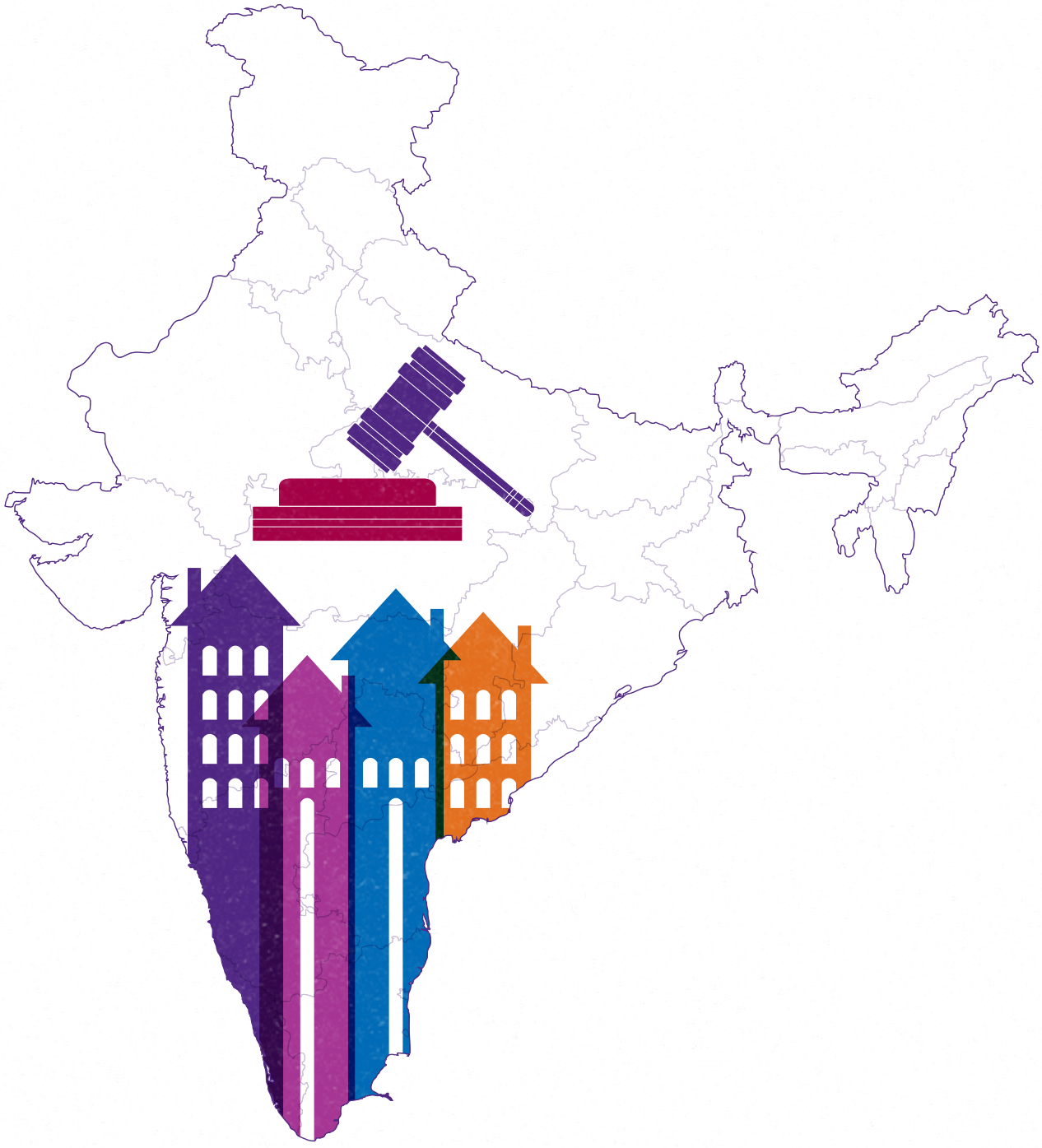
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Real Estate (Regulation & Development) Act (RERA) – The State Affair



Foreword



A. Didar Singh
Secretary General | FICCI

After undergoing unprecedented change in the last two decades, the real estate sector continues to be at the forefront of the Indian Government's agenda on account of its potential to propel economic growth significantly. I am happy to share with you the findings of the FICCI-Grant Thornton-Khaitan & Co report "Real Estate (Regulation & Development) Act (RERA) - The State Affair". This report has brought to light some interesting facts about the rules at the state level. A first of its kind, the report presents a holistic assessment of pan-India (Uttar Pradesh, Madhya Pradesh, Maharashtra, Telangana, Delhi, Tamil Nadu, Karnataka, West Bengal, and union territories) RERA rules and puts forth recommendations for states that are still in the process of formulating the rules. The report also assesses the impact of the regulation on various stakeholders covered under the Act.

Notified last year, RERA is now seen as one of the most significant reforms in the real estate sector. According to RERA, all the state governments were to put in place the Act's rules and regulations by May 1, 2017. While some states and union territories have either notified or drafted the rules, others are yet to frame their own rules.

The release of the report in the seminar on Real Estate Regulation Rules, GST & Affordable Housing (Credit Linked Subsidy Scheme) on May 4, 2017 at Federation House, New Delhi, would set the tone for deliberations. I am sure that findings of the report would be invaluable not only to realtors, but to consumers, government, research, academia and the industry as well. The ideas and conclusions that arise from this report would go a long way in addressing the regulatory challenges and show the path for taking the real estate sector to greater heights.



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We are delighted to share with you the FICCI-Grant Thornton-Khaitan & Co report "Real Estate (Regulation & Development) Act (RERA) - The State Affair"which gives an insight into some of the key provisions of the Act across various states in a comparative form.

It's a defining moment for the real estate sector which is set for a tectonic shift with the implementation of this Act and its various provisions. RERA has the potential of transforming the real estate sector by bringing in much-needed transparency and consistency, apart from boosting the customer confidence and attracting investments for the sector. Going forward, companies in the real estate sector would need to ramp up their systems/processes and focus on areas of project planning and design. Besides, companies should also work towards efficient working capital management to ensure full compliance with the law.

