



Ernakulam Branch of
Southern India Regional Council (SIRC) of
The Institute of Chartered Accountants of India (ICAI)

**IMPACT OF RERA
ACCOUNTS, INCOME TAX,
GST AND AUDIT**

ON : 22ND MAY, 2021

Presented by **CA.Ramesh Prabhu, Chairman,**
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LAWS EVOLVED IN PROPERTY TRANSACTION

- **Contract Act 1872 –General**
- **Transfer of Property Act,1882**
- **Indian Stamp Act, 1899**
- **Registration Act, 1908**
- **Cooperative Societies Act 1912**
- **Mah.Ownership Flats Act, 1963**
- **The Kerala Apartment Ownership Act, 1983**
- **Consumer Protection Act 1986**
- **Real Estate(Reg & Dev) Act, 2016**

WORKING OF MOFA 1963

**DUTY OF BUILDER TO DISCLOSE
VARIOUS DOCUMENT,
PLANS ETC.**



Court Orders
or Punishment

State Government
Direction or Action



सत्यमेव जयते

1

**Enforcement & Delivery Mechanisms
are Missing !**

2

**Compliance is
Missing !**



Flat buyer, RTI activist & common man may file RTI applications
& write complaints to **GOVERNMENT**,
and struggles to get orders passed against builder.

and / or

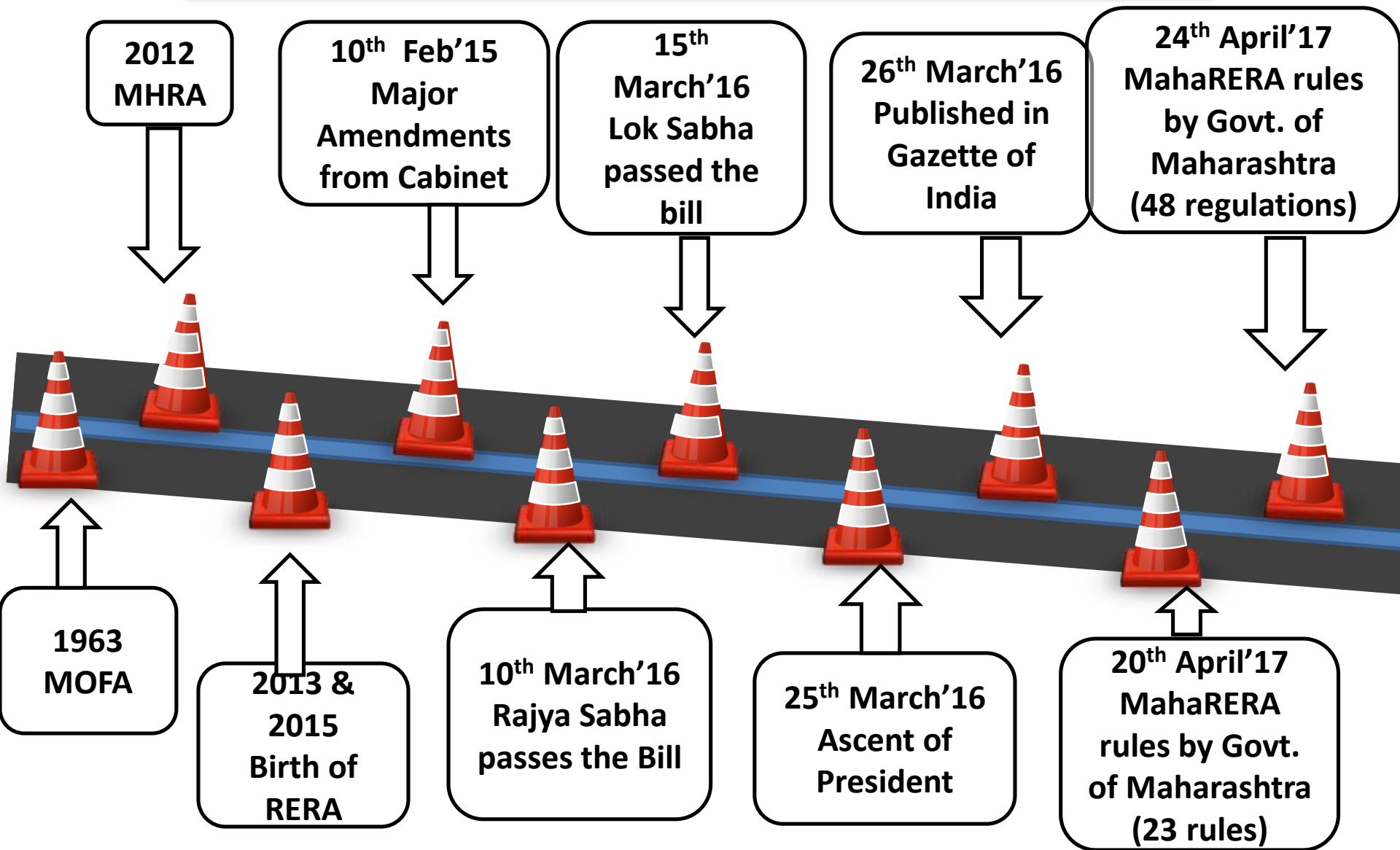
**Engages LAWYER and fights in
COURT for several years**

