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IBC AMENDMENT

2021



- Covid Financial Assistance
- Educational Devices - GST

- Privacy By Design
- Global Minimum Tax

- IPR
- RERA

August 2021

**RERA - Important Dates under RERA
And Interesting Q&A
(Part – 4 of RERA Series)**

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RERA - IMPORTANT DATES UNDER RERA AND INTERESTING Q&A

(Part IV of RERA Series)



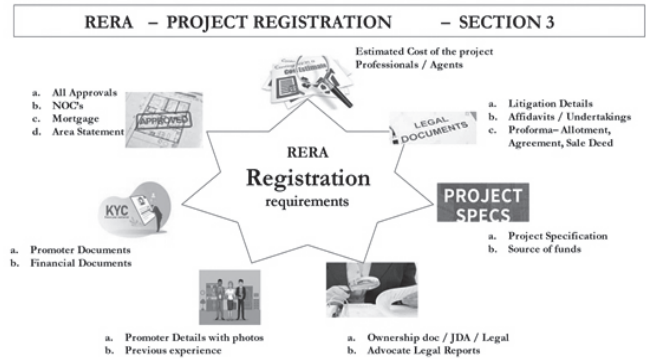
■ CA. Vinay Thyagaraj

Important Dates under RERA –

Sl No	Provision of the RERA Act	Details	Section
1	Prior Registration of Real Estate Project	Obtain the RERA registration on receipt of the Sanctioned plan (may be postponed if the intention is not to sell immediately)	Sec 3 / Sec 4
2	First time Update / Post Registration	On registration of the Project	Sec 11
3	Quarterly Updates	Within 15 days from the end of each Quarter	Sec 11 read with Rules
4	Annual Audit of Accounts	Within 6 months from the end of financial year	Sec 4(2)(L) (D)
5	Obtaining Professional Certificates – α) Architect, β) Engineer, and χ) Chartered Accountant	Architect, Engineer, and Chartered Accountant in Practice certificates shall be obtained for each withdrawal of funds from the RERA Designated bank account.	Sec 4(2)(L) (D)

Sl No	Provision of the RERA Act	Details	Section
6	Reporting of Completion	On completion of 100% development (internal and development) works in the project. Report within the same quarter of completion	Circular
7	Application for Extension of End date for the project	Within 3 months before the end date of registration	Sec 6 read with Rule
8	Modification of Application	Prior / post-approval of the authority for any modification in the Registration Application depending on the modification/ amendment.	Sec14
9	Formation of Association of Allottees	shall be formed within three months of the majority of allottees having booked the plot/ apartment	Sec 11

Sl No	Provision of the RERA Act	Details	Section
10	Transfer of Title	Within three months from date of issue of occupancy certificate.	Sec 17
11	Refund/Return of amount on Cancellation	Within 30/60 days of Such Cancellation	Sec 18 read with Rule
12	Conveyance of plot/apartment	Conveyance deed after receipt of Occupancy certificate	Sec 17
13	Hand- over a. the necessary documents b. plans c. including common areas to the association of the allottees	within thirty days after obtaining the occupancy certificate	Sec 17
14	Structural Defect warranty by the Promoter	Five years from the date of handing over to the allottee	Sec 14
15	Attend to Structural Defect by the Promoter	Promoter to rectify such defects without further charge, within thirty days from the date of notice	Sec 14
16	Grant of Registration by the authority for the real estate project	Within 30 days from the date of application	Sec 5



Important aspects, provisions under Real Estate (Regulation & Development) Act 2016 – RERA Act -

1. What are various aspects covered under RERA?

- a. The RERA Act 2016 covers various aspects of the Real Estate business
 - (i) Separate Authority to Regulate the Real Estate Industry
 - (ii) Activities regulated under the Act
 - a. Sales and Marketing,
 - b. Advertisement,
 - c. Agents and Channel Partners
 - d. Financial Management,
 - e. Legal,
 - f. Quality and Defect Liability,
 - g. Insurance,
 - h. Guarantee of Title of Land,
 - i. Construction and development,
 - j. Delivery timelines,
 - k. Compensation in case of delay,
 - l. Modification of plan or specification
 - m. takeover/transfer of project
 - n. Allottees/Customers duties

(iii) Adjudication mechanism

(iv) Appellate Tribunal

(v) Dispute redressal mechanism

2. The promoter does not intend to sell the units (apartments, plots, shops) in the Real Estate Project.

Does the promoter need RERA Registration?

- a. If the promoter does not intend to sell in perpetuity, then RERA Registration is not required (like lease, rent or own use).
 - b. However, if the intent is to sell even 1 unit out of many, RERA Registration is mandatory.
3. Can the promoter (builder, developer, landowner) advertise market / sell / units in a Real Estate Project before RERA Registration?
- a. No
 - b. Sec 3(1) of the Act mandates the prior registration of the Real Estate Project.
 - c. Hence RERA Registration is mandatory before advertising, sell, market, collect advances from prospective customers.
4. Is there a difference between Completion Certificate and Occupancy Certificate under RERA?
- a. Yes,

RERA Act defines U/s. 2(q) Completion certificate and U/s.2(zf) occupancy certificate.