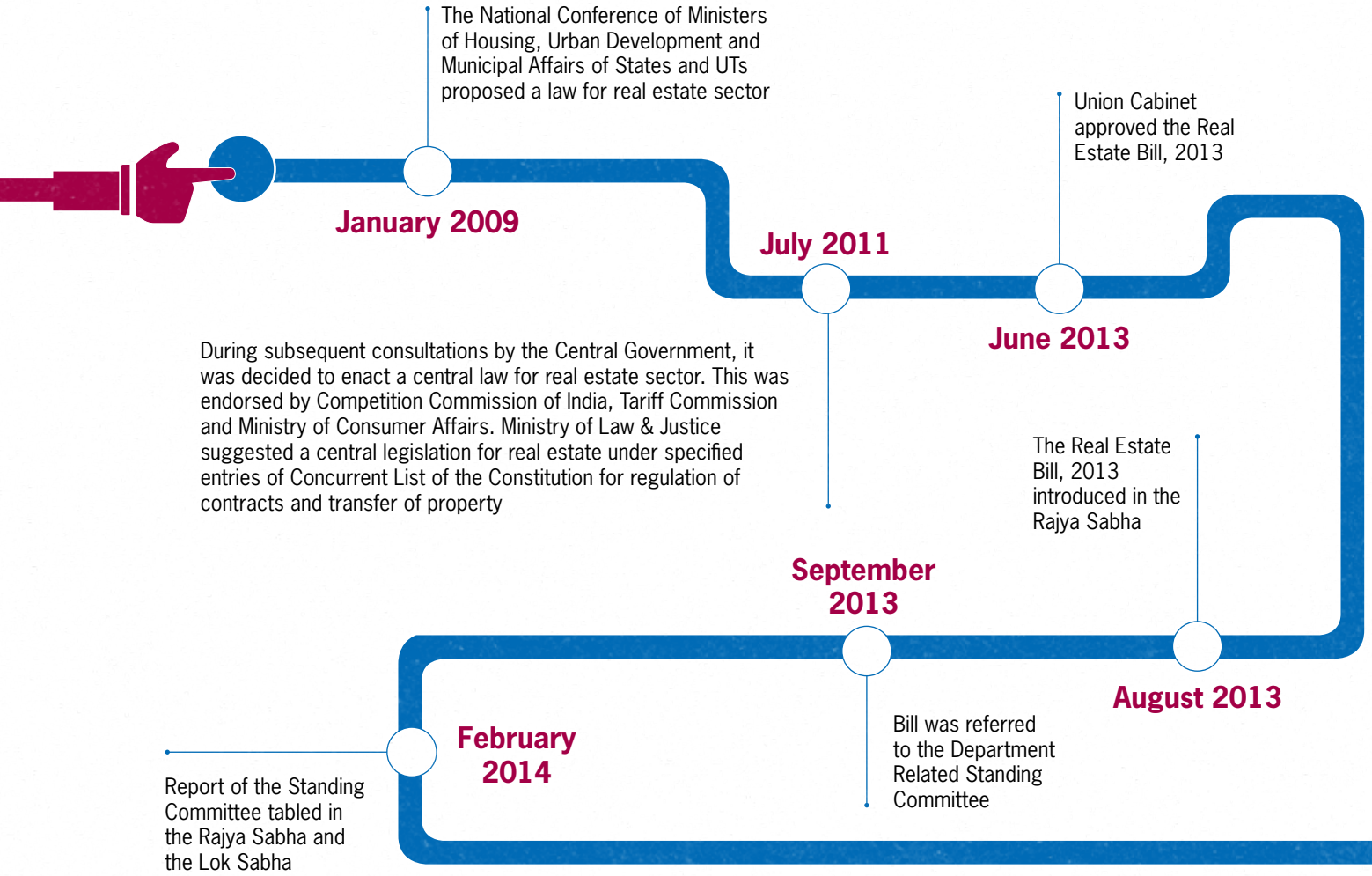
While states like Gujarat, Maharashtra, Uttar Pradesh, Madhya Pradesh, and Odisha have finalised their rules, in some states, current rules are still in the draft stages. It is in the interest of the sector that states are able to comply with the timelines.

I hope this report not only facilitates a healthy discussion among the panellists present here today, but also helps various stakeholders understand the impact of some of the key provisions in their respective states.



Journey so far

The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism, standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of the industry. Therefore, the need for regulating the sector has been emphasised on various forums.



February 2015

Attorney General upheld the validity of central legislation for Real Estate Sector and the competence of Parliament

April 2015

Union Cabinet approved Official Amendments based on Standing Committee Report

May 2015

Real Estate Bill, 2013 and Official Amendments referred to the Select Committee of the Rajya Sabha

July 2015

Select Committee of the Rajya Sabha tabled its report along with the Real Estate Bill, 2015

December 2015

Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of the Rajya Sabha for further consideration of Parliament

December 2015

Bill listed in the Rajya Sabha for consideration but could not be taken up

March 2016

The Rajya Sabha passed the bill

March 2016

The Lok Sabha passed the bill

March 2016

President of India accorded his assent to the Bill

March 2016

The Real Estate (Regulation and Development) Act, 2016 was published in the Gazette for public information

April 2016

59 Sections of the Real Estate (Regulation and Development) Act, 2016 notified by the Ministry of Housing & Urban Poverty Alleviation on 27 April 2016 bringing the Act into force with effect from 1 May 2016

October 2016-January 2017

a. Following Centre's move of notifying the Act, some progressive states have taken up the task of formulating their own rules under the Act since October 2016

b. In total, 7 states along with 5 union territories have either notified their own RERA rules or have published draft rules for public comments

c. On 17 January 2017, Minister of Housing and Urban Poverty Alleviation Venkaiah Naidu held a meeting with housing secretaries/ chief secretaries of all states and Union territories in New Delhi to address the issue of safeguarding the legislation

April 2017

The Central Government notified the entire Act which came into force on 1 May 2017

Mapping India's regulation

A number of states have either notified or published into their own rules under the state Act with some diversions and improvement in provisions from the main Act. The subsequent section maps the entire national scenario till the end of April 2017.

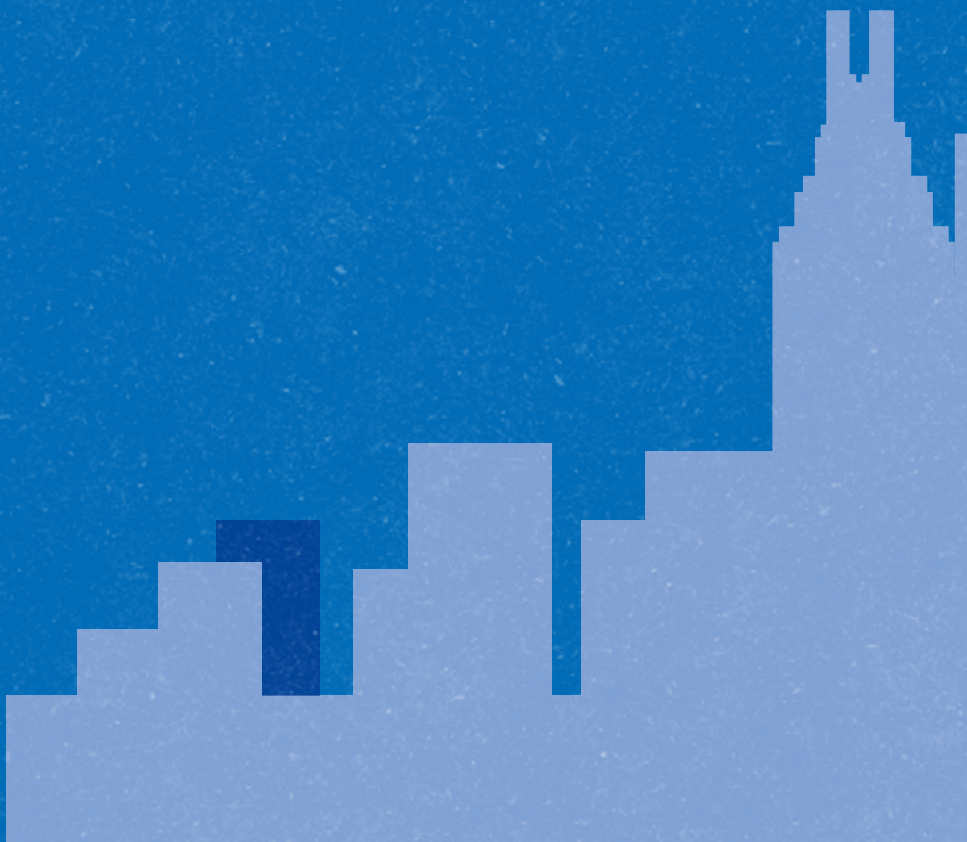
a. Rules framed by union territories, Delhi, Gujarat, Maharashtra, Madhya Pradesh, Odisha and Andhra Pradesh are in force.

b. Rules framed by Uttar Pradesh have been finalised but are yet to be notified.

c. States such as West Bengal, Karnataka and Tamil Nadu have framed draft rules for public comments.

d. Union Territories and states such as Maharashtra, Delhi, Karnataka, Tamil Nadu, Odisha and Andhra Pradesh have prescribed the format of agreement for sale which a promoter is required to adopt while selling the apartment.

e. Rules framed by Gujarat are primarily related to the appointment, functioning and administration of the Real Estate Regulatory Authority and Real Estate Appellate Tribunal.





