

**The Real Estate (Regulation & Development) Act 2016,  
and Rules thereunder**

Gujarat RERA

FAQs

<b>Subject</b>	<b>Page numbers</b>
<b>1. Real Estate Regulation and Development Act, 2016</b>	<b>2-23</b>
<b>2 The Real Estate (Regulation &amp; Development) (General) Rules, 2017</b>	<b>24 -31</b>
<b>3. The Real Estate (Regulation &amp; Development) (General) Regulations, 2017</b>	<b>32 -35</b>
<b>4. The Real Estate (Regulation &amp; Development) (Appellate Tribunal) Rules, 2016</b>	<b>36 -37</b>
<b>5. The Real Estate (Regulation &amp; Development) (RERA) Matters Relating to the Real Estate Regulatory Authority Rules, 2016</b>	<b>38-42</b>

# **1. The Real Estate (Regulation & Development) Act, 2016:**

This section gives the objective and key definitions used in the act. It addresses queries related to the eligibility, procedures and documents required for registration of projects and agents. The possible actions that the authority is empowered to take to deal with unfair practices including revocation of the project. It defines functions & duties of the promoter, as well as rights & duties of the allottees. A general overview is there of the Authority and Appellate Tribunal comprising of their respective functions, powers and establishment. It lays down the powers delegated for the recovery of interest, penalty or compensation related to offences. In addition it lays down specific directions to the Authority pertaining to finance, accounts & audit reports.

<b>Subject</b>	<b>Page numbers</b>
<b>1.1. Objective of Real Estate (Regulation &amp; Development) Act, 2016</b>	<b>3</b>
<b>1.2. Key definitions</b>	<b>3</b>
<b>1.3. Registration of Projects &amp; Agents</b>	<b>5</b>
<b>1.4. Revocation</b>	<b>7</b>
<b>1.5. Functions &amp; Duties of Promoter</b>	<b>8</b>
<b>1.6. Rights &amp; Duties of Allottees</b>	<b>11</b>
<b>1.7. Real Estate Regulatory Authority</b>	<b>11</b>
<b>1.8. Offences, Penalties &amp; Adjudication</b>	<b>15</b>
<b>1.9. Finance, Accounts, Audit &amp; Reports</b>	<b>19</b>
<b>1.10. Real Estate Appellate Tribunal</b>	<b>19</b>
<b>1.11. Miscellaneous</b>	<b>21</b>

## 1.1. Objective of Real Estate (Regulation & Development) Act, 2016

The object of this Act is to establish the Real Estate Regulatory Authority and Appellate Tribunal, for regulation and promotion of the real estate sector, to ensure sale of plot etc., in an efficient and transparent manner, to protect the interest of consumers, and to establish adjudicating mechanism for speedy redressal of disputes. The **Important Objectives** may be summarized as under;

- i. To ensure accountability towards Allottees and protect their interests.
- ii. To ensure fair-play and reduce frauds and delays.
- iii. To introduce professionalism and pan India standardization.
- iv. To establish symmetry of information between the Promoter and Allottees.
- v. To impose certain responsibilities on both Promoter and Allottees.
- vi. To establish regulatory oversight mechanism to enforce contracts.
- vii. To establish fast-track dispute resolution mechanism.
- viii. To promote good governance in the sector which in turn would create investor confidence.

**Real Estate (Regulation & Development) Act, 2016 is a Central Act**, enacted by the Central Government. *This Act came in to force, with effect from 1. 5. 2016.* However, as provided in the Act, the Regulatory Authority and the Appellate Tribunal were required to be established within the period of one year i.e. on or before **30. 4. 2017**.

## 1.2. Key definitions

### i. 'Allottee'

As defined in **Section 2 (d)** of the Act, 'Allottee' means the person to whom a plot etc. is allotted or sold or transferred by Promoter and also the person who subsequently acquired such property, but not the 'tenant'.

### ii. 'Apartment'

As per **Section 2 (e)** of the Act, 'Apartment' means block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suite, tenement, unit or

any other separate and self-contained part of any immovable property, for the use of residence, commercial, profession etc.

**iii. ‘Carpet Area’**

As defined in **Section 2 (k)** of the Act, ‘Carpet Area’ means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered the internal partition walls of the apartment.

**iv. ‘Commencement Certificate’**

As per **Section 2 (m)** of the Act, ‘Commencement Certificate’ means certificate or the building permit or the construction permit, issued by the Competent Authority, to begin development work, on any immovable property, as per sanctioned plan.

**v. ‘Common Area’**

As defined in **Section 2 (n)** of the Act, ‘Common Area’ means the entire land of the project, stair cases, lifts, lobbies, fire escapes, entrances, exists, basements, terraces, parks, play areas, open parking areas, common storage spaces, accommodation for security persons, cabin/area of common services, water tanks, sumps, motors, fans, pumps, compressors, ducts, all community and commercial facilities, and all other portion necessary and convenient for maintenance, safety etc. and in common use.

**vi. ‘Competent Authority’**

As per **Section 2 (p)** of the Act, ‘Competent Authority’ means the Local Authority established under the law, to give permission for development of property.

**vii. ‘Completion Certificate’**

As defined in **Section 2 (q)** of the Act, ‘Completion Certificate’ means certificate issued by the Competent Authority certifying that the project has

been developed, according to the sanctioned plan, layout plan and specifications, as approved.

**viii. ‘Estimated Cost’**

As defined in **Section 2 (v)** of the Act, ‘Estimated Cost’ means the total cost involved in developing the project which includes the land cost, cess, development and other charges.

**ix. ‘External Development Works’**

As defined in **Section 2 (w)** of the Act, ‘External Development Works’ means roads, landscaping, water supply, sewage, drainages, transformer, sub-station, solid waste management and disposal, etc.

**x. ‘Occupancy Certificate’**

As per **Section 2 (zf)** of the Act, ‘Occupancy Certificate’ means certificate issued by the Competent Authority permitting occupation of any building which has provisions for civic infrastructure such as water, sanitation and electricity.

**1.3. Registration of Projects & Agents**

**i. Projects eligible for registration**

As per **Section 3** of the Act, all the new and ongoing projects for residential or commercial, where the area of the land is more than **500** square meters or number of apartments/Units are more than **eight**, but registration is not required, if completion certificate is already obtained, prior to commencement of this Act.

**ii. Advertisement, booking or sale of unit**

**Section 3** of the Act prohibits advertisement, booking or sale of unit prior to the registration or if the registration is pending.

**iii. Documents required for registration of project**

As per **Section 4** of the Act, project details such as name, address, type of enterprise, last five years' project details, commencement certificate, sanctioned plan, layout plan, specifications, plan of development works, provisions of fire safety, electricity, drainages, location details, proforma of allotment letter, profoma of agreement for sale or conveyance deed, details about carpet areas of each Unit, balcony/verandahs, garages, name etc. of Real Estate Agent, contractors, architects, structural engineer etc. and declaration supported by affidavit signed by Promoter or any authorized person.

**iv. Time limit for granting or refusing the registration**

As per **Section 5** of the Act, such decision is required to be taken, within 30 days from the date of receipt of application with complete details.

**v. Can registration be refused, without giving an opportunity of hearing?**

No, as per proviso to **Section 5**, opportunity of hearing is required, before refusing the application for registration of project.

**vi. What if the Authority exceeds the time limit for granting or refusing the registration?**

If the Authority failed to register or refuse registration within the time limit, the project shall be deemed to be registered and the Authority after the further period of 7 days, is duty bound to provide registration number etc.

**vii. Validity period for registered project**

Registration of project shall remain in force till the date, as declared by the Promoter in the application, for completion of the project or phase thereof.

**viii. Extension of period for completion of project**

Promoter on the ground of 'force majeure', may apply for extension of period under **Section 6** of the Act and the Authority in reasonable circumstances, after recording reasons, may extend the period for completion of project.

However, before rejection of application for extension, opportunity of hearing is required to be given to the Promoter.

**ix. Can a person act as Real Estate Agent without registration?**

No, without registration as Real Estate Agent, under **Section 9** of the Act, activities such as any sale or purchase of any plot, apartment or building of any registered project are not permissible.

**x. What are the functions of the Real Estate Agent?**

As per **Section 10** of the Act, the Real Estate Agent has to maintain books of account, records and documents, not to involve in any unfair practice, not to make or support any false representation, and to make available the relevant information and documents of the project to Allottees.

**1.4. Revocation**

**i. Can the registration be revoked/cancelled, if granted?**

Where the Authority, suo moto or on receipt of complaint or on recommendation of Competent Authority, is satisfied that Promoter has violated provisions of any law, or the terms and conditions of the approval or is involved in an unfair practice or irregularities, may revoke/cancel the registration under **Section 7** of the Act.

**ii. Procedure required for revocation of registration**

As per **Section 7** of the Act, notice stating the grounds for proposed revocation of registration is required to be issued inviting explanation within 30 days, from the Promoter for consideration.

**iii. 'Unfair Practice'**

Practice of false representation in any manner, about the standard of services, about approval or affiliation, or any other kind of fraudulent practices, adopted by Promoter, for the purpose of promoting sale or development of project.

#### **iv. Actions by the Authority after revocation of registration**

Firstly, to debar the Promoter from accessing its website and display his name and photograph as defaulter. Secondly, to inform RERA of other States and Union Territories about revocation. Thirdly, to freeze the bank account for appropriate utilization of fund. Fourthly, to carry out remaining work as provided in **Section 8** of the Act.

### **1.5. Functions & Duties of Promoter**

#### **i. Functions of the Promoter**

As per **Section 11** of the Act, Promoter has to publish all the necessary details of the project on website and to update from time to time, to make available all the documents to Allottee, to provide stage wise time schedule for completion to Allottee, to comply with all the terms and conditions of the agreement for sale, to obtain completion or occupancy certificate and to hand over the possession to Allottee without any undue delay, to execute sale deed, to pay all the arrears, to maintain essential services till formation of Association of Allottees and to cooperate in forming such Association.

#### **ii. Compensation related to incorrect or false information provided through Advertisement or Prospectus or Model?**

**Section 12** the Act provides that if any person affected by such incorrect or false statement contained in Advertisement, Prospectus or Model, shall be compensated by the Promoter or if he intends to withdraw from the proposed project, he will be entitled for refund of entire investment, along with interest and compensation, provided under the Act.

#### **iii. Can promoter demand a deposit before Agreement for Sale?**

As per **Section 13** of the Act, Promoter cannot take an amount more than ten percent of the cost of the Unit, as deposit or advance, without executing an Agreement for Sale.



**iv. Form prescribed for Agreement for Sale**

**Section 13 (2)** of the Act provides for a common Form to be prescribed for Agreement for Sale mentioning all the necessary particulars like, specifications, internal and external development works, schedule for completion of work, schedule for payment by Allottee, date of handing over possession, conditions for cancellation of booking, payment of interest, in case of delay in payment or possession, formation of Association of Allottees etc.

**v. Alterations permissible for a project**

As per **Section 14 (2)** of the Act, Promoter is duty bound to complete the construction, as per the sanctioned plan, lay out plan and specifications, and cannot make additions or alterations, without the permission of the Allottee concerned. However, minor changes as recommended by Architect or Engineer, may be made after intimation to the Allottee. For any other additions or alterations, consent of 2/3 of the Allottees is required.

**vi. Can compensation be claimed for structural defect post possession?**

As per **Section 14 (3)** of the Act, within a period of 5 years, from the date of taking the possession, after requesting the Promoter to rectify such defects within 30 days, if it is not rectified by Promoter then, Allottee can claim compensation from the Promoter.

**vii. Whether rights and liabilities in respect of any ongoing project, can be transferred to third party by Promoter?**

**Section 15** of the Act provides that without the consent of 2/3 of Allottees and prior permission of RERA Authority, such transfer is not permissible. Even after permission, the intending Promoter/Third Party will be liable to comply with all the pending obligations. However, on this ground, such third party will not be entitled for extension of time for completion of project.

