over to the association.
Transfer of Title

• The Promoter shall execute a Regd. Conveyance deed in favour of the allottee along with undivided proportionate title in the common area to the Association and hand over physical possession to the allottee and common area to association and other title documents within a specified period as per sanctioned plans.

  **Execution of Conveyance Deed to allottee/association** shall be carried out by the promoter within 3 months from the date of issue of Occupancy certificate.

• After obtaining Occupancy certificate and handing over possession, promoter **shall hand over necessary documents** and plans including common area to the allottee/association.

  said documents shall be handed over within 30 days after obtaining **occupancy certificate**.
Failure/delay in completion

1) If the Promoter fails to complete or unable to give possession of apartment a) in accordance with the terms of agreement duly completed by the date specified therein, b) due to discontinuance of his business /suspension or revocation of RERA registration or for any other reason-

He shall be liable, on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy, to return the amount received by him with interest including compensation as prescribed in the Act.

Provided that where the allottee does not intend to withdraw from the Project, he shall be paid by the promoter, interest for every month of delay, till date of possession at such rate as may be prescribed.
Failure/delay in completion

2) Promoter shall compensate the allottee in case of any loss caused to him due to defective title of land, and claim for compensation under this subsection shall not be barred by limitation provided under any law in force.

3) If the promoter fails to discharge any other obligations under this Act/Rules/Regulations, or in accordance with the agreement for sale, he shall be liable to pay compensation to the allottees in the manner provided under this Act.
Rights & Duties of Allottees

1. Allottee shall be entitled to obtain information - sanctioned plans, layout plans, specifications, approved by the comp. authority and such other information as provided in the act/rules/regulations/agreement.

2. Entitled to know stage-wise time schedule of completion of the project including provision of water, sanitation, electricity and other amenities and services as agreed by the promoter as per the agreement.

3. Entitled to claim possession of apartment and association shall be entitled to claim the possession of common areas, as per the declaration given by the promoter.

4. Entitled to claim refund of amount with interest and compensation, if the promoter fails to comply or unable to give possession in accordance with terms of agreement or due to discontinuance of his business by suspension or revocation of registration.
Rights & Duties of Allottees

5. Entitled to have necessary documents and plans, including that of common areas after handing over possession by the promoter.

6. Shall be responsible to make payment in the manner and within the time specified in the agreement shall pay at proper time and place his share of registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

7. Liable to pay interest at such rate as maybe prescribed for delay in payment towards any amount or charges to be paid under (6).

8. Obligations of the allottee under (6) and liability of interest under (7) may be reduced on mutual consent of promoter and allottee.

9. Allottee shall participate towards formation of association.

10. He shall take possession within 2 months of issuance of occupancy certificate.

11. He shall participate towards registration of conveyance deed.
Rate of Interest

Rate of Interest payable by the promoter and Allottee shall be the State Bank of India’s Benchmark Prime Lending Rate plus 2 % and shall be computed as simple interest.

Timeline for Refund

Any refund shall be payable by the promoter to the allottee within 45 dates from the date on which such refund becomes due.
Recovery of Interest etc.

- If a promoter/allottee/R.E.A fails to pay any Interest/penalty/compensation—shall be recovered as arrears of land revenue.

- Order shall be enforced by the Authority/Adjudicating Officer/appellate tribunal as if it were a decree/order by Principal civil court.

- In the event of inability to execute the order, send it to the Principal Civil Court having jurisdiction.
Complaints

Filing complaint before the Authority

- Complaint shall be in Form M
  - Fee of Rs. 1000/- + Rs. 500/- (towards postage charges)

Filing complaint before the Adjudicating Officer

- Claims for compensation under Sec.12, 14, 18 & 19 of the Act.
  - Complaint shall be in Form N
  - Fee of Rs. 1000/- + Rs. 500/- (towards postage charges)

Complaints shall be in triplicate along with sufficient number of copies to be served to the Respondents.

Remittance of all Fees shall be through demand drafts drawn on a nationalized bank in favour of the "Kerala Real Estate Regulatory Authority" and payable at Thiruvananthapuram until the procedure is made web based.
• **No civil court** shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority/Adjudicating officer or Appellate Tribunal is empowered to determine by this Act.

• **No injunction** shall be granted by any court/authority in respect of any action taken/to be taken in pursuance of any power conferred by/under this Act.
**Punishments**

1. For non-registration under sec. 3- penalty which may extend to 10% of the estimated cost of the project.

2. Non-compliance of orders / directions of (1) or continuation of violation of provisions of section 3, - imprisonment which may extend up to 3 years or with fine up to 10% of the estimated cost of the project.
It is generally expected that the Act will provide:

A uniform regulatory environment, protect consumer interests, help speedy adjudication of disputes, and ensure orderly growth of the sector.

It aims at restoring confidence of the general public in the sector by instituting transparency and accountability in transactions.

This, in turn, will enable the sector to access capital and financial markets, essential for its long-term growth.

It will also promote orderly growth of the sector through consequent efficient project execution, professionalism, and standardization.