PRICING OF THE APARTMENT - AS MENTIONED IN THE AGREEMENT OF SALE

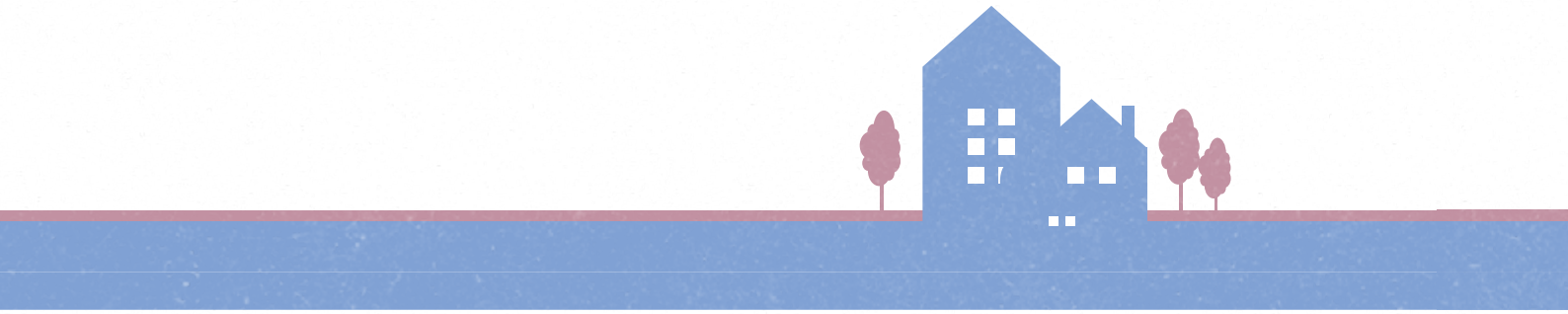
PARTICULARS	Union territories (UT) (IN FORCE)
A. Total price of the apartment to include:	• Break-up of cost of apartment, garage/closed parking, proportionate cost of common areas, preferential location charges, taxes, etc. • All taxes (VAT, Service Tax and Cess or any other similar taxes which may be levied, in connection with the construction of the Project) till handing over possession. In case there is any change/modification in the taxes, the subsequent amount payable by the allottee to the promoter shall be increased/reduced based on such change/modification • (However, if there is any increase in taxes after expiry of scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, then the promoter shall not charge the same to the allottee – This is provided only in the AFS of UTs and not in the AFS of other states) • Recovery of price of land, construction of common area, internal and external development charges, cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges • Cost of maintenance of essential services till maintenance is taken over by association of allottee
B. Total price – escalation free	• Total price is escalation free - excepting increase in development charges or any other increase in charges by the competent authority • The promoter should enclose copy of the notification /order/rule /regulation towards such increase along with the demand letter for subsequent payment • Provided that if there is any new imposition or increase of any development charges after the expiry of the scheduled date of completion of the project as per registration with the Authority, which shall include the extension of registration, then the promoter shall not charge the same to the allottee. (This is provided only in the AFS of UTs and not in the AFS of other states)
C. Recalculation of total price on receipt of OC	Shall be recalculated and adjusted on confirmation of final carpet area on receipt of OC
D. Rebate for early payment	The Promoter may allow, in its sole discretion, a rebate for early payments of instalments payable by the allottee by discounting such early payments for the period by which the respective instalment has been preponed. Such rebate shall not be subject to any revision/withdrawal, once granted to an allottee by the promoter.
E. Set off/adjustment of instalments	Promoter can adjust/appropriate all payments made by allottees under any head(s) of dues against lawful outstanding of the allottee against the apartment/plot and the allottee is required to undertake to not to object/demand/direct the promoter to adjust his payments in any manner

These provisions could be considered by other states while drafting their rules

	DELHI (IN FORCE)	KARNATAKA (DRAFT)	TAMIL NADU (DRAFT)	MAHARASHTRA (IN FORCE)
	Same as UT	Same as UT	Same as UT	Break-up of the cost of apartment, garage/parking space, proportionate cost of common areas and facilities. However, it excludes all taxes (VAT, Service Tax and Cess or any other similar taxes which may be levied in connection with the construction of the Project) till handing over possession. (This is a deviation from other rules)
	Same as UT	Same as UT	Same as UT	Same as UT
	Same as UT	Same as UT	Same as UT	Same as UT
	Same as UT	Same as UT	Same as UT	Same as UT
	Same as UT	Same as UT	Same as UT	Same as UT

REFUND OF CONSIDERATION - AS MENTIONED IN THE AGREEMENT OF SALE

PARTICULARS	UTs (IN FORCE)
A. Due to delay in handing over possession by the promoter - In accordance with terms of the agreement or due to revocation or suspension due to force majeure event	Promoter to refund the entire amount plus interest and compensation within 45 days from the date of receipt of termination notice from the allottee.
- Due to force majeure event	The promoter shall refund to the allottee the entire amount received by the promoter from the allottee within 45 days from the date it becomes impossible for the promoter to implement the project due to such force majeure event. (It appears that promoter is not required to pay interest or compensation)
B. Refund in case of breach committed by allottee in payment of instalments	Promoter is required to issue consecutive notices to the allottee for demanding payment of outstanding instalment, falling which, the promoter shall be entitled to cancel the allotment and forfeit the booking amount plus applicable interest and refund the balance amount to the allottee.
C. Voluntary withdrawal - by allottee	Allottee can also voluntarily withdraw without any default by promoter and in such an event, promoter can only forfeit the booking amount and refund the balance within 45 days.



	DELHI (IN FORCE)	KARNATAKA (DRAFT)	TAMIL NADU (DRAFT)	MAHARASHTRA (IN FORCE)
	Same as UT	Same as UT	Same as UT	The promoter shall be liable on demand to refund to the allottee the amounts already received by him in respect of the apartment with interest.
	Same as UT	Same as UT	Same as UT	Silent
	Same as UT	Same as UT	Same as UT	On allottee committing 3 defaults of payment of instalments, the promoter can exercise the option to terminate the agreement by issuing 15 days notice in writing by Registered Post AD at the address provided by the allottee and send a mail on the e-mail address provided by the allottee for demanding payment of outstanding instalment, failing which, the promoter shall be entitled to terminate the agreement and refund within 30 days of termination, the instalments of sale price after adjusting/recovering agreed liquidated damages or any other amount which may be payable to promoter. (Other states restrict it to forfeiture of booking amount only)
	Same as UT	Same as UT	Same as UT	Silent



Disclosure requirement

DELHI & UTs (IN FORCE)

Disclose the original sanctioned plan, layout plan and specifications and the subsequent modifications carried out, if any, including the existing sanctioned plan, layout plan and specifications.

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area or built up area.

In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.

Disclose the (i) total amount of money collected from the allottees, (ii) total amount of money used for development of the project, and (iii) total amount of balance money lying with the promoter.

(Unlike Maharashtra, it does not provide for disclosure of amount of balance money receivable from existing allottees and the total amount of money receivable from sale of unsold units)

MAHARASHTRA (IN FORCE)

The promoter is required to submit the following certificates:

(a) Architect's certificate - Certifying the percentage of completion of construction.

(b) Engineer's certificate - Certifying the estimated cost to complete remaining construction of each of the building/wing of the project.

(c) CA certificate – Certifying the balance cost to complete the project.

(d) CA certificate - Certify the (i) balance amount of receivables from the apartments/flats/premises sold or allotted with respect to those in which agreements have been executed, and (ii) estimated amount of receivables from unsold units calculated at the prevailing Annual Statement of Rates (ASR).

(e) The number of apartments sold or allotted to allottees and the basis on which they were sold/allotted. (Basis over here refers to carpet area, super area, super built up area).

(f) In case of plotted development, the area of plots sold to allottees and details like the extent of share of common areas and amenities.



KARNATAKA (DRAFT)

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area or built up area.

In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such a super area, super built up area or built up area.

In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.

TAMIL NADU (DRAFT)

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area or built up area.

In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.

WEST BENGAL (DRAFT)

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area or built up area.