**viii. Is there any provision for obtaining insurance of ongoing project?**

**Section 16** of the Act provides that Promoter to obtain insurance in respect of land, building, construction work etc. and to pay premium for that, till transfer to Association of Allottees.

**ix. Provisions for execution of sale deed, handing over the possession and necessary documents**

**Section 17** of the Act provides that within the period of 3 months, from the date of issuance of occupancy certificate, Promoter to execute registered sale deed in favour of Allottee and to hand over the possession along with the title documents thereof. Further, within the period of 30 days, from the date of occupancy certificate, Promoter to hand over all the necessary documents, plans etc., to the Association of Allottees.

**x. Allottee rights in case of failure in completion of project or handing over the possession**

**Section 18 (1)** of the Act provides that if the Promoter fails to complete the project or is unable to give possession and the Allottee on this ground, wishes to withdraw from the project, he will be entitled to get the refund with interest including compensation. However, if he does not intend to withdraw from the project, he will be entitled to get interest for every month delay, till handing over the possession.

**xi. Compensation entitled for Allottee due to defective land title**

**Section 18 (2)** of the Act provides that in case of defective title of land, Allottee will be entitled to get compensation and for that the provisions of law of limitation, shall not be applicable.

**xii. Compensation related to case of failure of discharge of any other obligations**

**Section 18 (3)** of the Act provides that if the Promoter fails to discharge any other obligations imposed under the Act, Rules, Regulations or the terms of agreement, Allottee will be entitled to claim compensation.

## **1.6. Rights & Duties of Allottees**

### **i. What are the rights of Allottees?**

As provided in **Section 19** of the Act, Allottees have right to obtain information relating to sanctioned plan, layout plan, specifications, stage wise time schedule of completion of the project, provisions of water, sanitation, electricity and other amenities and services, date of handing over the possession, to get registered a sale deed, to claim interest and compensation in case of failure on the part of the Promoter etc.

### **ii. What are the duties of Allottees?**

As provided in **Section 19** of the Act, Allottees shall be responsible to make necessary payments, in the manner and within the time as prescribed, in the agreement for sale, and also to pay his share of registration fees, taxes, maintenance, rent etc., to pay interest on the due amount, to take possession of Flat/Unit, within a period of two months of occupancy certificate, to cooperate in formation of Association of Allottees, etc.

## **1.7. Real Estate Regulatory Authority**

### **i. Establishment of the Real Estate Regulatory Authority**

The State Government has power to establish the Authority in the respective State, under **Section 20** of the Act.

### **ii. Who is eligible to appointed as Chairperson of the Authority?**

As provided in **Section 22** of the Act, person having adequate knowledge of and professional experience of at least twenty years in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs, or administration or person who has held the post of Additional Secretary to the Central Government or any

equivalent post in the Central or State Government, is eligible for such appointment.

**iii. Who is eligible to be appointed as members of the Authority?**

As provided in **Section 22** of the Act, person having adequate knowledge of and professional experience of at least fifteen years in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs, or administration or person who has held the post of Secretary to the State Government or any equivalent post in the Central or State Government, is eligible for such appointment.

**iv. Procedure for appointment of Chairperson and Members of Authority**

As per **Section 22** of the Act, the State Government to appoint Chairperson and Members of the Authority, on the recommendations of a Selection Committee, consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary.

**v. Office term of Chairperson and Members of Authority**

**Section 23** of the Act provides that Chairperson and Members shall hold office, for a term not exceeding five years, from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for re-appointment.

**vi. Who has general powers of supervision of the Authority?**

As per **Section 25** of the Act, Chairperson shall have the powers of general superintendence and directions, in the conduct of the affairs of Authority.

**vii. Who has powers to appoint other officers and employees of Authority?**

As provided in **Section 28** of the Act, the State Government in consultation with Authority, may appoint other officers and employees, as it considers necessary.

**viii. Eligibility to file complaint before Authority or Adjudicating Officer**

**Section 31** of the Act provides that any aggrieved person may file a complaint with the Authority or Adjudicating Officer for any violation or contravention of the provisions of this Act or Rules, and Regulations, against any Promoter, Allottee or Real Estate Agent.

**ix. Functions of the Authority for promotion of real estate sector**

As provided in **Section 32** of the Act, the Authority for promotion of real estate sector, to recommend to the Government on protection of interest of Allottees, Promoters, Real Estate Agents, to create single window system for approval and completion of the projects, to create grievance redressal mechanism, to suggest measures to encourage investment in this sector, for quality of construction, for grading of projects, for amicable conciliation of disputes, for digitization of records and for better services for development of this sector.

**x. What are the functions of the Authority?**

**Section 34** of the Act provides that the Authority to register and regulate the real estate projects and agents, to maintain website publishing necessary information about registration, extension, cancellation or revocation of projects, Promoters as defaulters, Real Estate Agents, to fix the fees, to ensure compliance of obligations under the Act, Rules and Regulations and orders/directions, issued by the Authority.

**xi. Whether the Authority has powers to call for information and conduct an investigation?**

As per **Section 35** of the Act, the Authority on a complaint or suo moto, may after recording reasons, exercise powers as vested in Civil Court and call for information from any Promoter, Real Estate Agent or Allottee and also appoint one or more persons, to make an inquiry, in relation to any affairs, under the Act, Rules or Regulations.

**xii. Whether the Authority has powers to issue interim orders?**

**Section 36** of the Act empowers the Authority to restrain Promoter, Real Estate Agent or Allottee, from committing any act, till conclusion of inquiry or further order, even without issuing notice to such party.

**xiii. Whether the Authority has powers to issue directions?**

**Section 37** of the Act empowers the Authority to issue any direction against Promoter, Real Estate Agent or Allottee, as it may consider necessary, for the purpose of discharging its functions, under the provisions of the Act, Rules or Regulations.

**xiv. Whether the Authority has powers to impose penalty or interest?**

**Section 38** of the Act empowers the Authority, to impose penalty or interest upon any Promoter, Real Estate Agent or Allottee, for contravention of any provisions of the Act, Rules or Regulations, after giving opportunity of hearing, to such party.

**xv. Whether the Authority has powers to rectify its orders?**

**Section 39** of the Act empowers the Authority, to rectify its mistake apparent from the record and amend any order, within the period of two years, from the date of order, if no appeal is preferred, against such order.

**xvi. Procedure required for recovery of interest, penalty or compensation**

**Section 40 (1)** of the Act provides that in case of failure, the due amount of interest, penalty or compensation, may be recovered from Promoter, Real Estate Agent or Allottee, by the Authority or the Adjudicating Officer or the Appellate Tribunal, as an arrears of land revenue.

**xvii. Procedure required for enforcement of order or direction passed by the Authority**

**Section 40 (2)** of the Act provides that in case of failure, in complying with any order or direction, the same can be enforced by the Authority or the

Adjudicating Officer or the Appellate Tribunal, as if it is passed by any Civil Court.

## **1.8. Offences, Penalties & Adjudication**

### **i. Penalty prescribed for non- registration of project**

In case of contravenes of the provisions of **Section 3**, Promoter shall be liable to a penalty, which may extend up to ten percent of the estimated cost of the project, under **Section 59 (1)** of the Act.

### **ii. Punishment prescribed for non-compliance of the order/direction passed**

In case of non-compliance of such order/direction passed under **sub-Section (1) of Section 59** for non-registration or continuation of violation, Promoter shall be punishable with imprisonment for a term, which may extend up to three years or with fine, which may extend up to a further ten percent of the estimated cost of the project, or with both, under **Section 59 (2)** of the Act.

### **i. Penalty prescribed for false information or contravention of the provisions of Section 4 of the Act.**

Promoter shall be liable to a penalty which may extend up to five percent of the estimated cost of the project, under **Section 60** of the Act, in case of false information or contravention of the provisions of **Section 4** of the Act.

### **ii. Penalty prescribed for contravention of other provisions of the Act**

Promoter shall be liable to a penalty which may extend up to five percent of the estimated cost of the project, under **Section 61** of the Act, in case of contravention of any provisions, other than the provisions of Sections 3 and 4 of the Act.

### **iii. Penalty prescribed for non-registration as Real Estate Agent**

Real Estate Agent shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up

to five percent of the cost of the plot, apartment or building of the project, under **Section 62** of the Act, for non-compliance or contravention of the provisions of **Sections 9** and **10** of the Act.

**iv. Penalty prescribed for non-compliance or contravention of order or direction of the Authority by Promoter**

**Section 63** of the Act provides that Promoter shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the project.

**v. Penalty prescribed for non-compliance or contravention of order or direction of the Appellate Tribunal by Promoter**

**Section 64** of the Act provides that Promoter shall be punishable with imprisonment, for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten percent of the estimated cost of the project or with both.

**vi. Penalty prescribed for non-compliance or contravention of order or direction of the Authority by Real Estate Agent**

**Section 65** of the Act provides that Real Estate Agent shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the plot, apartment or building of the project.

**vii. Penalty prescribed for non-compliance or contravention of order or direction of the Appellate Tribunal by Real Estate Agent**

**Section 66** of the Act provides that Real Estate Agent shall be punishable with imprisonment, for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten percent of the estimated cost of the plot, apartment or building of the project or with both.



**viii. Penalty prescribed for non-compliance or contravention of order or direction of the Authority by Allottee**

**Section 67** of the Act provides that Allottee shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five percent of the estimated cost of the plot, apartment or building of the project.

**ix. Penalty prescribed for non-compliance or contravention of order or direction of the Appellate Tribunal by Allottee**

**Section 68** of the Act provides that Allottee shall be punishable with imprisonment, for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten percent of the estimated cost of the plot, apartment or building of the project or with both.

**x. Punishment liability for the offence committed by a Company**

**Section 69 (1)** of the Act provides that every person who, at the time, the offence was committed, was in-charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, unless such person proves that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence.

**Section 69 (2)** provides that in case where it is proved that the offence has been committed with the consent or connivance or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, then he shall also be deemed to be guilty of such offence.

**xi. Whether compounding of offences permissible under the Act?**

**Section 70** of the Act provides that if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the Court, on such terms and conditions and on payment of such sums, as may be prescribed.

**xii. Eligibility to be appointed as Adjudicating Officer for adjudging compensation**

As provided in **Section 71 (1)** of the Act, a judicial officer, who is or has been a District Judge, can be appointed by the Authority, in consultation with the Government, for holding inquiry in the prescribed manner, after giving any person concerned, a reasonable opportunity of being heard, for the purpose of adjudging compensation, under Sections 12, 14, 18 and 19 of the Act.

**xiii. Complaints pending before Consumer Disputes Redressal Forum**

**Proviso to Section 71 (1)** of the Act provides that any person, whose Complaint is pending before the Consumer Disputes Redressal Forum, on or before the date of commencement of this Act, may withdraw the Complaint and file an application before the Adjudicating Officer, under this Act.

**xiv. Time prescribed for disposal of Complaint for compensation**

**Section 71 (2)** of the Act provides for expeditious disposal, within a period of sixty days, or to record reasons for delay in disposal.

**xv. How to conduct inquiry for adjudging compensation?**

As per **Section 71 (3)** of the Act, the Adjudicating Officer has power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case, to give evidence or to produce any documents, and upon satisfaction that the person has failed to comply with any of the relevant provisions of Sections 12, 14, 18 and 19, may direct to pay compensation or interest, as thinks fit in accordance with these provisions.

**xvi. Factors to be considered while adjudging compensation**

As per **Section 72** of the Act, while adjudging quantum of compensation or interest, (a) the amount of disproportionate gain or unfair advantage, (b) the amount of loss caused (c) the repetitive nature of the default and (d) any other factors, which are relevant, to be considered by the Adjudicating Officer.

## **1.9. Finance, Accounts, Audit & Reports**

### **i. What is meant by ‘Real Estate Regulatory Fund’?**

As per **Section 75** of the Act, Real Estate Regulatory Fund means, the fund created by the Government, from the source of grants received by the Authority from the Government, and the fees received under the Act by the Authority, to meet with the expenses to discharge its functions under the Act.

