Real Estate Regulation
at a glance
INTRODUCTION

The real estate sector has grown at an amazingly fast rate during the past three decades and has been catering to the housing needs of the upwardly mobile middle-class population. The real estate sector is now the second largest employer in the country, both direct and indirect. However, the sector remained unregulated, and so created a plethora of problems.

The real estate sector was governed by multiple laws, enacted by both the Centre and the state. The consumer protection laws are largely curative, not preventive from the customer perspective. As the sector remained more or less unregulated, many issues emerged in recent years such as lack of transparency on project specifics, non-adherence to agreed project completion period, deviations from agreed project components etc. The customers were often the victims and their trust in the sector was on the decline.

As it was found essential to have an exclusive regulatory mechanism for this sector, the Parliament passed the Real Estate (Regulation and Development) Act, 2016. Subsequently, the Government of Kerala promulgated the Kerala Real Estate (Regulation and Development) Rules, 2018, which paved the way for the formation of Kerala Real Estate Regulatory Authority (K-RERA).

K-RERA aims to create a safe, trustworthy and efficient real estate environment, making the sector a lot more convenient for buyers and sellers alike.
REAL ESTATE PROJECT

A real estate development with a land area of more than 500 Sq.meter or construction/development of 8 and more numbers of plots, flats, shops, office-space, godowns etc. which is intended to be transferred to another person(s) on lease hold or freehold basis.

PROMOTER

- A promoter is a person who constructs / develops a commercial real estate / apartment / flat / villas / land plots for sale.
- Development authority / Cooperative housing society who develops housing or commercial real estate.
- Owner of land in joint venture projects is also a promoter as per the Act.

ALLOTTEE (Home buyer)

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

A person to whom plot / apartment / building is given on rent is NOT an allottee.

REAL ESTATE AGENT

Any person or a firm/company of broker(s), dealer(s), middlemen who canvas, negotiate or act through any medium on behalf of any other person(s) or firm for sale or purchase or transfer of any units of real estate project.

ASSOCIATION

There shall be an association of allottees for every project. The promoter shall take steps to form the association within 3 months of majority of allottees having booked the apartments. The association shall take possession of the common areas and maintain it.

REGISTRATION

- All new commercial/residential real estate projects where the land is not less than 500 square meters or not less than eight apartments, shall be registered with the Kerala Real Estate Regulatory Authority (K-RERA) with effect from 01.01.2020.
- On-going real estate projects that have not received Occupancy Certificate before 01.01.2020 shall apply for registration on or before 31.03.2020.
All real estate agents shall be registered with K-RERA with effect from 01.01.2020.

No Promoter of a real estate project or real estate agent shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner, any plot, apartment or building in a real estate project or part of it, without registration.

Non-registration attracts severe penalties.

**REGISTRATION FEE FOR PROJECTS**

<table>
<thead>
<tr>
<th>REAL ESTATE PROJECTS</th>
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<tbody>
<tr>
<td>1. Plot development</td>
<td>Rs. 10 per sqm of total layout area</td>
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<tr>
<td>2. Ongoing Residential projects</td>
<td>Rs. 10 per sqm of total layout area plus Rs. 25 per sqm of total floor area</td>
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<tr>
<td>3. New Residential projects</td>
<td>Rs. 10 per sqm of total layout area plus Rs. 50 per sqm of total floor area</td>
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<tr>
<td>4. Commercial or any other projects</td>
<td>Rs. 10 per sqm of total layout area plus Rs. 100 per sqm of total floor area</td>
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<table>
<thead>
<tr>
<th>REAL ESTATE AGENTS</th>
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<tbody>
<tr>
<td>1. Individual</td>
<td>Rs. 25,000 per person</td>
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<tr>
<td>2. Firm / Company / Others</td>
<td>Rs. 2,50,000 for a firm</td>
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Promoter shall

- register all the real estate projects with K-RERA.
- get all the sale agreements executed in the prescribed format and registered as per the prevailing laws.
- deposit 70% of advances received from allottees in a separate bank account opened for each project.
- update quarterly, the stage wise progress of project and the number of bookings, in the web portal of K-RERA.
- adhere to the sanctioned plans and project specifications.
- be responsible for any structural defect or any other defect in workmanship, quality or provision of services for a period of five years from the date of handing over.
- facilitate the formation of association of allottees within a period of three months of majority of allottees having booked the apartment/plot.
- provide and maintain essential services on reasonable charges till taking over charge by the association of allottees.
- pay all outgoing charges until transfer of physical possession of projects.
- obtain all insurances on title of land, building and construction of the project and pay premium and charges and also hand over all related documents, to allottees / association.
- obtain Occupancy Certificate and make it available to allottees / association.
- execute conveyance deed in favour of allottee within three months from the date of receipt of Occupancy Certificate.
- obtain Lease Certificate, if project is developed on a leasehold land and make it available to allottee / association.
- furnish copy of all the documents / approvals /sanctions / drawings and plans to the allottee and original to the association at the time of exit of the project.
- handover copy/original of the above documents to the association before exiting the project.
- compensate the allottees for any delay of project or defective title of land or any other such loss that is caused to allottee.