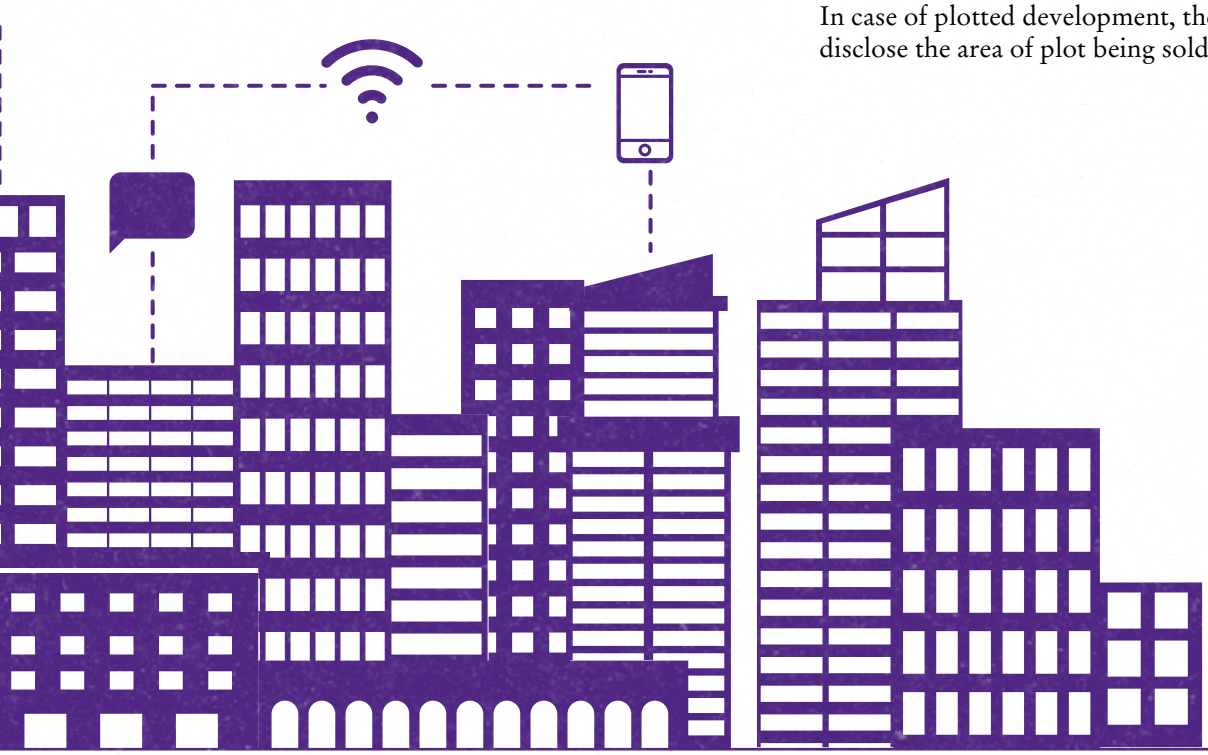
In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.

MADHYA PRADESH (IN FORCE)

Disclose the status of project and extent of completion.

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area or built up area.

In case of plotted development, the promoter shall disclose the area of plot being sold to allottees.



Disclosure on timeline for completion of balance construction

DELHI (IN FORCE)

Disclose the original time period disclosed to the allottee for completion of the project at the time of sale including the delay and the time period within which he undertakes to complete the pending project, which shall be commensurate with the extent of development already completed, and this information shall be certified by an engineer, an architect and a chartered accountant in practice.

MAHARASHTRA (IN FORCE)

Disclose all details of ongoing project including (i) the extent of the construction work completed in respect of buildings as per the last approved sanctioned plan of the project, and (ii) the extent of development of common areas, amenities etc. along with expected period of completion of the ongoing project which shall commensurate to the extent of development work completed.

For Delhi, UT and Maharashtra, it is unclear as to whether the promoter would at all be liable to pay compensation for delay of the contract period and if yes, at what rate, i.e. at the contractual rate or the rates fixed as per the rules or whether the promoter will be absolved from the compensation for such delay as long as she/he completes the project within the new timeline so declared

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Silent

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

Exemption for seeking 2/3rd consent of allottees in case of modification of plans

DELHI & UTs (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

Prior written consent of atleast 2/3rd of the allottees would not be required if – (i) implementation of the proposed plan has already been disclosed to the allottee under the agreement prior to registration, or (ii) modification is required to be made in compliance of any order or direction issued by competent authority or statutory authority.

Under the agreement for sale, the promoter is not required to obtain the consent of allottee in case of any alteration or addition to the apartment required by Government authorities or due to change in law.

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Silent

TAMIL NADU (DRAFT)

If the project has been conceived to be developed in phases and the plans for the initial phase are approved by the planning authority prior to the notification of the rules, then, for such projects, the requirement of obtaining 2/3rd consent from existing allottee is exempted for addition/revision/modification of plans for subsequent phases of development, provided the scheme of developing the project in phased manner has been agreed upon by the allottee and promoter in the agreements executed between them.

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

Deposit of 70 per cent realisation - past or future receivables

DELHI & UT (IN FORCE)

Promoter is required to deposit in the separate bank account, 70 per cent of the amounts already realised from the allottees, which have not been utilised for construction of the project or the land cost.

MAHARASHTRA (IN FORCE)

Maharashtra Rules clarify that promoter is required to only deposit 70 per cent of such amounts as are to be realised from the allottees after the Act comes into force.

However, if the receivables of the ongoing project is less than the estimated cost of balance construction, then the promoter shall deposit 100 per cent of the amounts to be realised in the separate account.

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Silent

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

States which are silent on this aspect need to classify on similar lines with Delhi, UTs and Maharashtra.



Disclosure of carpet area

DELHI (IN FORCE)

Disclose the size of the apartment based on the carpet area even if sold on any other basis such as super area, super built up area, built up area, etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

MAHARASHTRA (IN FORCE)

Disclose the number of apartment sold or allotted on carpet area basis or on other basis such as built up area, super built up area, etc. Such disclosure shall not affect the validity of the agreement entered into between the promoter and the allottee.

This is a departure from other rules which require the promoter to disclose the carpet area even if sold earlier on built up or super built up area.

KARNATAKA (DRAFT)

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built-up area, built up area, etc which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super built up area, built up area, etc which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

UTs (IN FORCE)

The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

TAMIL NADU (DRAFT)

The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

WEST BENGAL (DRAFT)

The promoter shall disclose the size of the apartment based on the carpet area even if sold on any other basis such as super area, super built up area, built up area, etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.

MADHYA PRADESH (IN FORCE)

The promoter shall disclose the size of the apartment based on the carpet area even if sold on any other basis such as super area, super built up area, built up area, etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.



Exception to ongoing project

DELHI & UTs (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

Silent

ANDHRA PRADESH – EXEMPTION OF ONGOING PROJECT

Projects which fulfil any of the following criteria, will not be treated as an ongoing project under the Act:

- Where roads, open spaces, amenities and services have been handed over to the local authority in layout projects;
- Where all slabs are laid in housing projects;
- Where all the development work have been completed and sale/lease deeds of 50 per cent of the apartments/ houses/plots have been executed;
- Where development works have been completed and application has been filed with the competent authority for issue of completion certificate or occupancy certificate.

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Projects which fulfil any of the following criteria, will not be treated as an ongoing project under the Act:

- Where the services have been handed over to the Local Authority for maintenance;
- Where common areas and facilities have been handed over to the Association or the Residents' Welfare Association for maintenance;
- Where all the development work have been completed and sale/lease deeds of 60 per cent of the apartments/ houses/plots have been executed;
- Where all the development works have been completed and application has been filed with the competent authority for issue of completion certificate.

TAMIL NADU (DRAFT)

Projects which fulfil any of the following criteria, will not be treated as an ongoing project:

a. Where services have been handed over to the Local Authority for maintenance; or

b. Where common areas and facilities have been handed over to the Association or the Residents' Welfare Association for maintenance; or

c. Where all development works are complete and application or intimation letter has been submitted with the competent authority for obtaining completion certificate, if applicable.

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

Definition of land and construction cost

DELHI & UT (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

Land cost:

a. Acquisition cost, lease charges, overhead cost, marketing cost, legal cost and supervision cost.

b. Premium paid to obtain development rights, FSI, additional FSI, fungible FSI, and any other incentive under DCR.

c. Acquisition of TDR.

d. Consideration payable to outgoing developer.

e. Amounts payable to state government or competent authority or any other statutory authority of the state or central government, towards stamp duty, transfer charges, registration fees etc.

f. Premium payable as per annual statement of rates (ASR) for redevelopment of land owned by public authorities.

g. In case the promoter is not required to incur any cost towards acquisition of the land due to inheritance, gift or otherwise, the cost of land shall be reckoned on basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, 1958 relevant on the date of registration of the project.