### **ii. Budget and audit of accounts of the Authority**

As per **Section 77** of the Act, every year the Authority to prepare a budget, to maintain accounts and other records, for the purpose of audit by the Comptroller and Auditor General of India.

### **iii. Preparation of annual report**

**Section 78** of the Act provides that the Authority shall prepare annual report about the activities and accounts of previous year, and programs of work for the coming year, to be placed before the State Legislature.

## **1.10. Real Estate Appellate Tribunal**

### **i. Who has power to establish the Real Estate Appellate Tribunal?**

The State Government has power to establish the Appellate Tribunal in the respective State under **Section 43** of the Act.

### **ii. Edibility to be appointed as Chairperson of the Appellate Tribunal?**

As per **Section 46 (1)** of the Act, a person shall not be qualified for appointment as Chairperson of the Tribunal, unless he is or has been a Judge of a High Court.

### **iii. Edibility to be appointed as Judicial Member of the Appellate Tribunal?**

As per **Section 46 (1)** of the Act, a person shall not be qualified for appointment as Judicial Member of the Tribunal, unless he has held a judicial

office in the territory of India for at least fifteen years, or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters.

**iv. Edibility to be appointed as Technical/Administrative Member of the Appellate Tribunal**

As provided in **Section 46 (1)** of the Act, a person who is well-versed in the field and professional experience of at least twenty years in urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs, or administration or person who has held the post equivalent to the post of Additional Secretary to the Government of India or any equivalent post, in the Central or State Government, is eligible for such appointment.

**v. Procedure for appointment of Chairperson and Members of Appellate Tribunal**

As per **Section 46 (2) and (3)** of the Act, the State Government to appoint Chairperson, in consultation with the Chief Justice or his nominee, and the appointment of the Members on the recommendations of a Selection Committee, consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary.

**vi. Term of office for Chairperson and Members of Appellate Tribunal**

**Section 47** provides that Chairperson and Members shall hold office, for a term not exceeding five years, from the date on which they enter upon their office, or until they attain the age of sixty-seven and sixty-five years respectively, whichever is earlier, and shall not be eligible for re-appointment.

**vii. Powers of the Appellate Tribunal?**

**Section 53** of the Act provides that the Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code, and the rules of evidence contained in the Evidence Act, but guided by the principle of natural justice,

and shall have power to regulate its own procedure, and shall have the same powers, as are vested in a Civil Court for summons, attendance, discovery, production of documents, evidence, review, dismissal, ex-parte etc.

**viii. Who has general powers of supervision of the Appellate Tribunal?**

As per **Section 54** of the Act, Chairperson shall have the powers of general superintendence and directions, in the conduct of the affairs of Tribunal.

**ix. Eligibility for representing a case on behalf of Applicant or Opponent**

As per **Section 56** of the Act, the Applicant or Appellant may appear in person or may authorize one or more Chartered Accountants, Company Secretaries, Cost Accountants, or Legal Practitioners, or any of its officers, to present his or its case, before the Tribunal, Authority, or Adjudicating Officer.

**x. Procedure required for executing orders passed by the Appellate Tribunal**

**Section 57** of the Act provides that every order shall be executable, as a decree of Civil Court and for this purpose, the Tribunal shall have all the powers of a Civil Court, and may transfer the order, to Civil Court for its execution.

**xi. Challenging of order or decision of Appellate Tribunal**

As per **Section 58** of the Act, an Appeal may be filed in the High Court, within a period of 60 days, against the order or decision of the Tribunal, on the grounds, specified in Section 100 of the C. P. Code.

**1.11. Miscellaneous:**

**i. Whether Civil Court has jurisdiction, to deal with the subject matter, under this Act?**

**Section 79** of the Act provides that no Civil Court shall have jurisdiction, to entertain any suit or proceeding or to grant injunction, in respect of any matter, which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered to determine by or under this Act.

**ii. Who can file Complaint for the offence punishable under this Act?**

As per **Section 80** of the Act, no Court shall take cognizance of any offence punishable under this Act or the Rules or Regulations, except a complaint in writing made by the Authority or by officer duly authorized by the Authority.

**iii. Whether the Authority can delegate its powers?**

As per **Section 81** of the Act, the Authority may, by general or special order in writing, delegate its powers and functions, except the powers to make Regulations under Section 85, to any Member or Officer of the Authority or any other person, as it may deem necessary.

**iv. Who has powers to make Rules, under the Act?**

As per **Section 84** of the Act, the Government has powers, to makes Rules under this Act.

**v. Who has powers to make Regulations, under the Act?**

As per **Section 85** of the Act, the Authority has powers, to make Regulations under this Act.

**vi. Whether the Officers and Employees of the Authority and Tribunal, can be said to be public servants?**

As per **Section 87** of the Act, the Chairperson, Members and other Officers and employees of the Authority and the Appellate Tribunal and the Adjudicating Officer, to be deemed to be public servants, within the meaning of Section 21 of the IPC.

**vii. What about the applicability of the provisions of other laws?**

**Section 88** of the Act provides that the provisions of this Act, shall be in addition to, and not in derogation of, the provisions of any other law, for the time being in force.

**viii. Whether this Act has overriding effect?**

**Section 89** of the Act provides that the provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force.

**ix. What about the actions taken by the officers in good faith, under this Act?**

**Section 90** of the Act provides that no suit, prosecution or other legal proceedings shall lie against the Government or the Authority or Member or any Officer or the employee, for anything which is done in good faith or intended to be done, under this Act, Rules or Regulations.

## **2. The Real Estate (Regulation & Development) (General) Rules, 2017:**

The State Government has framed the rules for implementation of the Real Estate (Regulation & Development) Act, 2016. It lays down all the necessary documents and procedures that are required for registration, extension and alteration of the project. Similarly, it prescribes formats to ensure compliance with the provisions of the Act. It addresses inquiries related to fees and refund, separate bank account and procedure for withdrawal of amounts for the project. This further deals with procedure for registration of real estate agents. It lays down the procedure for renewal and revocation of the registration, implementation of the orders, directions, or decisions of the Authority & Adjudicating Officer.

<b>Subject</b>	<b>Page numbers</b>
<b>2.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (General) Rules, 2017</b>	<b>25</b>
<b>2.2. Documents required for registration of project</b>	<b>26</b>
<b>2.3. Fees prescribed for registration of project</b>	<b>26</b>
<b>2.4. Declaration form prescribed under Rules</b>	<b>26</b>
<b>2.5. What about refund of fees, in case of withdrawal of application for registration?</b>	<b>27</b>
<b>2.6. Whether disclosed of estimated cost is required, at the time of registration of project?</b>	<b>27</b>
<b>2.7. What about the registration of ongoing projects?</b>	<b>27</b>
<b>2.8. Additional information required for registration of ongoing projects</b>	<b>27</b>
<b>2.9. Opening of separate account in Bank and deposition of amount, in case of ongoing projects</b>	<b>27</b>



<b>2.10. Conditions applied for withdrawal of amount from the separate account maintained by Promoter</b>	<b>28</b>
<b>2.11. What about the issuance of Certificate of Registration of Project, under Section 5 of the Act?</b>	<b>28</b>
<b>2.12. Procedure for acquiring extension for a project</b>	<b>28</b>
<b>2.13. Procedure prescribed for revocation of registration, under Section 7 of the Act</b>	<b>29</b>
<b>2.14. Form prescribed in the Rules for Agreement for Sale</b>	<b>29</b>
<b>2.15. Procedure prescribed for registering as Real Estate Agent</b>	<b>29</b>
<b>2.16. Issuance of Certificate of Registration as Real Estate Agent</b>	<b>29</b>
<b>2.17. Provisions for renewal and revocation of registration, as Real Estate Agent</b>	<b>29</b>
<b>2.18. Whether rate of interest is provided, under the General Rules, 2017?</b>	<b>30</b>
<b>2.19. Time limit allotted to Allottee for reviving a refund by Promoter</b>	<b>30</b>
<b>2.20. Conditions prescribed for compounding of offences under Section 70 of the Act</b>	<b>30</b>
<b>2.21. Method prescribed for implementation of orders, directions, or decisions</b>	<b>30</b>

## **2.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (General) Rules, 2017**

These Rules under the Act, came in to force, with effect from **1. 5. 2017**.

## **2.2. Documents required for registration of project**

As per **Rule 3 (1) and (2)** of these Rules, 2017, the Promoter has to furnish the additional information/documents about PAN card, complete details of Promoter, Partners, Directors, details about covered and open parking areas, details about the title-deed of the land and encumbrances thereof, details about the development agreement etc. and copies of relevant documents, in triplicate at the time of submitting application for registration in prescribed Form 'A'.

## **2.3. Fees prescribed for registration of project**

As per **Rule 3 (3)**, the prescribed fees, to be paid by demand draft are as below,

- i. Group Housing- Rs. 5 per sq. m., if the project land is less than 1000 sq. meters. and Rs. 10 per sq. m., if the project land exceeds 1000 sq. meters., however, maximum Rs. 5,00,000/-.
- ii. Mixed Project- Rs. 10 per sq. m., if the project land is less than 1000 sq. meters. and Rs. 15 per sq. m., if the project land exceeds 1000 sq. meters., however, maximum Rs. 7,00,000/-.
- iii. Commercial- Rs. 20 per sq. m., if the project land is less than 1000 sq. meters. and Rs. 25 per sq. m., if the project land exceeds 1000 sq. meters., however, maximum Rs. 10,00,000/-.
- iv. Plotting- Rs. 5 per sq. m., however, maximum Rs. 2,00,000/-.

## **2.4. Declaration form prescribed under Rules**

As per **Rule 3 (4)**, declaration Form 'B' is required to be submitted along with an application for registration of project.

**2.5. What about refund of fees, in case of withdrawal of application for registration?**

**Rule 3 (5)** provides retention of 10% of registration fees, or Rs. 50,000/-, whichever is more, as processing fees, and refund of remaining fees to Promoter, in case of withdrawal of application, before expiry of period of 30 days.

**2.6. Whether disclosed of estimated cost is required, at the time of registration of project?**

**Rule 3 (6)** provides that the estimated cost, bifurcating the same, into market value of the land, construction cost, other costs, interest, taxes, cess, development charges, other charges, means of finance and the expenses already incurred till the date of application, along with the certificate of Chartered Account etc. is required to be disclosed, at the time of application for registration of the project.

**2.7. What about the registration of ongoing projects?**

As per **Rule 4 (1)**, the projects which has not received Completion Certificate, on the date of commencement of the provisions of the Act, are required to be registered, by submitting an application, as provided in Rule 3.

**2.8. Additional information required for registration of ongoing projects**

As per **Rule 4 (2)**, the Promoter has to furnish additional information about sanctioned and revised plan, layout plan, specifications, details about the amount already received from Allottees, and the remaining amount to be collected, status of project, time limit for completion of project, size of apartment on the basis of carpet area, and area of plot in case of plotting.

**2.9. Opening of separate account in Bank and deposition of amount, in case of ongoing projects**

**Rule 4 (5)** provides that in case of ongoing projects, the Promoter shall have to deposit 70% of the balance amount, which are to be realized from the

Allottees, in a separate account in Bank, within a period of three months of the application for registration.

**2.10. Conditions applied for withdrawal of amount from the separate account maintained by Promoter**

**Rule 5** provides that the Promoter shall be entitled to withdraw the amounts from the separate account, to the extent of the cost already incurred and paid by the Promoter before the application for registration, and it shall be duly certified by a Chartered Accountant. After registration, he shall be entitled to withdraw the cost of land and construction, in proportion to the percentage of completion of the project, as certified by the Chartered Account, whereas the balance amount, upon issuance of Completion Certificate, after duly certified by Engineer, Architect and Chartered Account, as per physical condition, at the site.