Sec 2(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, 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;

Sec 2(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, 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;

5. Does RERA mandate a Separate Bank account for each project?
- a. Yes,
 - b. Mandatory and Separate RERA Designated Bank Account
 - c. Shall be opened for each project and those details

shall be provided while applying for grant of registration.

- d. Refer RERA Bank Account Direction 2020, Notification issued by the Karnataka RERA Authority.
6. How much money shall be required to deposit into RERA Designated Bank Account?
- a. 70 % (Minimum) of the amount realised from the Allottees shall be deposited into RERA designated project bank account.
7. I received Occupancy Certificate for the project. Can I stop deposit money into RERA Designated Account?
- a. Yes / No
 - b. Such deposit shall continue till 100 % completion of development in the Real Estate Project (Mere receipt of OC or CC does not mean the completion of development)
 - c. Money shall continue to deposit, withdraw and shall be utilised for the specific project
8. Promoter already mentioned in the customer agreement (agreement for sale) that promoter has right to modify plans without obtaining prior consent / communication, is this permitted under RERA?
- a. No,
 - b. Prior written and informed consent / Approval Required for modification in the project Sanctioned plan or Specification – Refer Sec 14
9. I received Completion Certificate, do the promoter need RERA Registration?

RERA Registration is mandatory even if the promoter has received the occupancy certificate and completed the project's development.

However, if such completion certificate is received on or before 1.5.2017, the RERA Registration is not required for that project.

10. The promoter uses their funds to develop the Real Estate Project. Is it necessary to obtain registration of a Project when the promoter has completed the construction and obtain an occupancy certificate?
- a. The above question is an often repeated question

from time to time that the Promoters, professionals, stakeholders ask to which the answers were discussed in several sessions or forums. However, the question remains in the minds of the Promoters, professionals.

- b. The answer to the said question is "YES"
- c. It is necessary to register a Real Estate Project even when the promoter himself has invested all the funds to complete the development works in the project and wants to sell only after obtaining a completion certificate.
- d. Under the Act, there is no distinction between when the promoter proposes to sell and when the new project must be registered.
- e. Section 3 of the RERA Act is clear that a Promoter shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area without first registering the real estate project with the Authorities.
- f. From the above, it can be made out that on and from the date of commencement of the RERA Act, it has become mandatory for a promoter to register the real estate Project before doing any of the activities described above in relation to the project.
- g. The RERA Act does not stipulate whether the project has to be registered immediately after the plan sanction or when the promoter proposes to carry out the activities above in relation to the project.
- h. From our experience in dealing with the matters relating to registration of Projects and the method in which the Real Estate Regulatory Authorities are dealing with the registration of the Projects, it can be said that the promoter should register the project immediately after obtaining plan sanction, failing which the authority may take action for non-registration of the project.
- i. The authorities are taking the stand since it would not be possible for them to monitor whether the Promoters of the Projects for which the registration is not obtained is being advertised or marketed or sold.

- j. As there are no sales, no collections, there will not be many compliances required to be fulfilled by the promoter under the RERA Act.
- k. In a case where the promoter is investing all the funds required to complete the development works in the project and does not market or sell the units in the project, the only formality for the promoter to comply would be to obtain registration for the Project, Post Registration and Quarterly updates and no other compliances would be required to be fulfilled including the compliance concerning the financial management of the project being depositing of 70% of the amounts collected in the project in such account and upon every withdrawal obtain certificates from the Chartered Accountants, Architects and Engineers, when such compliances would not be required when the promoter is investing all the funds.
- l. With the above note, we are of the opinion that the promoter should obtain registration for the real estate project to avoid any complications.

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KSCAA REPRESENTATIONS:

- 1) Representation on Anomaly in Limitation date for completion of Transfer Pricing Assessment Proceedings for AY 2018-19 dated 13th July, 2021 to Smt. Nirmala Sitharaman, Hon'ble Union Minister for Finance and Corporate Affairs.
- 2) Representation Seeking Rationalisation of Provisions Relating to Revocation of Cancellation of Registration under Amnesty Scheme dated 31st July, 2021 to Smt. Nirmala Sitharaman, Hon'ble Chairperson, GST Council.
- 3) Follow-up Representation on extension of last date for submission of statutory audit report for FY 2020-21 dated 12th August, 2021 to Shri. S T Somashekar, Hon'ble Minister of State for Co-operation of Karnataka.
- 4) Representation on examination of UDIN mentioned in statutory audit report of various Co-operative Societies and Associations dated 12th August, 2021 to Hon'ble Director, Registrar of Cooperative Societies in Karnataka.

**For full text of above representation,
please visit: www.kscaa.com**

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