Construction cost:

a. On-site and off-site expenditure for development of project.

b. Payment of taxes, fees, charges, premiums, interest etc.

c. Principal sum and interest payable to financial institutions, scheduled banks, non-banking financial institution (NBFC) or money lenders.

Construction cost shall not include the sum which the promoter has raised and incurred by way of loan obtained from such banks, non-banking finance companies or money-lenders, for the purpose of purchase of land for the project or for obtaining the development rights over such land.

d. Rehabilitation scheme – expenditure towards clearance of land or encumbrances for temporary transit accommodation, construction of rehab building, overhead cost, ASR linked premium, fees, charges and security deposits to authorities.

KARNATAKA (DRAFT)

Construction cost: Cost incurred by the promoter towards on-site expenditure for the physical development of the project.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Construction cost: Cost incurred by the promoter, towards the on-site expenditure for the physical development of the project.

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

Registration fee

DELHI & UTs (IN FORCE)

Commercial project: Rs 20 per square metre if land area is less than 1,000 square metre. Rs 25 for every square metre if land area exceeds 1,000 square metres, but not more than Rs 10,00,000;

Group housing project: Rs 5 per square metre if land area is less than 1,000 square metre. Rs 10 for every square metre if land area exceeds 1,000 square metres, but not more than Rs 5,00,000;

Mixed development Project (residential and commercial): Rs 10 per square metre if land area is less than 1,000 square metre. Rs 15 for every square metre if land area exceeds 1,000 square metres, but not more than Rs 7,00,000;

Plotted development project: Rs 5 per square metre but shall not be more than Rs 2,00,000.

MAHARASHTRA (IN FORCE)

Rs 10 per square metre of the land area subject to minimum of Rs 50,000 and maximum of Rs 10,00,000.

KARNATAKA (DRAFT)

Not provided

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Commercial project: Rs 20 per square metre if land area is less than 1,000 square metres. Rs 1,000 for every 100 square metres or part thereof if land area exceeds 1,000 square metres;

Residential project: Rs 10 per square metre if land area is less than 1,000 square metre. Rs 500 for every 100 square metres or part thereof if land area exceeds 1,000 square metres.

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

Commercial project: Rs 50 per square metre if land area is less than 1,000 square metre. Rs 100 for every square metre if land area exceeds 1,000 square metres;

Residential project: Rs 10 per square meter if land area is less than 1,000 square metres. Rs 20 for every square metre or part thereof if land area exceeds 1,000 square metres.

MADHYA PRADESH (IN FORCE)

Residential project: Rs 10 per square meter if land area is less than 1,000 square metres. Rs 20 for every square metre or part thereof if land area exceeds 1,000 square metres.

Commercial project: Rs 50 per square metre if land area is less than 1,000 square metres. Rs 100 for every square metre if land area exceeds 1,000 square metres.

OTHER KEY PROVISIONS

DELHI & UTs (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

Silent

KARNATAKA (DRAFT)

A plan of the project depicting the division or proposed division of land into plots, roads, open spaces, amenities, etc. and other details as may be necessary.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Plan of the project depicting the proposed division of land into plots, roads, open spaces, amenities, etc. and other details as may be necessary.

TAMIL NADU (DRAFT)

A plan of the project depicting the division or proposed division of land into plots, roads, open spaces, amenities, etc., and other details as may be necessary.

WEST BENGAL (DRAFT)

A plan of the project depicting the division or proposed division of land into plots, roads, open spaces, amenities etc. and other details as may be necessary.

MADHYA PRADESH (IN FORCE)

A plan of the project depicting the division or proposed division of land into plots, roads, open spaces, amenities etc. and other details as may be necessary.



OTHER KEY PROVISIONS

Parking space

DELHI & UTs (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

Covered parking space means an enclosed or covered area as approved by the Competent Authority as per the applicable Development Control Regulations for parking of vehicles of the allottees which may be in basements and/or stilt and/or podium and/or space provided by mechanised parking arrangements, but shall not include a garage and/or open parking.

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Silent

TAMIL NADU (DRAFT)

Parking means the parking space(s) as shown in the plans approved by the planning authority.

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

Litigation to be disclosed

DELHI (IN FORCE)

Details of litigations in relation to the project including details of litigations which have been disposed of by the concerned court in the past 5 years in relation to the real estate projects developed or being developed by the promoter.

MAHARASHTRA (IN FORCE)

Details of proceedings in relation to the project which are sub-judice.

KARNATAKA (DRAFT)

Details of past or ongoing litigations in relation to the real estate project.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Details of past or ongoing litigations in relation to the real estate project.

UTs (IN FORCE)

Details of litigation in the past 5 years in relation to the real estate projects developed or being developed by the promoter.

TAMIL NADU (DRAFT)

Details of past or ongoing litigations in relation to the real estate project.

WEST BENGAL (DRAFT)

Details of past or ongoing litigations in relation to the real estate project.

MADHYA PRADESH (IN FORCE)

Details of ongoing litigations in relation to the real estate project.

Extension of registration

DELHI & UTs (IN FORCE)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

MAHARASHTRA (IN FORCE)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

Under the Rules, extension will also be granted where actual work could not be carried by the promoter as per the sanctioned plan due to specific orders relating to the project from any Court of law, tribunal, competent authority, statutory authority or a high power committee or due to such mitigating circumstances as may be decided by the Authority.

KARNATAKA (DRAFT)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

TAMIL NADU (DRAFT)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

WEST BENGAL (DRAFT)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

MADHYA PRADESH (IN FORCE)

As per the Act – (i) force majeure event and (ii) under reasonable circumstances for such period not exceeding 1 year.

Revocation – protecting interests of mortgagee and investors

DELHI & UTs (IN FORCE)

Silent

MAHARASHTRA (IN FORCE)

While facilitating the remaining development work, the Authority shall take such measures as may be required to protect the interests of mortgagees and investors which have been disclosed by the promoter to the Authority and also displayed on the website of the Authority.

The Authority shall also give adequate opportunity to be heard to debt and equity investors in the project including, but not restricted to scheduled banks; housing finance companies, insurance companies, NBFC operating as asset finance companies, investment companies, loan companies, investment finance companies, infrastructure debt funds, micro finance institutions, foreign direct investors, private equity funds, Real Estate Investment Trust (REIT), etc. Rules of other states do not deal with this matter in such detail.

KARNATAKA (DRAFT)

Silent

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Silent

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

Silent

MADHYA PRADESH (IN FORCE)

Silent

(Other states should also consider similar provisions as mentioned in Maharashtra rules in order to protect the interests of mortgagees and investors which have been disclosed to the Authority)

Car Parking (Open and closed/covered*)

DELHI & UTs (IN FORCE)

The rule requires the promoter to disclose the number of open and covered car parks available in the project.

The Agreement for Sale in Recital L suggest that covered car park can be sold to the allottee and price of such car park can be mentioned separately in the agreement.

MAHARASHTRA (IN FORCE)

The rule requires the promoter to disclose the number of open, covered, enclosed or unenclosed car park in the project.

The Agreement for Sale in Clause 1(a) suggest that covered car park can be sold to the allottee and price of such car park can be mentioned separately in the agreement.

KARNATAKA (DRAFT)

The rule requires the promoter to disclose the number of open car park available in the project.

The Agreement for Sale in Recital L suggest that closed car park can be sold to the allottee and price of such car park can be mentioned separately in the agreement.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

The rule requires the promoter to disclose the number of open car park available in the project.

As opposed to Delhi and Karnataka, the rules provide that covered parking can be sold.

TAMIL NADU (DRAFT)

The rule requires the promoter to disclose the number of open car parks available in the project.

As opposed to Delhi, Karnataka and UT, the rules provide that covered parking can be sold.

The Agreement for Sale in Recital L also suggest that closed car park can be sold to the allottee and price of such car park can be mentioned separately in the agreement.