**2.11. What about the issuance of Certificate of Registration of Project, under Section 5 of the Act?**

**Rule 6** provides that the Authority shall issue Certificate of Registration in Form 'C' to the Promoter, mentioning validity period. In case of rejection of application for registration, the Authority shall inform the Promoter in Form 'D'.

**2.12. Procedure for acquiring extension for a project**

As per **Rule 7**, in case where the project could not be completed within the validity period, the Promoter has to submit an application in Form 'E' for extension, along with an explanatory note, setting out the grounds and reasons for delay in completion of the project, together with relevant documents, and ½ of the registration fees. However, where extension of registration is due to force majeure, the Authority may at its discretion waive the fees for such extension while issuing Extension Certificate in Form 'F'. In case of rejection of application, the Authority shall inform the Promoter in Form 'D'.

**2.13. Procedure prescribed for revocation of registration, under Section 7 of the Act**

**Rule 8** provides that before revocation of registration, 30 days' notice stating the grounds, is required to be issued to the Promoter, to explain the circumstances, and also required to give hearing to him for defence.

**2.14. Form prescribed in the Rules for Agreement for Sale**

**Rule 9** prescribes Annexure 'A' for Agreement for Sale for the purpose of Section 13 (2) of the Act. However, it is clarified that any Agreement for Sale, allotment letter etc. already executed, prior to the commencement of the Act, shall not limit the rights and interests of the Allottee, in any manner.

**2.15. Procedure prescribed for registering as Real Estate Agent**

As per **Rule 10**, an application is required to be submitted in Form, 'G' mentioning details about name, type of enterprise, particulars of its registration, bye-laws, memorandum of association, articles of association, photographs of proprietor, partners, directors, copy of PAN card, address proof of place of business, along with a demand draft for Rs. 10,000/- towards fees, in case of individual and Rs. 50,000/- other than individual.

**2.16. Issuance of Certificate of Registration as Real Estate Agent**

As per **Rule 11**, Certificate of Registration, as Real Estate Agent is required to be issued by the Authority, in Form 'H' for a period of 5 years, whereas intimation about rejection of application is required to be given in Form 'I'.

**2.17. Provisions for renewal and revocation of registration, as Real Estate Agent**

**Rule 12** provides that an application in Form 'J' along with updated details as required under Rule 11, together with demand draft for ½ fees provided therein, is required to be submitted and in case of renewal, the Authority to inform the Agent in Form 'K', mentioning the renewal period for further 5 years, whereas in case of rejection, to intimate the Agent in Form 'I'.

**Rule 13** provides that the Authority may revoke the registration for the reasons specified under Section 9 (7) of the Act, and intimate the Agent in Form 'I'.

**2.18. Whether rate of interest is provided, under the General Rules, 2017?**

As per **Rule 16**, the payment of interest under Sections 12, 18, and 19 of the Act, shall be the contractual rate, even in case of chargeable from the Allottee also, whereas in case where there is no contractual rate, the rate of interest shall be the rate which is prevalent, as per existing directives of RBI i.e. Marginal Cost of Lending Rate (MCLR), the State Bank of India Prime Lending Rate plus two percent and the effective date shall be from the date of payment made to the Promoter or from the date of default made by the Allottee in payment to the Promoter.

**2.19. Time limit allotted to Allottee for reviving a refund by Promoter**

As provided in **Rule 16**, the amount of refund together with interest or compensation, under the Act, Rules or Regulations, is required to be paid by Promoter to Allottee within the period of 45 days.

**2.20. Conditions prescribed for compounding of offences under Section 70 of the Act**

As provided in **Rule 19**, for compounding of offences punishable under Sections 59 and 64, 5% amount of the estimated cost of the project, whereas for offences punishable under Sections 66 and 68, 5% amount of the estimated cost of the plot, apartment, or building, is required to be recovered from the accused.

**2.21. Method prescribed for implementation of orders, directions, or decisions**

As provided in **Rule 20**, for the purpose of **Section 40 (2)** of the Act, every order shall be enforced in the same manner, as if it was a decree or order passed by the Principal Civil Court in suit proceedings and in case of inability

to execute, it can be transferred to Civil Court having jurisdiction for its execution.

### **3. The Real Estate (Regulation & Development) (General) Regulations, 2017:**

The segment consists of the general regulations specified by Gujrat Real Estate Regulatory Authority, in addition to the Real Estate (Regulation & Development) Act, 2016 and State Government General Rules, 2017. Consisting of procedure for appointment of officers, establishment of consultants and experts. Publishing of annual report on statement of accounts on webpage and formats prescribed for withdrawal of money from the separate bank. Information on conducting the adjudication proceedings and maintenance of its records by the authority. Prescribed form and formats related to compliances. Issuance of orders and directions and inherent powers of the Authority.

<b>Subject</b>	<b>Page numbers</b>
<b>3.1. Date of effect of the Gujarat Real Estate Regulatory Authority (General) Regulations, 2017</b>	<b>33</b>
<b>3.2. What means by ‘Consultant’?</b>	<b>33</b>
<b>3.3. Formats prescribed for withdrawal of money from separate bank account</b>	<b>33</b>
<b>3.4. Is it required to submit the hard copy of the Application?</b>	<b>34</b>
<b>3.5. Is it required, to upload the annual report on statement of accounts on webpage by the Promoter?</b>	<b>34</b>
<b>3.6. Displaying of approved plans &amp; specification at the project site</b>	<b>34</b>
<b>3.7. Whether party-in-person may represent his case in Gujarati?</b>	<b>34</b>



<b>3.8. Procedure for appointment of Officers, Consultants, Experts etc., by the Authority</b>	<b>35</b>
<b>3.9. How to conduct the adjudication proceedings by the Authority?</b>	<b>35</b>
<b>3.10. Records of the adjudication proceedings maintained by the Authority?</b>	<b>35</b>
<b>3.11. What about the issuance of orders and directions?</b>	<b>35</b>
<b>3.12. Inherent powers of the Authority</b>	<b>35</b>
<b>3.1. Date of effect of the Gujarat Real Estate Regulatory Authority (General) Regulations, 2017</b>	

These **Regulations, 2017** came into force with effect from **7. 9. 2017**.

**3.2. What means by ‘Consultant’?**

As defined in **Regulation 2 (vi)**, Consultant includes any person not in the employment of the Authority, who may be appointed as such, to assist the Authority, on any matter required to be dealt with by the Authority under the Act, Rules and Regulations.

**3.3. Formats prescribed for withdrawal of money from separate bank account**

**Regulation 3** provides Form No. 1, 2 and 3, for Certificates to be issued by the Architect, Engineer and Chartered Accountant respectively, for withdrawal of amount from the separate bank account during progress of work, whereas Form 4 for withdrawal of the amount, after completion of the building or wing of the project.

Similar Certificates are provided under **Regulation 3-A**, for plotting Project and Occupancy Certificate Form 4-A to be issued by the Project Architect.

**3.4. Is it required to submit the hard copy of the Application?**

**Section 4 and Section 9 of the Act**, Regulation 3-B provides that every application under Section 4 and Section 9 of the Act shall be submitted online as well as in hard copy, with all the details and the documents to the Authority and such hard copy, to be submitted at least within a period of 7 days, from the date of online application.

**3.5. Is it required, to upload the annual report on statement of accounts on webpage by the Promoter?**

As provided in **Regulation 4**, the annual report on statement of accounts, in Form 5, in accordance with the third proviso to Section 4 (2) of the Act, duly certified and signed by the Chartered Accountant, is required to be uploaded on webpage by the Promoter.

**3.6. Displaying of approved plans & specification at the project site**

**Regulation 5** provides that the sanctioned plans, layout plans, along with specifications, approved by the Competent Authority shall be prominently displayed by the Promoter, at the project site.

**3.7. Whether party-in-person may represent his case in Gujarati?**

Regulation 9 provides that the proceedings of the Authority shall be conducted in English, provided that the Authority shall allow any person to plead or represent his case in Gujarati.

Regulations 10 and 11 provide that the Authority has discretion to accept the Complaint, either in English or in Gujarati, with a direction to submit translation thereof, in English.

Regulation 12 further provides that the Authority may direct to provide translation of Petitions and the documents in to English or Gujarati.

**3.8. Procedure for appointment of Officers, Consultants, Experts etc., by the Authority**

Regulation 14 provides that the Authority shall have the powers to appoint the Secretary, Officers, employees for discharging various duties and also to appoint Consultants, Lawyers, Experts to assist the Authority, in the discharge of its functions.

**3.9. How to conduct the adjudication proceedings by the Authority?**

Regulation 25 provides that the Authority by general or specific order may direct that specific matters or issues, other than the matters fall under Sections 12, 14, 18 and 19 of the Act, be heard and decided by a single bench of either the Chairperson or any Member of the Authority.

**3.10. Records of the adjudication proceedings maintained by the Authority?**

As per **Regulation 30**, the Authority shall maintain an indexed database of its records including, complaints filed, details of hearings conducted, and orders/documents issued from time to time.

**3.11. What about the issuance of orders and directions?**

**Regulation 39** provides that subject to the provisions the Act, Rules and Regulations, the Authority may, from time to time, issue orders and directions, in regard to the implementation of the Regulations and procedure to be followed, as it deems fit.

**3.12. Inherent powers of the Authority**

Regulation 40 provides that nothing in the Regulations shall be deemed to limit or otherwise affect the inherent powers of the Authority, to make such orders, as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.

#### **4. The Real Estate (Regulation & Development) (Appellate Tribunal) Rules, 2016:**

The following segment consists of directions related to the rules specified by the State Government related to Appellate Tribunal under the Real Estate (Regulation & Development) Act, 2016. It comprises of information on filing an appeal, selection procedure of chairperson/members and establishment of the appellate tribunal as well as powers of the chairperson and additional powers of Appellate Tribunal.

<b>Subject</b>	<b>Page numbers</b>
<b>4.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (Matters Relating to the Gujarat Real Estate Appellate Tribunal) Rules, 2016</b>	<b>36</b>
<b>4.2. Procedure for filing an Appeal before the Appellate Tribunal</b>	<b>37</b>
<b>4.3. Selection procedure of Members of the Appellate Tribunal</b>	<b>37</b>
<b>4.4. Additional powers of Appellate Tribunal</b>	<b>37</b>
<b>4.5. Administrative powers of the Chairperson of the Appellate Tribunal</b>	<b>37</b>
<b>4.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (Matters Relating to the Gujarat Real Estate Appellate Tribunal) Rules, 2016</b>	

These Rules came into force with effect from **29. 10. 2016**.

#### **4.2. Procedure for filing an Appeal before the Appellate Tribunal**

As provided in **Rule 3**, an Appeal is required to be filed in Form 'A', along with an attested true copy of the order under challenge, documents which are relied upon and referred to in the Appeal, and the index of the documents, together with a demand draft for Rs. 1,000/- towards fees.

#### **4.3. Selection procedure of Members of the Appellate Tribunal**

As per **Rule 4** of the Rules, the Government to make reference to the Selection Committee, on receipt of such reference, the Selection Committee, after following the procedure as deemed fit, including appointment of Search Committee, shall have to suggest a panel of names i.e. two names for each vacancy, within a period of sixty days, and then the Government, within thirty days, shall have to select one of them, for the vacancy.

#### **4.4. Additional powers of Appellate Tribunal**

As per **Rule 8**, the Appellate Tribunal, in addition to the powers specified in the Act, shall have the powers to call upon any experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline to assist the Tribunal in the conduct of any inquiry or proceedings.

#### **4.5. Administrative powers of the Chairperson of the Appellate Tribunal**

Chairperson under **Rule 9**, has powers pertaining to staff strength, wages, salary, perquisites, personal polices, creation and abolition of posts, appointments, promotions and confirmation, acceptance of resignations, authorization of tours, medical bills, leaves, hiring of vehicles, nominations for seminars, conferences and trainings, staff welfare expenses, scraping of assets, disciplinary actions, etc.