Promoter shall not
- receive from the allottee, more than 10% of the cost of the apartment/plot/villa/shop before the execution of sale agreement.
- withdraw the amount from the separate account without the certificates from the Engineer, Architect and a Chartered Accountant in practice as to stagewise completion of the project.
- transfer or assign his majority rights and liabilities with respect to the real estate project to a third party without prior written consent of the two-third majority of the allottees.
- cancel allotment of apartment against the terms and conditions of the agreement of sale.
- mortgage or create any charge on the project property after executing an agreement for sale with the allottee.
- advertise, sell, or canvas for sale through any medium without K-RERA registration.
- publish any wrong or misleading advertisements / prospectus / brochure / notice related to the real estate project.
- deviate from the sanctioned plan or change the specification without the previous consent of the allottees.
**ALLOTTEES SHALL**

- have the right to obtain all information such as copy of sanctioned plans, layout plans, specifications, approved by the competent authority and copies of all documents such as title deed and all other information related to the project.
- have the right to know stagewise 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.
- have the right to claim possession of the apartment.
- have the right to claim refund of amount with interest and compensation, if the promoter fails to comply or is unable to give possession in accordance with terms of agreement or due to discontinuance of his business by suspension or revocation of registration.
- make payments to the promoter in the manner and within the time specified in the agreement at the proper time and place.
- pay common area maintenance charges to the association.
- be liable to pay interest for delay in payment to the promoter.
- be a participant in the association.
- take possession of apartment within 2 months of issuance of Occupancy Certificate.
- participate in the registration of conveyance deed.

**FILING OF COMPLAINTS**

- Any aggrieved person can file a complaint against any promoter, allottee or real estate agent to the Authority in Form M along with a fee of Rs. 1000/- in the form of DD in favour of the ‘Kerala Real Estate Regulatory Authority’ payable at Thiruvananthapuram.
- For compensation claims to be submitted before the adjudicating officer in the following situations, the complaint shall be in Form N along with a fee of Rs. 1000/- in the form of DD in favour of the ‘Kerala Real Estate Regulatory Authority’ payable at Thiruvananthapuram.
  - For getting cheated due to wrong / misleading materials in advertisements / brochures / prospectus / notice.
Deviation by Promoter from sanctioned plans/permits & failure to cure the defects in 5 years period.

Failure to complete construction and give possession as per the provisions of agreement / due to any other reasons.

Getting damaged due to defective title of land of the Promoter.

For the delay / failure from the part of the buyer / allottee in payment as per the provisions of agreement / failure to take possession of unit / failure to participate in the formation of association or registration of deeds.

Several complaints related to the same project/promoter maybe clubbed and heard jointly.

Appeals against the orders of Authority / Adjudicating officer shall be to the Kerala Real Estate Appellate Tribunal.

Complaints shall be filed in Triplicate along with sufficient copies to be served to the respondents.

Complaints shall be submitted either in person or through an authorised representative or by post.

In the hearings of the Authority / Adjudicating Officer, parties may appear in person or through a legal practitioner / an authorised representative.

**OFFENCES AND PENALTIES**

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<tr>
<th>SL NO.</th>
<th>OFFENCE</th>
<th>PENALTY</th>
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<tbody>
<tr>
<td>1</td>
<td>Non-registration of projects</td>
<td>Upto 10% of estimated cost of Real estate project And for continuing offence, imprisonment up to 3 years or with fine or both - compoundable with 10% of estimated cost of the real estate project.</td>
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<td>2</td>
<td>Promoter provides false / misleading information during registration.</td>
<td>Up to 5% of estimated cost of Real estate project</td>
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<tr>
<td>3</td>
<td>Promoter violates any other provision of act</td>
<td>Up to 5% of estimated cost of Real estate project</td>
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<tr>
<td>No.</td>
<td>Violation Description</td>
<td>Penalty Details</td>
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<td>4</td>
<td>Non-registration of real estate agents</td>
<td>Rs. 10,000 every day of default maximum up to 5% of the cost of plot apartment or building.</td>
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<td>5</td>
<td>Promoter failing to comply orders of Authority</td>
<td>Penalty for every day of default up to 5 % of estimated cost of Real estate project.</td>
</tr>
<tr>
<td>6</td>
<td>Promoter failing to comply directions of Appellate Tribunal</td>
<td>Fine every day up to 10% of estimated cost of the real estate project AND / OR up to 3 years imprisonment -compoundable with 10% of estimated cost of the real estate project.</td>
</tr>
<tr>
<td>7</td>
<td>Real Estate agent fails to comply with the directions of Authority</td>
<td>Fine for every day of default up to 5 % of estimated cost of the plot, apartment or building.</td>
</tr>
<tr>
<td>8</td>
<td>Real Estate Agent failing to comply with the order of Appellate Tribunal</td>
<td>Fine for every day up to 10% of estimated cost of the plot, apartment or building as the case may be AND / OR up to 1 year imprisonment -compoundable with 10% of estimated cost of the plot, apartment or building.</td>
</tr>
<tr>
<td>9</td>
<td>Allottee failing to comply with the order of Authority</td>
<td>Fine for every day of default up to 5% of estimated cost of the plot, apartment or building.</td>
</tr>
<tr>
<td>10</td>
<td>Allottee failing to comply with the order of Appellate Tribunal</td>
<td>Fine for every day of default up to 10% of estimated cost of the plot, apartment or building AND / OR up to 1 year imprisonment - compoundable with 10% of estimated cost of the plot, apartment or building.</td>
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**The RERA will**

1. take a decision on applications for registration of projects / real estate agents within 30 days of receipt of application.
2. dispose of all the complaints within 2 months.
3. ensure transparency in the real estate sector by making available all the publishable information relating to promoter / project / real estate agents through the web portal of the authority.
4. will enhance awareness on the rights of allottees, responsibility of builders and real estate agents, to make the real estate industry customer friendly.

5. protect the interest of the allottees, promoter, and real estate agent.

6. encourage investments in real estate sector, which will create more jobs.

7. advise the state government on all issues with the real estate sector.

8. establish conciliation fora with the representatives of consumers association, promoters association and the authority as envisaged under the act.

This hand-out is intended to give general awareness and shall not be treated as a legal document. For authentic information on legal provisions, refer the Real Estate Regulation and Development Act of 2016 and rules/regulations framed thereunder.