WEST BENGAL (DRAFT)

The rule requires the promoter to disclose the number of open car parks available in the project.

MADHYA PRADESH (IN FORCE)

The rule requires the promoter to disclose the number of open car parks available in the project.

*Most state rules do not define or give details of covered car parking

OTHER KEY PROVISIONS

Declaration of non-discrimination

DELHI & UTs (IN FORCE)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

MAHARASHTRA (IN FORCE)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

KARNATAKA (DRAFT)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

TAMIL NADU (DRAFT)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building.

WEST BENGAL (DRAFT)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building.

MADHYA PRADESH (IN FORCE)

The promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be.

Updating status of construction with photographs on the website

DELHI & UTs (IN FORCE)

Each building, floor, internal infrastructure and common areas.

MAHARASHTRA (IN FORCE)

Silent

KARNATAKA (DRAFT)

Each building, floor, internal infrastructure and common areas.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Each building, floor, internal infrastructure and common areas.

TAMIL NADU (DRAFT)

Each building, floor, internal infrastructure and common areas.

WEST BENGAL (DRAFT)

Each building, floor, internal infrastructure and common areas.

MADHYA PRADESH (IN FORCE)

Each building, floor, internal infrastructure and common areas.

Submission of land title search report

DELHI & UTs (IN FORCE)

From an advocate with experience of at least 10 years.

MAHARASHTRA (IN FORCE)

From an advocate in practice.

KARNATAKA (DRAFT)

From an advocate with experience of at least 10 years in land-related matters.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

From an advocate with experience of at least 10 years in land related matters.

TAMIL NADU (DRAFT)

Silent

WEST BENGAL (DRAFT)

From an advocate with experience of at least 10 years in land-related matter.

MADHYA PRADESH (IN FORCE)

From an advocate with experience of at least 10 years.

Submission of no encumbrance certificate

DELHI (IN FORCE)

Through an advocate with experience of at least 10 years from the revenue authority not below the rank of the tehsildar.

MAHARASHTRA (IN FORCE)

Non-encumbrance certificate through an advocate having experience of at least 10 years from the revenue authority not below the rank of tehshildar.

KARNATAKA (DRAFT)

From the concerned sub-registrar through an advocate with experience of at least 12 years in land-related matters.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

From an advocate with experience of at least 10 years in land-related matters.

UTs (IN FORCE)

Non-encumbrance certificate through an advocate having experience of at least 10 years from the revenue authority not below the rank of tehshildar.

TAMIL NADU (DRAFT)

Updated encumbrance certificate, extract/certificate of Revenue Authorities reflecting the title of the promoter to the land on which development is proposed.

WEST BENGAL (DRAFT)

From an advocate with experience of at least 10 years in land-related matters.

MADHYA PRADESH (IN FORCE)

From an advocate with experience of at least 10 years.

Submission of income tax returns

DELHI (IN FORCE)

Authenticated copy of the PAN card.

Annual report including profit and loss account, balance sheet, cash flow statement, directors' report and the auditors' report for the preceding 3 financial years.

If annual report is not available then the audited profit and loss account, balance sheet, cash flow statement, directors' report and the auditors' report for the preceding 3 financial years.

MAHARASHTRA (IN FORCE)

Income tax returns of the preceding 3 financial years.

KARNATAKA (DRAFT)

Authenticated copy of the PAN card.

Income Tax Returns for preceding three financial years. Audited balance sheet for the preceding financial year.

In case of a newly incorporated or registered entity - annual returns of the parent entity for the preceding 3 financial years.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Authenticated copy of PAN card.

Income Tax Returns for preceding 3 financial years. Audited balance sheet for the preceding financial year.

In case of a newly incorporated or registered entity - annual returns of the parent entity for the preceding 3 financial years.

UTs (IN FORCE)

Annual report including profit and loss account, balance sheet, cash flow statement, directors' report and the auditors' report for the preceding 3 financial years.

If annual report is not available then the audited profit and loss account, balance sheet, cash flow statement, directors' report and the auditors' report for the preceding 3 financial years.

TAMIL NADU (DRAFT)

Audited balance sheet of the promoter firm/company for the preceding financial year and income tax returns of the promoter firm/company for 3 preceding financial years.

WEST BENGAL (DRAFT)

Income tax returns for preceding 3 financial years. Audited balance sheet for the preceding financial year.

In case of a newly incorporated or registered entity - annual returns of the parent entity for the preceding 3 financial years.

MADHYA PRADESH (IN FORCE)

Income tax returns for preceding 3 financial years. Audited balance sheet for the preceding financial year.

In case of a newly incorporated or registered entity - annual returns of the parent entity for the preceding 3 financial years.

Rate of interest (Promoter and allottee)

DELHI & UTs (IN FORCE)

State Bank of India highest marginal cost of funds-based Lending Rate + 2%.

Provided that in case the State Bank of India highest marginal cost of funds-based lending rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may from time to time for lending to the general public.

MAHARASHTRA (IN FORCE)

State Bank of India's highest marginal cost of lending rate plus 2%

KARNATAKA (DRAFT)

State Bank of India highest marginal cost of funds-based lending Rate + 2%

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

No rate specified

TAMIL NADU (DRAFT)

Repo rate of RBI plus 2 %

WEST BENGAL (DRAFT)

State Bank of India highest marginal cost of funds-based lending rate + 2%

MADHYA PRADESH (IN FORCE)

State Bank of India highest marginal cost of funds-based lending rate + 2%

Timelines for refund by promoter

DELHI & UTs (IN FORCE)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

MAHARASHTRA (IN FORCE)

Within 30 days from the date on which the refund along with applicable interest and compensation becomes due and payable.

KARNATAKA (DRAFT)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

TAMIL NADU (DRAFT)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

The rule further provides that the entitling allottee shall get full refund at any time if the builder has not followed the time schedule. The builder shall not keep 10 per cent of the booked value of the property.

WEST BENGAL (DRAFT)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

MADHYA PRADESH (IN FORCE)

Within 45 days from the date on which the refund along with applicable interest and compensation becomes due.

Promoter cannot withdraw penalty, interest and compensation from a separate account

DELHI & UTs (IN FORCE)

The Authority may in the interest of the allottees, inquire into the payment of amounts imposed as penalty, interest or compensation, paid or payable by the promoter, in order to ensure that the promoter has not withdrawn the said amount from a separate account.

The Act or rule does not clarify whether in the event of termination of the agreement, will the promoter be permitted to withdraw 70 per cent of the amount received from the allottee from the separate account toward refund of such amount to the allottee in the manner prescribed under the rules.

MAHARASHTRA (IN FORCE)

Silent

KARNATAKA (DRAFT)

Same as Delhi

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

Same as Delhi

TAMIL NADU (DRAFT)

Same as Delhi

WEST BENGAL (DRAFT)

Same as Delhi

MADHYA PRADESH (IN FORCE)

Same as Delhi



Compounding of offences

DELHI (IN FORCE)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

MAHARASHTRA (IN FORCE)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 5 per cent (in case of violation of order of Authority) and 5 per cent (in case of violation of order of Appellate Tribunal) of the estimated cost of real estate project which may extend up to 10 per cent.

In case of Agent - Offence punishable with imprisonment can be compounded by paying 5 per cent of the estimated cost of the plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, which may extend up to 10 per cent.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 5 per cent of the estimated cost of the plot, apartment or building, as the case may be, which may extend up to 10 per cent.

KARNATAKA (DRAFT)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

UTTAR PRADESH (NOTIFIED BUT NOT IN FORCE)

In case of Promoter - Offences punishable with imprisonment under the Act shall be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10 per cent of the estimated cost of real estate project for 3 years.

In case of Agent - Offences punishable with imprisonment under the Act shall be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10 per cent of the estimated cost of plot, apartment or building for 1 year.

In case of Allottee - Offences punishable with imprisonment under the Act shall be compounded by paying money proportionate to the term of imprisonment subject to maximum of 10 per cent of the estimated cost of plot, apartment or building for 1 year.