## **5. The Real Estate (Regulation & Development) (RERA) Matters Relating to the Real Estate Regulatory Authority Rules, 2016:**

The following segment consists of directions related to the rules specified by the State Government about administrative matters of the authority in relation to the Real Estate (Regulation & Development) Act, 2016. It deals with the selection procedure and administrative powers of the chairperson of the Authority; information on additional powers of the authority, recovery of penalty, interest and compensation amount charged and publishing information on website. It further lays down the procedure for filing a complaint in the Authority, or holding of an inquiry by the authority. Relevant rules for annual statement of accounts, and annual report/return of RERA are also laid down.

<b>Subject</b>	<b>Page numbers</b>
<b>5.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (Matters Relating to the Real Estate Regulatory Authority) Rules, 2016</b>	<b>39</b>
<b>5.2. Procedure for selection of Chairperson and Members of the Authority</b>	<b>39</b>
<b>5.3. Administrative powers of the Chairperson of the Authority</b>	<b>39</b>
<b>5.4. Additional powers of the authority</b>	<b>40</b>
<b>5.5. Recovery of penalty, interest and compensation amount</b>	<b>40</b>
<b>5.6. Rules for publishing information on website</b>	<b>40</b>
<b>5.7. How to file a Complaint in Authority?</b>	<b>40</b>
<b>5.8. Procedure of holding an inquiry by the Authority</b>	<b>40</b>

<b>5.9. Filing complaint for compensation before the Adjudicating Officer</b>	<b>41</b>
<b>5.10. Procedure for holding an inquiry by the Adjudicating Officer</b>	<b>41</b>
<b>5.11. Annual statement of accounts of RERA</b>	<b>41</b>
<b>5.12. Annual repot/return of RERA</b>	<b>42</b>
<b>5.1. Date of effect of the Gujarat Real Estate (Regulation and Development) (Matters Relating to the Real Estate Regulatory Authority) Rules, 2016</b>	

These Rules under the Act, came in to force, with effect from **29. 10. 2016**

**5.2. Procedure for selection of Chairperson and Members of the Authority**

As per **Rule 3** of the Rules, the Government to make reference to the Selection Committee, on receipt of such reference, the Selection Committee, after following the procedure as deemed fit, including appointment of Search Committee, shall have to suggest a panel of names i.e. two names for each vacancy, within a period of sixty days, and then the Government, within thirty days, shall have to select one of them, for the vacancy.

**5.3. Administrative powers of the Chairperson of the Authority**

Chairperson under **Rule 5**, has powers pertaining to staff strength, wages, salary, perquisites, personal polices, creation and abolition of posts, appointments, promotions and confirmation, acceptance of resignations, authorization of tours, medical bills, leaves, hiring of vehicles, nominations for seminars, conferences and trainings, staff welfare expenses, scraping of assets, disciplinary actions, etc.

#### **5.4. Additional powers of the authority**

As per **Rule 8**, the Authority, in addition to the powers specified in sub-section 35 of the Act, shall have the powers to require the Promoter, Allottee, or Real Estate Agent, to furnish required information or documents, and to requisite any public record or document or copy thereof, to call upon any experts/consultants to assist, and to inquire about payment of amount imposed as penalty, interest or compensation.

#### **5.5. Recovery of penalty, interest and compensation amount**

**Rule 9** provides that the due amount of the penalty, interest and compensation to be recovered, as arrears of land revenue, in the manner provided in the Gujarat Land Revenue Code, 1879.

#### **5.6. Rules for publishing information on website**

**Rule 10** prescribes in which manner, the required information to be published on website.

#### **5.7. How to file a Complaint in Authority?**

**Rule 11 (1)** of the Rules, 2016 provides that any aggrieved person may file a Complaint in Form 'A' (except for compensation) with the Authority, along with a fee of rupees one thousand in the form of demand draft, for violation any provisions of the Act, Rules and Regulations.

#### **5.8. Procedure of holding an inquiry by the Authority**

As provided in **Rule 11 (2)**, the Authority shall follow summary procedure and firstly, to issue notice along with particulars and documents to the Respondent, secondly, on appearance of Respondent, to explain the alleged contravention to him and in case he pleads guilty, to pass appropriate order about penalty, or in case of denial, ask explanation about alleged contravention, thirdly, if the explanation found satisfactory, may pass order to dismiss the Complaint, or if needed, direct the parties to produce further documents or evidence, fourthly, after receipt of required documents or



evidence, may pass appropriate order either for penalty or dismissal of Complaint. However, where any party though duly informed, remained absent, the Authority shall have the power to proceed further, in absence of such party.

#### **5.9. Filing complaint for compensation before the Adjudicating Officer**

**Rule 12 (1)** of the Rules, 2016 provides that any aggrieved person may file a Complaint in Form 'B' with the Adjudicating Officer, along with a fee of rupees one thousand in the form of demand draft, for compensation or interest, for violation of the relevant provisions of Sections 12, 14, 18 and 19 the Act.

#### **5.10. Procedure for holding an inquiry by the Adjudicating Officer**

As provided in **Rule 12 (2)**, the Adjudicating Officer shall follow summary procedure and firstly, to issue notice along with particulars and documents to the Respondent, secondly, on appearance of Respondent, to explain the alleged contravention to him and in case he pleads guilty, to pass appropriate order about compensation, or in case of denial, ask explanation about alleged contravention, thirdly, if the explanation found satisfactory, may pass order to dismiss the Complaint, or if needed, direct the parties to produce further documents or evidence, fourthly, after receipt of required documents or evidence, may pass appropriate order either for compensation or dismissal of Complaint. However, where any party though duly informed, remained absent, the Adjudicating Officer, shall have the power to proceed further, in absence of such party.

#### **5.11. Annual statement of accounts of RERA**

As per **Rule 13**, the Authority shall have to prepare a budget, to maintain proper accounts and other relevant records and also to prepare an annual statement of accounts, as provided in Section 77 of the Act, as per prescribed Form 'C'.

## **5.12. Annual report/return of RERA**

As per **Rule 14**, the Authority shall have to prepare its annual report, as provided in Section 78 of the Act, as per prescribed Form 'D'.

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**Date: 26. 05. 2021**

Prepared by,

**[P. R. Patel]**

Adjudicating Officer,

RERA, Gandhinagar.

**Real Estate (Regulation and Development) Act, 2016**

**FREQUENTLY ASKED QUESTIONS (FAQs)**

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**STATUS:**

**1. What is the status of the Act?**

The Real Estate Bill was passed by the Rajya Sabha on 10<sup>th</sup> March, 2016 and the Lok Sabha on 15<sup>th</sup> March, 2016. The Bill as passed by the Parliament was assented to by the Hon'ble President on 25<sup>th</sup> March, 2016. The Act as assented to by the Hon'ble President was published in the Official Gazette on 26<sup>th</sup> March, 2016 for public information.

**2. When did the Act come into force?**

Section 2, sections 20 to 39, sections 41 to 58, sections 71 to 78 and sections 81 to 92 were notified by the Central Government and came into effect from 1st May, 2016. Sections 3 to 19, Section 40, Section 59 to 70 and Sections 79 and 80 were notified by the Central Government and came into effect from 1<sup>st</sup> May 2017.

**3. When did the Rules framed by the Government of Gujarat came into force?**

The Government of Gujarat by notification dated 29<sup>th</sup> October 2016 has notified the Gujarat Real Estate (Regulation and Development) (Matters Relating to the Real Estate Regulatory Authority) Rules, 2016 ("**Authority Rules**") and Gujarat Real Estate (Regulation and Development) (Matters Relating to the Gujarat Real Estate Appellate Tribunal) Rules, 2016 ("**Appellate Rules**"). The Government of Gujarat by notification date 4<sup>th</sup> May 2017 has notified Gujarat Real Estate (Regulation and Development) (General) Rules, 2017 ("**General Rules**").

**4. Whether the Real Estate Regulatory Authority has been established in the State of Gujarat?**

Yes. Ms. \_\_\_\_\_ has been designated as the interim Regulatory Authority by the Government of Gujarat. The address of the Real Estate Regulatory Authority is \_\_\_\_\_.

**OBJECTS AND REASONS:**

**5. What was the need for a regulatory law for the real estate sector?**

The real estate sector has grown in the recent years but has largely been unregulated from the perspective of consumer protection. Though, consumer protection laws are available, the recourse available therein are only curative, but not preventive. This has affected the overall potential growth of the sector due to absence of professionalism and standardization.

**6. What are the objects and reasons for which the Act has been framed?**

The Real Estate Act is intended to achieve the following objectives:

- a) ensure accountability towards allottees and protect their interest;

- b) infuse transparency, ensure fair-play and reduce frauds & delays;
- c) introduce professionalism and pan India standardization;
- d) establish symmetry of information between the promoter and allottee;
- e) imposing certain responsibilities on both promoter and allottees;
- f) establish regulatory oversight mechanism to enforce contracts;
- g) establish fast- track dispute resolution mechanism;
- h) promote good governance in the sector which in turn would create investor confidence.

## **PRELIMINARY**

### **7. Who is the 'appropriate Government' as per the Act?**

Section 2(g) of the Act defines 'appropriate Government' to mean as follows:

- (i) for the Union territory without Legislature, the Central Government;
- (ii) for the Union territory of Puducherry, the Union territory Government;
- (iii) for the Union territory of Delhi, the Central Ministry of Urban Development;
- (iv) for the State, the State Government.

### **8. What are the important responsibilities of the appropriate Government?**

- a) As per section 84 the appropriate Government is required to notify Rules for the implementation of the Act, within six months of its commencement.
  - b) As per section 20 the appropriate Government is required to establish the Regulatory Authority within 1 year from its commencement i.e. maximum by 30<sup>th</sup> April, 2017.
  - c) As per section 20 the appropriate Government is required to designate an officer (preferably Housing Secretary) as interim Regulatory Authority, until the establishment of a full time Regulatory Authority.
  - d) As per section 43 the appropriate Government is required to establish the Appellate Tribunal within 1 year from its commencement i.e. maximum by 30<sup>th</sup> April, 2017.
  - e) As per section 43 the appropriate Government is required to designate an existing Appellate Tribunal (under any other law in force) to be the Appellate Tribunal, until the establishment of a full time Appellate Tribunal.
  - f) The Chairperson and Members of the Regulatory Authority and the Members of the Appellate Tribunal are required to be appointed based on recommendations of a Selection Committee, thus the appropriate Government is required to constitute the Selection Committee.
  - g) As per section 28 and section 51 the appropriate Government is required to appoint officers and other employees of Regulatory Authority and the Appellate Tribunal. In addition, it is required to identify office space etc. and other infrastructure for its functioning.
  - h) As per section 41 the Central Government (i.e. the Ministry of HUPA) is required to establish the Central Advisory Council.
  - i) As per section 75 the appropriate Government is required to constitute a 'Real Estate Regulatory Fund'.
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9. **Does the definition of 'promoter' include public bodies such as Development Authorities and Hosing Boards?**  
The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term 'promoter' which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.
10. **Does the definition of 'promoter' include all promoters in case of joint development?**  
As per the Explanation to section 2(zk) "where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder".
11. **What is the rate of interest payable in case of default by the 'promoter' or the 'allottee'? Is the rate of interest payable by either party (promoter or allottee) the same?**  
As per the Explanation to section 2(za) the rate of interest payable by either the promoter or the allottee shall be the same. The rate of interest shall be the contractual rate of interest as may be mutually agreed between the promoter and the allottee. Where no contractual rate of interest is mutually agreed upon between the promoter and the allottee, the rate of interest shall be the rate which is prevalent as per existing directions of Reserve Bank of India, i.e. Marginal Cost of Lending Rate (MCLR) the State Bank of India Prime Lending rate plus two percent . In this regard please see Rule 16 of the General Rules.
12. **Does advertisement include solicitation by emails and sms? Is issuance of prospectus considered to be a case of 'advertisement'?**  
As per section 2(b), which defines 'advertisement' any medium adopted in soliciting for sale would be covered under the said definition, including sms and emails.
13. **Does the term 'allottee' include secondary sales?**  
As per section 2(d) an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.
14. **Is 'community and commercial facilities' which are provided in a real estate project are part of 'common areas'?**  
Section 2(n) defines 'common areas' to include 'community and commercial facilities', thus they are an integral part of the project, to be handed over to the Association of Allottees/Society.

**15. What happens in case of jurisdictions (States/UTs) which do not provide for both the ‘occupancy certificate’ and the ‘completion certificate’?**

Section 2(zf) and section 2(q) respectively, define ‘occupancy certificate’ and ‘completion certificate’. The two definitions are very broad and use the term ‘by whatever name called’. Thus, if in a State/UT only one certificate is issued which provides for both the aspects covered under the two definitions, it would suffice the requirements under the Act.

**16. What is the difference between the term ‘completion certificate’ and ‘occupancy certificate’?**

Section 2(zf) and section 2(q) respectively, define ‘occupancy certificate’ and ‘completion certificate’. Occupancy certificate relates to the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

**17. The Act defines ‘estimated cost of the real estate project’, what is the significance of the definition?**

Section 2(v) defines ‘estimated cost of the real estate project’, which means “the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges”. The determination of the estimated cost of the real estate project is necessary due to Chapter VIII of the Act, which provides that penalties would be imposed on the promoter, for violations prescribed under the Act, based on the estimated cost of the real estate project.

**18. What is the definition of ‘garage’ and can it be sold by the promoter independent of an ‘apartment’?**

Section 2(y) defines the term ‘garage’, which can be sold to the allottee independent of the ‘apartment’.

**19. What is the definition of ‘real estate project’? Does the term ‘project’ connote a ‘real estate project’?**

The term ‘real estate project’ has been defined under section 2(zn) and the term ‘project’ has been defined under section 2(zj), which have been interchangeably used under the Act.

**20. Are real estate agents covered under the Act? Does the term ‘real estate agents’ include web-portals engaged in selling of apartments or plots?**

Section 2(zm) defines the term ‘real estate agents’, which is a very broad and inclusive definition and covers all forms of agencies involved in sale and purchase of projects, registered under the Act. Consequently, web-portals etc. engaged in selling plots or

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apartments are also covered under the Act and are required to comply with the duties and responsibilities as provided therein including under the Rules and regulations made thereunder.

**21. What happens in case a term is used under the Act but has not been defined?**

Section 2(zr) is an omnibus definition which provides that terms which have not been defined under the Act or the Rules and Regulations made thereunder, would have the same meaning as respectively assigned to them under the relevant Municipal laws or under any law for the time being in force.

### **REGISTRATION OF PROJECT AND AGENTS**

**22. Does the Act cover both residential and commercial real estate?**

The Act covers both residential and commercial real estate. Section 2(e) defines 'apartment' and section 2(j) defines 'building' which include both residential and commercial real estate.

**23. Does the Act cover ongoing / incomplete projects?**

Section 3(1) first proviso provides that promoters of 'all ongoing projects which have not received completion certificate will need to register their project with the Regulatory Authority, within 3 months of its commencement'.

**24. Does the Act cover all projects in urban areas and in rural areas?**

Section 3(1) provides that all projects within a 'planning area' will require to be registered with the Authority. 'Planning Area' has been defined under section 2(zh).

However, section 3(1) second proviso gives powers to the Authority 'in the interest of allottees' to order / direct the promoter to register projects beyond the planning area, which has the requisite permission of the local authority.

**25. Which projects are exempt from the ambit of the Act?**

As per section 3(2) the following projects do not require to be registered under the Act:

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the



case may be, under the real estate project.

**26. At what stage can a promoter start to advertise his project for sale?**

The promoter of a new project can advertise his project for sale after the project has been registered with the Regulatory Authority as provided in section 3(1).

**27. What are the details to be furnished at the time of application for registration of real estate project with the Regulatory Authority?**

Section 4 of the Act provides for details / information and undertaking to be provided by the promoter to the Authority for registration of the project. The mechanism for registration i.e. the requisite forms to be filled, the fees to be paid etc. are determined in the General Rules made by the Government of Gujarat. Please see Rules 3(2), 3(3) and 3(4) of the General Rules.

**28. What are the formalities for the registration of a real estate project with the Regulatory Authority?**

The promoter is required to make an application as per Form and fees prescribed by the General Rules made by the Government of Gujarat, along with the documents / information and undertaking specified in section 4 to the Authority for registration of the project. In addition, the promoter is also required to append other / additional documents / information as specified in the General Rules.

**29. In how many days is the Regulatory Authority required to register the real estate project?**

The Regulatory Authority is required to register the project, if in compliance with the Act and the Rules and Regulations, within 30 days of the application having been received by the Authority.

**30. What in case the application for registration of the real estate project is incomplete?**

If the application for the registration of the project is not complete as required under the Act or the Rules and Regulations made thereunder, the Authority may grant an opportunity to the promoter to complete the application in all respects. However, in case of non-compliance the Authority has the power to reject the application, only after giving an opportunity to the promoter of being heard.

**31. Is there a provision for deemed registration of a real estate project in case the Regulatory Authority does not respond to the application?**

Section 5 of the Act provides that the Authority has to decide on the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.

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**32. What is the period of validity of registration granted to a real estate project by the Regulatory Authority?**

As per section 4, the validity of the registration granted to a project shall be the period declared by the promoter under section 4(2)(l)(C), at the time of making the application for registration, within which he would complete the project.

**33. Is the promoter required to maintain an 'escrow account' or a 'separate account'? Is a 'separate account' to be maintained for every project or it can be for one or more projects? What are the purposes for which the promoter can withdraw the money from the separate account?**

Section 4(2)(l)(D) provides that the promoter shall maintain a 'separate account' for every project undertaken by him wherein seventy percent of the money received from the allottees shall be deposited for the purposes of construction and land cost. The account has to be self maintained and is not an escrow account requiring the approval of the Authority for withdrawal.

**34. On what basis is the promoter required to withdraw the money from the separate account?**

The promoter is required to withdraw the amounts from the separate account in accordance with Rule 5 of the General Rules.

**Is the promoter required to get his accounts audited?**

**35. As per section 4(2)(l)(D) third proviso, the promoter is required to get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project.**

**36. Is the application for registration of a real estate project, proposed under the Act is manual or it can also be done online?**

Section 4 envisages that for a period of one year the application process can be both manual and online based, however, after one year it is mandatory to make the entire process online.

However, for the purposes of project information to the prospective consumers, it would

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help in establishing the web portal at the earliest.

**37. Can the period of registration granted to a real estate project by the Regulatory Authority be extended? What is the definition of force majeure?**

Section 6 envisages two situations within which the registration granted to a project can be extended. Extension of registration can be granted in case of force majeure, in addition, it can also be granted under reasonable circumstances, without the fault of the promoter, which shall not be more than a maximum period of 1 year.

Explanation to section 6 has defined force majeure to mean 'a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project'.

**38. What are the terms and conditions for extension of registration?**

The terms and conditions, the application form and the fees payable for extension of registration shall be in the manner as prescribed by Rule 7 of the General Rules.

**39. Can the registration of a project be revoked?**

As per section 7 the Authority has the powers to revoke registration of a project, for violations specified under the said section. However, revocation of registration of a project is envisaged as a last resort and can only be done after providing a reasonable opportunity of being heard.

**40. What are the next steps that can be taken for project completion in case of revocation of a project?**

In case a project is revoked, section 8 provides for various mechanisms in which the project can be completed. However, in such a scenario, the association of allottees shall have the first right of refusal for carrying out the remaining development works.

**41. Does the Act also cover real estate agents? What are the duties and responsibilities of the real estate agents?**

Section 9 of the Act provides that real estate agents which engage in selling projects registered under the Act, can only do so after registering themselves with the Authority. The mechanisms for registration, the fees payable, the period of registration, subsequent renewal etc. are matters stipulated in Rules 10 to 15 of the General Rules.

Section 10 of the Act provides for detailed functions and duties of real estate agents.

## FUNCTIONS AND DUTIES OF PROMOTER

**42. What are the important functions and responsibilities of the promoter after registration of the project with the Authority?**

As per section 11 of the Act, the promoter is required to update all project information as furnished at the time of application (as provided under section 4) on the website of the Authority. In addition, section 11 also provides for certain information, which needs to be regularly (quarterly) updated by the promoter, in order to make an informed choice by the buyer.

In addition, the promoter is required to carry out all the responsibilities as envisaged under section 11 at various stages of development of the project and upon its completion.

**43. What are the disclosures to be made on the website of the Regulatory Authority?**

Section 4 and section 11 provide for a detailed list of disclosures on the website of the Authority by the promoter for public viewing. Also, The detailed list is specified in Rule 10 of the Authority Rules.

**44. What is the promoter's obligations regarding veracity of the advertisement or prospectus?**

As per section 12 the promoter is responsible for the veracity of all information contained in the advertisement and the prospectus. In case of any loss sustained by any person due to false information contained therein, the promoter is liable to make good the loss sustained due to the same.

**45. Can the promoter collect any amount of money towards booking of the apartment / plot?**

Section 13 provides that the promoter cannot accept a sum more than 10 percent of the apartment / plot cost as an advance payment / application fees. For any further collection towards the apartment / plot cost, the promoter is required to enter into an 'Agreement for Sale' with the allottee.

**46. What is the 'Agreement for Sale' and is it binding on the 'promoter' and the 'allottee'?**

As per section 13(2) the appropriate Government is required to specify through Rules the 'Agreement for Sale' to be entered into between the promoter and the allottee. This Agreement is binding on the parties, however, internal flexibility could be provided in the said Agreement for Sale, for determination / insertion of other provisions as decided between the parties.

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**47. Can the promoter modify / amend the sanctioned plans or project specifications after having been approved by the competent authority and disclosed to the allottees?**

As per section 14 of the Act the promoter can only modify / amend the sanctioned plans or project specifications, after the approval of the competent authority and its disclosure to the allottees, in case of minor additions or alterations.

However, in case of major modification / alteration, the promoter can modify the sanctioned plans or project specification only after having taken approval from two-third of the allottees. In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

**48. What is the period for which the promoter is liable for any structural defects etc. in the project / apartment etc.?**

As per section 14(2) the promoter shall be liable for 5 years from the date of handing over of possession to the allottee towards structural defect or any other defect as specified therein.

**49. What is the obligation of the promoter as regard transfer of the project to a third party?**

As per section 15 the promoter is not entitled to transfer or assign his majority rights and liabilities in the project to a third party, without obtaining the prior written consent of two-third of allottees and the Regulatory Authority.

In addition, for arriving at the number of two-third allottees, the number of apartments held by the promoter will be excluded. Also, irrespective of the number of apartments held by an allottee he/she shall only be entitled to one vote.

**50. What is the obligation of the promoter as regards insurance of real estate project?**

As per section 16 the promoter is required to seek an insurance of the real estate project towards title of the land and towards construction of the project.

However, the said section provides that this provision shall only come into effect after and in the manner as may be notified by the appropriate Government.

**51. What is the obligation of the promoter as regards transfer of title of the apartment / plot?**

Section 17 of the Act provides for detailed provisions regarding transfer of title of the apartment and the project to the allottee and to the association of the allottees/society respectively.

**52. What is obligation of the promoter towards return of amount and compensation to the allottee?**

Section 18 of the Act provides for provisions as regards various situations in which the allottee would be compensated by the promoter due to delay in completion of the project etc.

### **RIGHTS AND DUTIES OF ALLOTTEES**

**53. What are the rights and duties of the allottees under the Act?**

Section 19 provides for the various rights of the allottees. This section specifies various rights which the allottees have against the promoters including those which the promoters are liable to fulfill based on the agreement entered into with the allottees, namely – stage-wise schedule of completion of the project and the services, claim timely possession of the apartment / plot, entitlement to necessary documents and plans etc.

Section 19 provides for the various duties of the allottees, which provide for matters relating to payment regarding the apartment / plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association etc.