UTs (IN FORCE)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

TAMIL NADU (DRAFT)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

WEST BENGAL (DRAFT)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

MADHYA PRADESH (IN FORCE)

In case of Promoter - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the real estate project;

In case of Agent - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be of the real estate project for which the sale or purchase has been facilitated.

In case of Allottee - Offence punishable with imprisonment can be compounded by paying 10 per cent of the estimated cost of the plot, apartment, or building as the case may be.

PROVISIONS WHERE ACT IS SILENT

Overlap with certain special Acts

Special Acts may have an overriding effect. However, there is an overlap of rules. This needs further clarification which is important to safeguard the interests of developers as well as consumers.

Compliance related to mixed projects

There is no clarity on the type of project and their definition – whether the project is a mixed, standalone residential or commercial or a large scale township. For instance, a certain portion of a mixed land use project or a particular tower of a large township project can be treated as a single project.

Change of guard during the ongoing projects

A number of times companies sell stakes or a portion of the project to a private equity fund. As a result, the management changes. Act is silent on its impact and the eventuality.

Structural defect and the ones induced by allottees

There is a no mention of structural defects introduced by allottee after occupation certificate has been issued.

Withdrawal from separate account at the time of refund

In case of termination, where the promoter is required to refund the instalments received from the allottee, it is not clear if the promoter will be permitted to withdraw from the separate account 70 per cent of the realisations received from the allottee.



About us

About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialisation, and its emergence as one of the most rapidly growing global economies.

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Founded in 1911, Khaitan & Co combines a rich heritage of over a 100 years with modern, cutting-edge, strategic and solution-oriented legal practices and offers full service legal solutions to its domestic and international clients. The Firm has a strength of over 500 fee-earners including 115 partners and directors across its offices in Mumbai, New Delhi, Bengaluru and Kolkata. The Firm's Real Estate Team has diverse skills and experience to support the needs of stakeholders across the real estate value chain. From handling complex real estate transactions to fast and efficient asset management, the Firm's lawyers offer complete service and have executed some of the largest real estate transactions in the country. Clients trust the Firm to manage the intricacies of their transactions and disputes, complementing legal and commercial acumen to provide counsel that translates into successful outcomes. The wealth of experience and range of skills in the Firm's team helps us deliver a seamless and complete service along all stages of the asset lifecycle.

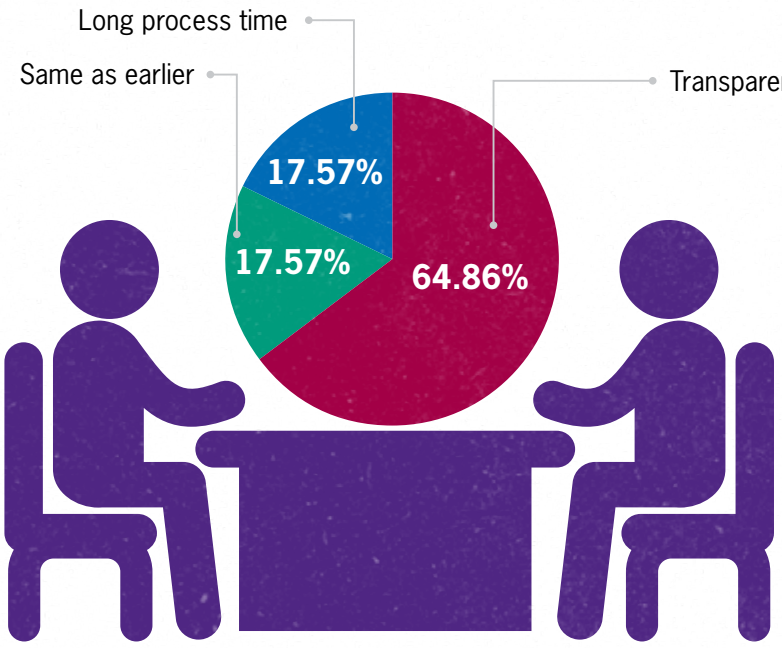
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Annexure – How will RERA impact the sector and stakeholders

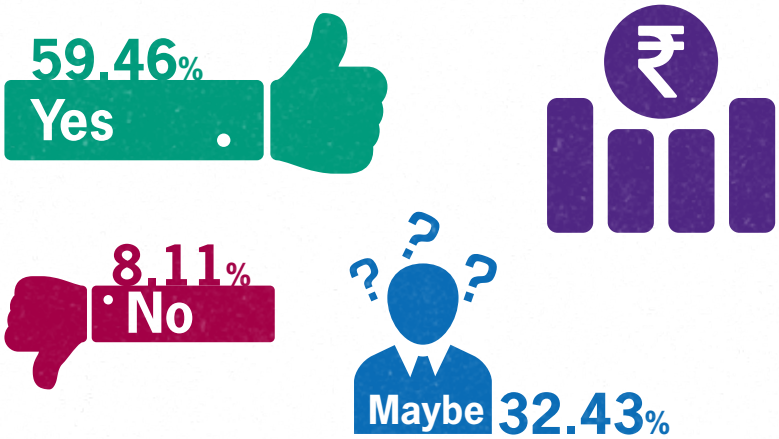
Results of a survey conducted during the second half of 2016

1. Post implementation of RERA, what the are major changes that you expect to see while making real estate dealings?



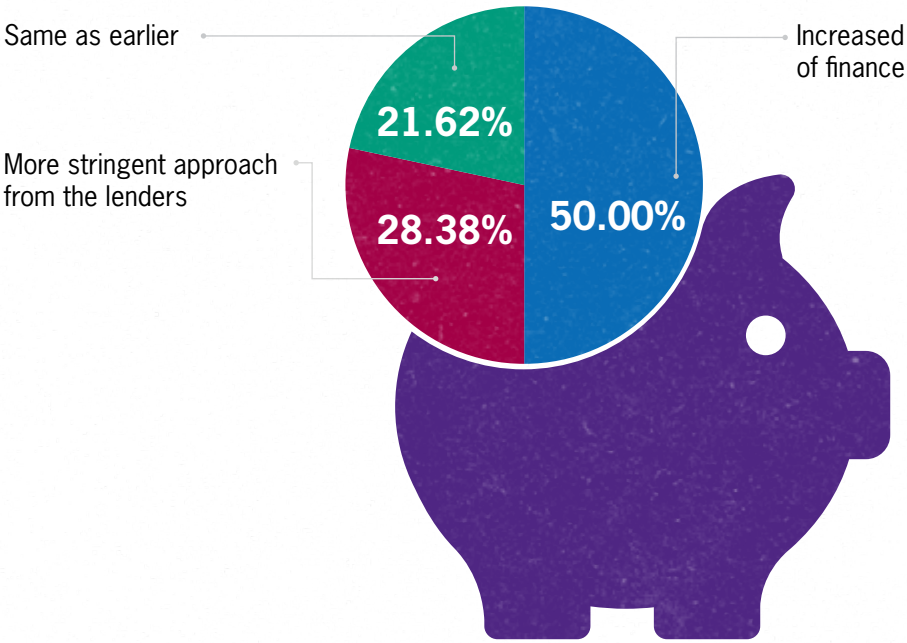
More than 60% of the respondents feel that, going forward, transparency will increase in real estate dealings

2. As an investor in real estate, do you think RERA will boost the governance hold on the sector and eventually lead to increase in foreign (FDI) and domestic investments into the sector in near future?