### **THE REAL ESTATE REGULATORY AUTHORITY**

**54. What is the timelines for establishment of the Regulatory Authority?**

As per section 20 the Regulatory Authority is required to be established within 1 year of the commencement of the said section. As section 20 has been notified with effect from 1<sup>st</sup> May, 2016, the Authority is required to be established maximum by 30<sup>th</sup> April, 2017. However, for speedy implementation of the Act, section 20 empowers the 'appropriate Government' to appoint an interim Regulatory Authority, until the establishment of the full time Authority.

**55. How are the Chairman and the Members of the Authority required to be appointed?**

As per section 22 the Chairman and the Members of the Authority are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Chairman and the Members.

**56. What are the important responsibilities of the 'Regulatory Authority'?**

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibility of the Regulatory Authority are:

- a) Registration of the real estate project and the real estate agent;
- b) Extension of registration of the real estate project and its revocation;

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- c) Renewal of registration of the real estate agent and its revocation;
  - d) As per section 34 the Authority is responsible to maintain a website of records for public viewing of –
    - all projects registered with the Authority including details of projects as specified in the Act and the rules and regulations - to be disclosed on the website;
    - details of promoters with photographs of promoters;
    - details of projects in case of revocation of registration or where any project penalized under the Act;
    - details of agents registered under the Act including his photograph and also of those agents whose registration has been revoked.
  - e) As per section 71 the Authority is required to appoint one or more 'adjudicating officer' in consultation with appropriate Government.
  - f) As per section 85 the Regulatory Authority is required to notify Regulations within 3 months of establishment.
  - g) As per section 32 the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

**57. How can a complaint be filed with the Authority for any violations under the Act?** Section 31 of the Act provides for filing of complaint by an aggrieved person with the Regulatory Authority. The form and manner and the fees payable for filing the complaint are specified in Rule 11 of the Authority Rules.

**58. What is the time period within which the Authority is required to dispose of any matter that is brought to it for consideration?**

Section 29 provides that the Authority should endeavour to dispose of the questions / complaints as expeditiously as possible but not later than sixty days from the date of filing the same. However, where it could not be disposed of during the said period the Authority is required to record its reasons for the same.

#### **THE REAL ESTATE APPELLATE TRIBUNAL**

**59. What is the timelines for establishment of the Appellate Tribunal under the Act?**

As per section 43 of the Act, the Appellate Tribunal is required to be established within 1 year of of the commencement of section 43. As section 43 has been notified with effect from 1<sup>st</sup> May, 2016, the Appellate Tribunal is required to be established maximum by 30<sup>th</sup> April, 2017.

However, for speedy implementation of the Act, section 43 empowers the 'appropriate Government' to designate an existing Appellate Tribunal (under any other law in force) to function as an Appellate Tribunal under the Act.

- 60. What are the important responsibilities of the Appellate Tribunal?**  
The Appellate Tribunal is a quasi-judicial body, which is empowered to hear appeals from the orders / decisions / directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are provided in Rule 3 of the Appellate Rules made by the Government of Gujarat.
- 61. Can an appeal be filed against the decision or the orders of the Appellate Tribunal?**  
Any person aggrieved by the decision or order of the Appellate Tribunal can file and appeal with the High Court as provided in section 58 of the Act.
- 62. What is the time period within which the Appellate Tribunal is required to dispose of the appeal?**  
Section 44 provides that the Appellate Tribunal should endeavour to dispose of the appeal as expeditiously as possible but not later than sixty days from filing the appeal. However, where the same could not be disposed of during the said period the Appellate Tribunal is required to record its reasons for the same.
- 63. How are the Chairman and the Members of the Appellate Tribunal required to be appointed?**  
As per section 46 the Chairman of the Appellate Tribunal shall be a sitting or retired Judge of the High Court. Section 46 also provides that the Appellate Tribunal shall comprise of at-least two Members one of whom shall be a Judicial Member and the other shall be a Technical or Administrative Member.  
As per section 46 the Members of the Appellate Tribunal are required to be appointed by the appropriate Government on the recommendations of a Selection Committee comprising of the Chief Justice of the High Court (or his nominee), the Housing Secretary and the Law Secretary. The section also provides for the qualification etc. that are required for the appointment of the Judicial / Administrative Members.



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## OFFENCES, PENALTIES AND ADJUDICATION

- 64. What is the punishment prescribed for non-registration of a project under the Act?**  
As per section 59, where under the Act, it is obligatory for the promoter to register a project with the Authority, and if the promoter fails to do the same, he shall be liable to a penalty upto ten percent of the estimated cost of the real estate project.  
However, in case the promoter consistently defaults or does not comply with the directions / orders of the Authority as regards registration of the project with the Authority, he shall be liable to further ten percent of the estimated cost of the real estate project or imprisonment upto 3 years or both.
- 65. What is the punishment prescribed for violation of section 4 which provides for application for registration of the project?**  
As per section 60 if the promoter defaults as regards matters covered under section 4, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.
- 66. What is the punishment prescribed for violation of other provisions of the Act by the promoter?**  
As per section 61 if the promoter defaults any other provision of the Act or the Rules and Regulations made thereunder, he shall be liable to a penalty upto five percent of the estimated cost of the real estate project.
- 67. What is the punishment prescribed for non-compliance of the orders of the Authority by the promoter?**  
As per section 63 if the promoter fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the estimated cost of the real estate project.
- 68. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the promoter?**  
As per section 64 if the promoter fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto

ten percent of the estimated cost of the real estate project or with imprisonment for a term which may extend upto three years or with both.

**69. What is the punishment prescribed for non-registration of by a real estate agent under the Act?**

As per section 62, where under the Act, it is obligatory for the real estate agent to register himself with the Authority, and if the real estate agent fails to do the same, he shall be liable to a penalty upto of rupees ten thousand per day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

**70. What is the punishment prescribed for non-compliance of the orders of the Authority by the real estate agent?**

As per section 65 if the real estate agent fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment, for which the sale has been facilitated by him.

**71. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the real estate agent?**

As per section 66 if the real estate agent fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment, for which the sale has been facilitated by him or with imprisonment for a term which may extend upto one year or with both.

**72. What is the punishment prescribed for non-compliance of the orders of the Authority by the allottee?**

As per section 67 if the allottee fails to comply with the orders of the Authority, he shall be liable to a penalty for every day of default, which may cumulative extend upto five percent of the cost of the plot / apartment.

**73. What is the punishment prescribed for non-compliance of the orders of the Appellate Tribunal by the allottee?**

As per section 68 if the allottee fails to comply with the orders of the Appellate Tribunal, he shall be liable to a penalty for every day of default, which may cumulative extend upto ten percent of the cost of the plot / apartment or with imprisonment for a term which may extend upto one year or with both.

**74. Can an offence which provides for imprisonment be compounded?**

As per section 70 if any person is punishable with imprisonment under the Act, the same may be compounded on such terms and conditions as prescribed by Rule 19 of the General Rules made by the Government of Gujarat.

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75. **What is the role of the Adjudicating Officer?**

The Adjudicating Officer is a quasi-judicial person who is mandated to adjudicate on disputes arising under section 12, 14, 18 and section 19. The Adjudicating Officer shall be a person who is or has been a District Judge.

76. **What are the factors that need to be taken into account by the Adjudicating Officer while deciding a dispute under sections 12, 14, 18 and 19 of the Act?**

The Adjudicating Officer shall, while deciding the disputes under section 12, 14, 18 and 19 of the Act, have regard to – the amount of disproportionate gain or unfair advantage, the amount of loss, repetitive nature of the default and such other factors that the Adjudicating Officer may consider necessary in furtherance of justice.

### MISCELLANEOUS

77. **Are the civil courts and consumer forums barred from entertaining disputes under the Act?**

As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act.

Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.

78. **Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?**

The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.

79. **Can the Authority delegate any of its functions under the Act?**

As per section 81, the Authority is empowered to delegate such of its powers and functions under the Act to any Member, officer or any other person subject to conditions specified in the order issued for the same. However, the Authority cannot delegate the responsibility of making Regulations under section 85 under the Act.

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**80. Are the Rules, Regulations etc. notified required to laid before the Parliament or the State Legislature?**

As per section 86 every Rule, Regulation, notification issued by the appropriate Government or the Authority, is required to be laid before the Parliament or the State Legislature, as the case may be.

**81. Does the Government have the power to issue Orders towards Removal of Difficulties while implementing the Act?**

The Central Government, under section 91, has been empowered to notify Orders towards removal of difficulties while implementing the Act. However, such removal of difficulties Order cannot be issued after the expiry of a period of two years since its commencement.

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- પ્રશ્ન-(૧)** કયા પ્રોજેક્ટની નોંધણી રેરા અંતર્ગત કરવી જરૂરી છે ? ટૂંક સમયમાં પૂરા થયેલ પ્રોજેક્ટની રેરા અંતર્ગત નોંધણી કરવી જરૂરી છે અથવા ફક્ત નવા પ્રોજેક્ટની નોંધણી કરવી પડે ?
- જવાબ:-** રેરા એક્ટની કલમ-૩(૨)(એ) અને (બી) મુજબ તમામ ચાલુ પ્રોજેક્ટ અને તા-૧/૫/૨૦૧૭ પછી જે પ્રોજેક્ટના બાંધકામને વપરાશની પરવાનગી (બી.યુ.પરમીશન) મળેલ હોય તેવા તમામ પ્રોજેક્ટોને રેરા એક્ટ અંતર્ગત રજીસ્ટ્રેશન કરાવવું જરૂરી છે. તમામ નવા પ્રોજેક્ટનું પણ રેરા એક્ટ અંતર્ગત રજીસ્ટ્રેશન કરવું જરૂરી છે.
- પ્રશ્ન-(૨)** એચ.યુ.એફ.ને એજન્ટનું રજીસ્ટ્રેશન રેરા એક્ટ અંતર્ગત કરવું હોય તો કેટલી રકમ ચુકવવી પડે?
- જવાબ:-** એચ.યુ.એફ. એ વ્યક્તિગત અરજદાર નથી, આથી રેરા રજીસ્ટ્રેશન ફી રુલ્સ-૧૦ ના સબ રુલ્સ (૨) મુજબ વ્યક્તિગત અરજદાર સિવાયના અરજદાર ગણી રુા. ૫૦,૦૦૦/- ચુકવવાનાં થાય.
- પ્રશ્ન-(૩)** એકજ યુઝર આઈ.ડી.થી એક કરતા વધારે પ્રોજેક્ટનું રજીસ્ટ્રેશન કરી શકાય કે અલગ અલગ પ્રોજેક્ટ માટે અલગ અલગ આઈ.ડી. જોઈએ.?
- જવાબ:-** રજીસ્ટ્રેશન પ્રોજેક્ટનું કરવાનું છે, નહિં કે વ્યક્તિનું. અલગ અલગ પ્રોજેક્ટનું રજીસ્ટ્રેશન અલગ અલગ યુઝર આઈ.ડી.થી કરવું પડે.
- પ્રશ્ન-(૪)** સ્ટેટ બેન્ક ઓફ ઈન્ડિયામાં ખાતુ ન હોય, અન્ય બેન્કમાં ખાતુ હોય તો રેરાની રજીસ્ટ્રેશન ફી કેવી રીતે ચુકવવી?
- જવાબ:-** સ્ટેટ બેન્ક ઓફ ઈન્ડિયામાં ખાતુ હોવું જરૂરી નથી. રેરા ફી સ્ટેટ બેન્ક ઓફ ઈન્ડિયા કલેક્ટ લીન્ક (રેરા વેબ સાઈટ) મારફત અન્ય બેન્કો, ક્રેડીટ કાર્ડ, ડેબીટ કાર્ડથી ચૂકવી શકાય.
- પ્રશ્ન-(૫)** પ્રોજેક્ટ પૂરો થયો હોય બી.યુ. પરમીશન મેળવેલ ન હોય અને ચાર યુનીટ વેચવાના બાકી હોય તો પ્રોજેક્ટનું રજીસ્ટ્રેશન રેરા અંતર્ગત કરવું પડે?
- જવાબ:-** પ્રોજેક્ટની બી.યુ.પરમીશન મેળવવામાં આવેલ ન હોય આ પ્રોજેક્ટ ચાલુ પ્રોજેક્ટ તરીકે ગણવો પડે. જેથી રેરા એક્ટની કલમ-૩(૨)(એ) અને (બી)મુજબ રજીસ્ટ્રેશન કરવું જરૂરી છે. તમામ નવા પ્રોજેક્ટનું પણ રેરા એક્ટ અંતર્ગત રજીસ્ટ્રેશન કરવું જરૂરી છે.

પ્રશ્ન-(૬) એફોર્ડેબલ હાઉસીંગ પ્રોજેક્ટમાં તમામ યુનિટ વેચાઈ ગયેલા હોય, પરંતુ વેચાણ કરાર કરવામાં આવેલ ન હોય અને બાકી હોય તો આવા પ્રોજેક્ટોનું રેરા અંતર્ગત રજીસ્ટ્રેશન કરવું જરૂરી છે?

જવાબ:- એફોર્ડેબલ હાઉસીંગ પ્રોજેક્ટની બી.યુ.પરમીશન તા-૧/૫/૨૦૧૭ પહેલાં મળેલ ન હોય તો આ પ્રોજેક્ટ ચાલુ પ્રોજેક્ટ તરીકે ગણવો પડે. જેથી રેરા એક્ટની કલમ-૩(૨)(એ) અને (બી)મુજબ રજીસ્ટ્રેશન કરવું જરૂરી છે. વધુમાં આ પ્રોજેક્ટમાં વેચાણ કરાર પણ કરવામાં આવેલ ન હોય રેરા એક્ટના કાયદા અંતર્ગત રજીસ્ટ્રેશન કરવું જરૂરી છે.

પ્રશ્ન-(૭) કોને ક્વર્ડ પાર્કીંગ તથા ઓપન પાર્કીંગ ગણવું?

જવાબ:- ગ્રાઉન્ડ લેવેલે આવેલ કોમન પ્લોટ, માર્જીનમાં આવેલ ખુલ્લી જગ્યા કે જે જગ્યામાં સક્ષમ ઓથોરીટી દ્વારા પાર્કીંગની જગ્યા મંજૂર કરવામાં આવેલ હોય તેવી જગ્યાને ઓપન પાર્કીંગ ગણવું. હોલોપ્લીન્ટ, સેલરની જગ્યાએ સક્ષમ ઓથોરીટી દ્વારા પાર્કીંગની જગ્યા મંજૂર કરવામાં આવેલ હોય તેવી જગ્યાને ક્વર્ડ પાર્કીંગ ગણવું.

પ્રશ્ન-(૮) પ્રોજેક્ટની વિગતમાં કુલ ક્વર્ડ એરીયાની ગણતરી કેવી રીતે કરવી?

જવાબ:- સક્ષમ ઓથોરીટી દ્વારા મંજૂર કરવામાં આવેલ બાંધકામનો કોઈ પણ ફ્લોર ઉપરનો મહત્તમ બીલ્ટઅપ એરીયા કુલ ક્વર્ડ એરીયા તરીકે ગણવો.

પ્રશ્ન-(૯) રેરા રજીસ્ટ્રેશન અંતર્ગત ડેવલપમેન્ટ વિગતમાં દર્શાવેલ ઈન્વેન્ટરીના પ્રકારો એટલે શું?

જવાબ:- રેરા રજીસ્ટ્રેશન અંતર્ગત ડેવલપમેન્ટ વિગતમાં દર્શાવેલ ઈન્વેન્ટરીના પ્રકારો એટલે પ્રોજેક્ટનો વપરાશ કયા અર્થમાં થાય છે જેમ કે, રહેઠાણ, કોમર્શીયલ વિગેરે.

પ્રશ્ન-(૧૦) રેરા એક્ટ અંતર્ગત પ્રોજેક્ટની ફીની ગણતરી, કુલ જમીનના એરીયા કે કુલ ક્વર્ડ બાંધકામના એરીયા મુજબ કેવી રીતે કરવાની થાય છે?

જવાબ:- રેરા એક્ટના કાયદાની કલમ-૩(૩) મુજબ કુલ જમીનના ઉપયોગ જેવા કે ગૃપ હાઉસીંગ પ્રોજેક્ટ (રહેણાંક), કોમર્શીયલ પ્રોજેક્ટ, મીક્ષ પ્રોજેક્ટ (રહેણાંક અને કોમર્શીયલ) તથા પ્લોટીંગના ડેવલપમેન્ટ પ્રોજેક્ટ અંતર્ગત પ્રોજેક્ટની ફીની ગણતરી કુલ જમીનના એરીયા મુજબ કરવાની થાય છે.

પ્રશ્ન-(૧૧) ગેરેજ કોને ગણવામાં આવે? તે ક્વર્ડ પાર્કિંગથી કઈ રીતે જુદું પડે છે?

જવાબ:- રેરા એક્ટમાં ગેરેજની દર્શાવેલ વ્યાખ્યા કલમ નં.૨(Y) મુજબ અર્થઘટન કરવાનું થાય છે.

પ્રશ્ન-(૧૨) પ્લોટીંગની સ્કીમ હોય તેમાં ફક્ત પ્લોટીંગના પ્લાન ઓથોરીટી દ્વારા મંજૂર કરવામાં આવે છે તેને બી.યુ.પરમીશન આપવામાં આવતું નથી, આથી પ્લોટીંગની સ્કીમમાં પ્રોજેક્ટ કમ્પ્લીશનની તારીખ કઈ ગણવી.

જવાબ:- પ્લોટીંગની સ્કીમમાં પ્લોટીંગના પ્લાન, ઓથોરીટી દ્વારા મંજૂર થયા બાદ, પ્લોટીંગની સ્કીમમાં ઈન્ફ્રાસ્ટ્રક્ચર (રોડ, ઈલેક્ટ્રીક, સીટી, કોમન પ્લોટ વિગેરે સહિત) જે વ્યાજબી સમયમાં પ્રમોટર/ડેવલોપર દ્વારા પુરૂ કરવા ધારેલ હોય તેને કમ્પ્લીશન તારીખ ગણવી જોઈએ.

પ્રશ્ન-(૧૩) બીનખેતીની જમીન ૨૦૧૪ માં થયેલ છે જેમા ૪૦% પ્લોટ સેલ થઈ ગયેલ છે. ૬૦% સેલ કરવાના બાકી છે તો "રેરા" માં રજીસ્ટ્રેશન કરાવવાનું કે કેમ?

જવાબ:- ૬૦% પ્લોટ સેલ કરવાના બાકી હોય, એટલે કે બધા પ્લોટ વેચાઈ ગયેલ ન હોઈ "રેરા" રજીસ્ટ્રેશન કરાવવું પડે.

પ્રશ્ન-(૧૪) ૧૨ ફ્લેટની સ્કીમ છે, જેમાં ૬ ફ્લેટનું વેચાણ થયેલ છે અને ૬ ફ્લેટનું વેચાણ બાકી છે તો "રેરા" માં રજીસ્ટ્રેશન કરવું પડે?

જવાબ:- તા-૧/૫/૨૦૧૭ પહેલાં બી.યુ.મેળવેલ હોય તો રજીસ્ટ્રેશન કરવું જરૂરી નથી, અન્યથા રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું જરૂરી છે.

અ.ન	પ્રશ્ન	જવાબ
૧	અરજદાર દ્વારા ઓનલાઇન એપ્લીકેશન /રેરા ફી/હાર્ડ કોપી અલગ અલગ દિવસોએ જમા કરાવેલ છે.તો ઓથોરિટી એપ્લીકેશન નિકાલની સમયમર્યાદા કેવી રીતે ગણશે ?	<p>➤ અરજદાર દ્વારા કાયદા મુજબના નિયત ફોર્મ -પુરાવા - રેરા ફીની ખાત્રી સહિતની ચૂકવણી સાથેની પૂરાવા બાકી ન હોય તેવી અરજી સંબંધિત રેરા કચેરીમાં મળ્યેથી ૩૦ દિવસની સમયમર્યાદામાં ઓથોરિટી નિકાલ કરશે.</p> <p>➤ ત્રુટીવાળા કિસ્સામાં ઓથોરિટી દ્વારા સૂચવેલ તમામ પૂર્તતા પૂરી થયેથી ૩૦ દિવસની સમયમર્યાદા શરૂ થયેલ ગણાશે.</p>
૨	અમારી સ્કીમ પૂરી થઇ ગઇ છે અને બી.યુ.પરમિશન માટે એપ્લીકેશન આપેલ છે.હું બી.યુ.પરમિશન ન આવે ત્યાં સુધી કોઈ પણ જાહેરાત કરું નહીં અને પ્રોપર્ટીનો કોઈ પણ ભાગ વેચાણ કરું નહીં તો મારે રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે?	હા... રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે.
૩	બિલ્ડર પોતાના પૈસાથી સ્કીમ ઉભી કરે અને બી.યુ.પરમિશન આવ્યા પછી જ વેચાણ કરે ,તેવા સંજોગોમાં રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે?	હા... વેચાણ કરવાના હેતુથી તૈયાર થતા/કરવામાં આવતા તમામ સ્કીમ/પ્રોજેક્ટોને રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે.
૪	જે પ્રોજેક્ટ/સ્કીમને મંજૂરી/રજાચિઠ્ઠી સંબંધિત ગ્રામ પંચાયત દ્વારા આપવામાં આવેલ હોય તેવા કેસોમાં રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે?	સદર ગ્રામ પંચાયતનો સમાવેશ તત્કાલીન કાયદા/નોટીફિકેશનથી પ્લાનિંગ ઓથોરિટીના વિસ્તારમાં સમાવેશ થતો હોય તો તેવા સ્કીમ/પ્રોજેક્ટોને રેરા અંતર્ગત રજીસ્ટ્રેશન કરાવવું ફરજિયાત છે.
૫	રેરાના સરક્યુલર -૧ માં જણાવેલ ફોર્મ-૧ , ફોર્મ- ૨ , તથા ફોર્મ-૪ માં ઉલ્લેખિત એન્જીનીયર તરીકે ક્યાં એન્જીનીયર સર્ટીફિકેટ આપી શકે? પ્રમોટર્સ દ્વારા આર્કિટેક્ટ રોકવામાં આવેલ ન હોય તેવા કિસ્સામાં કોણ સર્ટીફિકેટ આપી શકે?	સમુચિત સત્તામંડળ દ્વારા રજીસ્ટરડ લાયસન્સી એન્જીનીયર સર્ટીફિકેટ ફોર્મ-૨ આપી શકે. પ્રોજેક્ટ ડીઝાઇન કરાવવા માટે આર્કિટેક્ટ ના રોક્યા હોય કે પ્લાન એપ્રુવલમાં આર્કિટેક્ટની સહી ના હોય પણ સાઈટ ઉપર થયેલા કામનું સર્ટીફિકેટ ફોર્મ-૧ તથા ફોર્મ-૪ કાઉન્સિલ ઓફ આર્કિટેક્ટ દ્વારા રજીસ્ટર થયેલ આર્કિટેક્ટ જ આપી શકે.
૬	રેરા રજીસ્ટ્રેશનની ઓનલાઇન અરજીમાં અપલોડ કરવાના થતા કંપની/પેઢીના ઓડિટ રિપોર્ટના તમામ પાના અપલોડ કરવા જરૂરી છે?	ટેક્સ ઓડિટ રિપોર્ટના તમામ પાનાને બદલે ફક્ત ટેક્સ ઓડિટ રિપોર્ટનું ફોર્મ -૩(સી)(બી) અન્ડર ઇન્કમેટેક્સ એક્ટ અપલોડ કરવું.