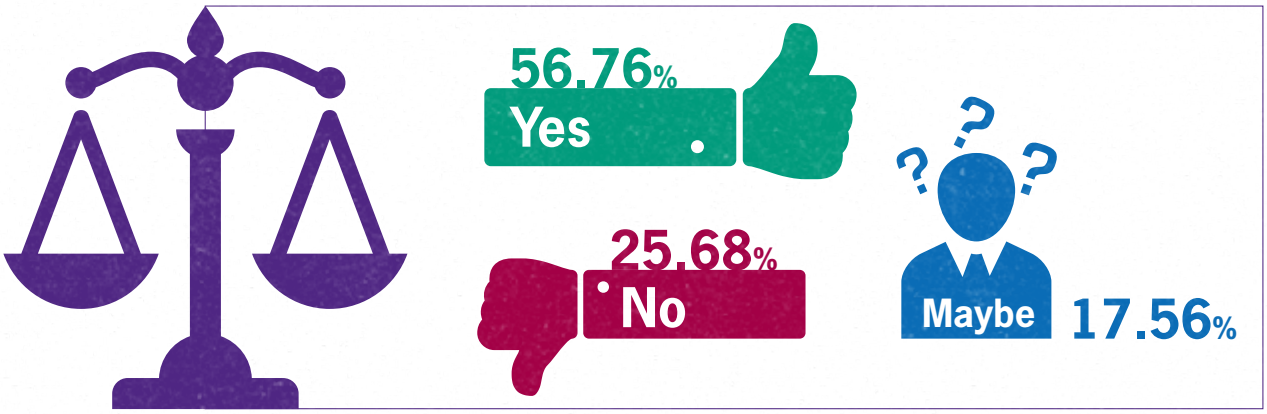
Close to 60% of the respondents feel that RERA will increase the governance hold in the sector and lead to increased investments

3. Post RERA implementation, what changes do you expect in lending options from bankers/institutions?



Approximately 50% of the respondents hope that the lending options from lenders will improve and availing finance will be easier.

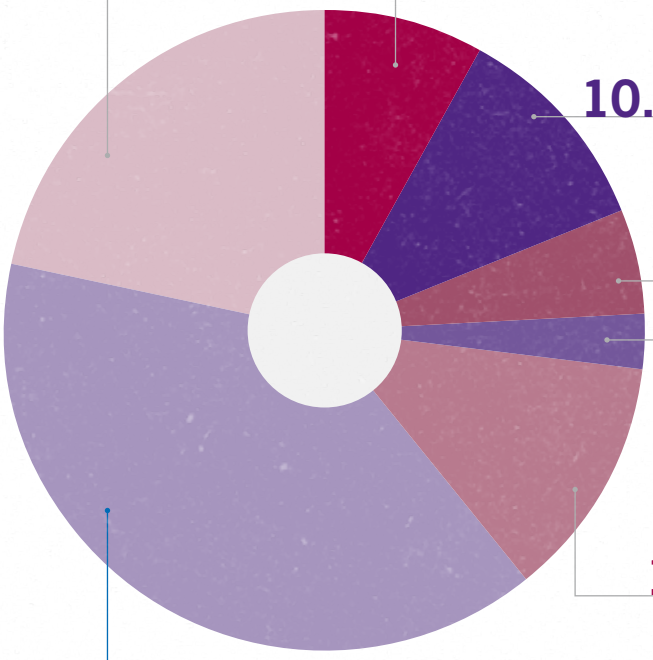
4. The Act provides for lot of transparency to be maintained by the developers. Do you think these practices will reduce litigation going forward?



More than 50% of the respondents believe that RERA will reduce litigations

5. What is your opinion on the rule of depositing 70 per cent of sales proceeds in a separate account? (can choose any two)

- It will help in getting timely delivery of the project
- This will lock the cash and force the builders to rely on further borrowings, which will eventually lead to higher project cost
- It will help in eliminating the fly-by-night operators in the real estate sector
- No major change



21.62% b. This will lock the cash and force the builders to rely on further borrowings, which will eventually lead to higher project cost
c. It will help in eliminating the fly-by-night operators in the real estate

8.11% a. It will help in getting timely delivery of the project

10.81% b. This will lock the cash and force the builders to rely on further borrowings, which will eventually lead to higher project cost

5.41% c. It will help in eliminating the fly-by-night operators in the real estate

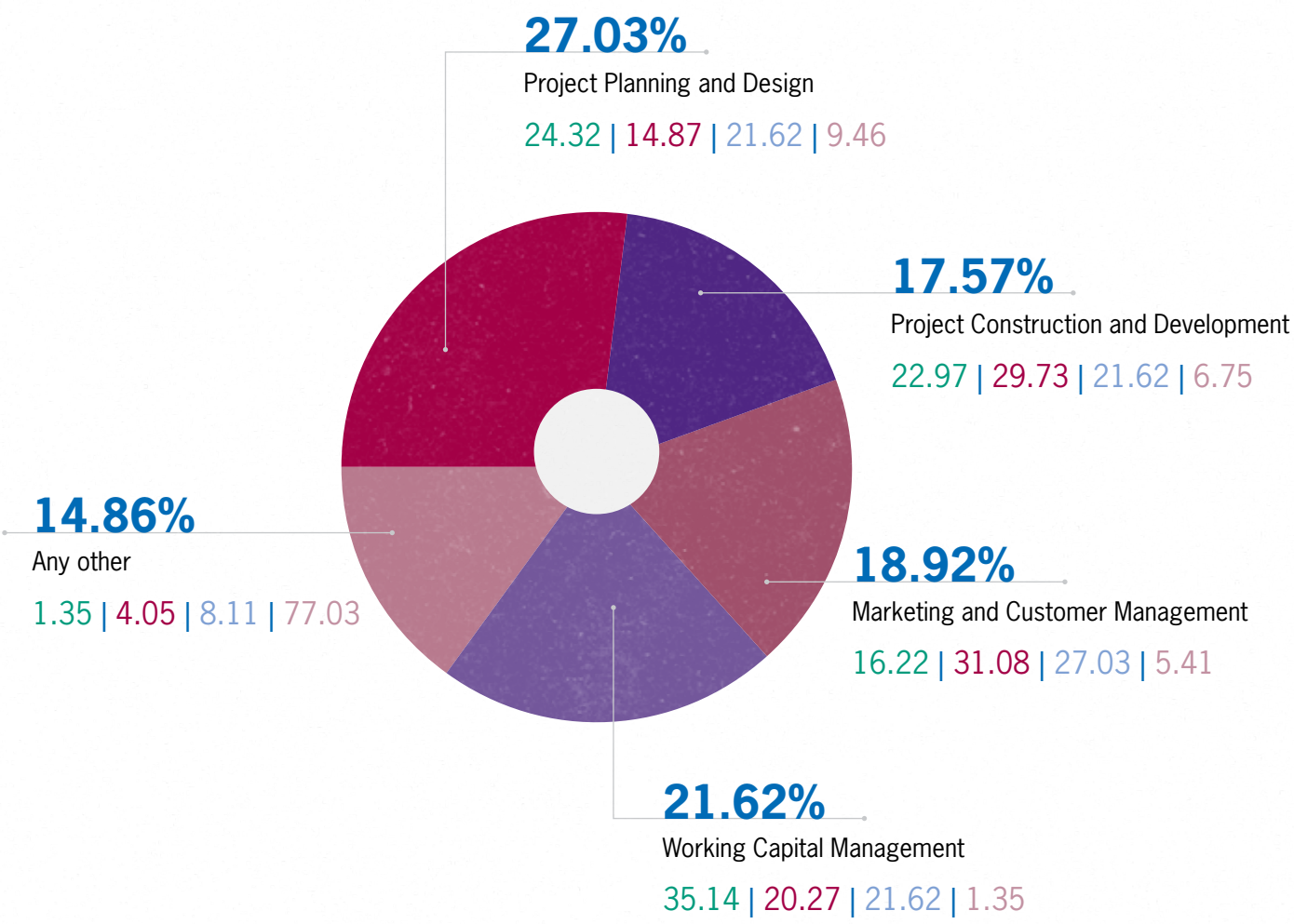
2.70% d. No major change

12.16% a. It will help in getting timely delivery of the project
b. This will lock the cash and force the builders to rely on further borrowings, which will eventually lead to higher project cost

39.19% a. It will help in getting timely delivery of the project
c. It will help in eliminating the fly-by-night operators in the real estate

Close to 40% of the respondents feel that the implementation of RERA will help timely delivery of projects and also eliminate non- serious players from the sector

6. Where do you see the maximum impact of RERA in the operations of your Company? (Rank 1 -5)



More than 40% of the respondents believe that maximum impact will be in the area of project planning and construction

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