5

3

4

“ I: RERA JOURNEY ”



SUPREME COURT OF INDIA **on Constitutional Validity of RERA**

Nearly 40 petitions in different High Courts.

Union Govt filed a Transfer Petition (Civil) Nos. 1448- 1456 of 2017

Held :

- (1) The Bombay High Court to hear all the petitions**
- (2) Decide the petitions within 2 months**

BOMBAY HIGH COURT WP 2737 of 2017
on Constitutional Validity of RERA

• **Neelkamal Realtors Suburban Pvt. Ltd.**

Vs.

Union of India and ors.

• **Held on : DECEMBER 06, 2017**

Challenged :

(1) RERA violative of the provisions of Articles 14, 19(1)(g), 20 and 300-A of the Constitution of India.

(2) Most of the sections of RERA

BOMBAY HIGH COURT WP 2737 of 2017

on Constitutional Validity of RERA

- **Held :**
- **All the provisions of RERA constitutionally valid and directed to register the on going projects and comply with RERA.**
- **Section 6 regarding extension of the registration as against one year, the RERA to decide on case to case basis.**
- **Appellate Tribunal U/s 43 to have two judicial members as against earlier one.**

SUPREME COURT :WP 43 OF 2019

- **Pioneer Urban Land and Infrastructure Ltd**
- **Vs**
- **Union of India & Others**
- **Order Dated: 9th August, 2019**
- **Challenged Home Buyers as Financial Creditors under IBC, 2016 while RERA in place.**
- **Held :**
- **The Amendment to the Code include Home Buyers as financial creditor u/s 5(8)(f) does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.**

SUPREME COURT : WP 43 OF 2019

- **Held :**
- **The RERA is to be read harmoniously with the Code**
- **In the event of conflict that the Code will prevail over the RERA.**
- **Concurrent remedies to Allottees:**
 - (a) Consumer Protection Act, 1986,**
 - (b) RERA**
 - (c) Triggering of the Code.**
- **Directed the Chief Secretaries of all the states/ UT to appoint Permanent Authority/Tribunal in 3 months as per RERA.**

SUPREME COURT :WP 43 OF 2019

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SUPREME COURT :WP (C) 116 OF 2019

- Forum for People's Collective Efforts (FPCE) & Anr.
Versus The State of West Bengal & Anr. ...
- **Order dated:** May 4, 2021
- **Challenged** The constitutional validity of the West Bengal Housing Industry Regulation Act, 2017 ("WB-HIRA"/the "State enactment") under Article 32.
- **Held :**
- **WB-HIRA is repugnant to the RERA, and is hence unconstitutional.**
- **Parliament having legislated on a field covered by the Concurrent List, it is constitutionally impermissible for the State Legislature to enact a law over the same subject matter by setting up a parallel legislation.**

Laws in Kerala

Initially : The Kerala Real Estate (Regulation and Development) Act, 2015 was notified.

After the RERA is enacted in 2016 and implemented from 1st May, 2017 across India

Kerala Real Estate (regulation and development) Act repeal Act,2017 was enacted.

The Kerala Real Estate (Regulation and Development) Rules 2018

Kerala Real Estate Regulatory Authority (General) Regulations-2020



Kerala RERA

Real Estate Regulatory Authority

- Home
- About ▾
- Careers
- Projects
- Complaints ▾
- Downloads
- Act & Rules
- Orders&Circulars
- Rulings ▾
- Cause List ▾

Kerala Real Estate Regulatory Authority
Online Application
Login

FLASH NEWS ATTENTION - PUBLIC NOTICE: Date extension for uploading the details of Projects already registered to web Portal

WHY THIS Act IS REQUIRED..??



**HIGHLY
UNREGULATED**

NO TRANSPARENCY

NO INFORMATION

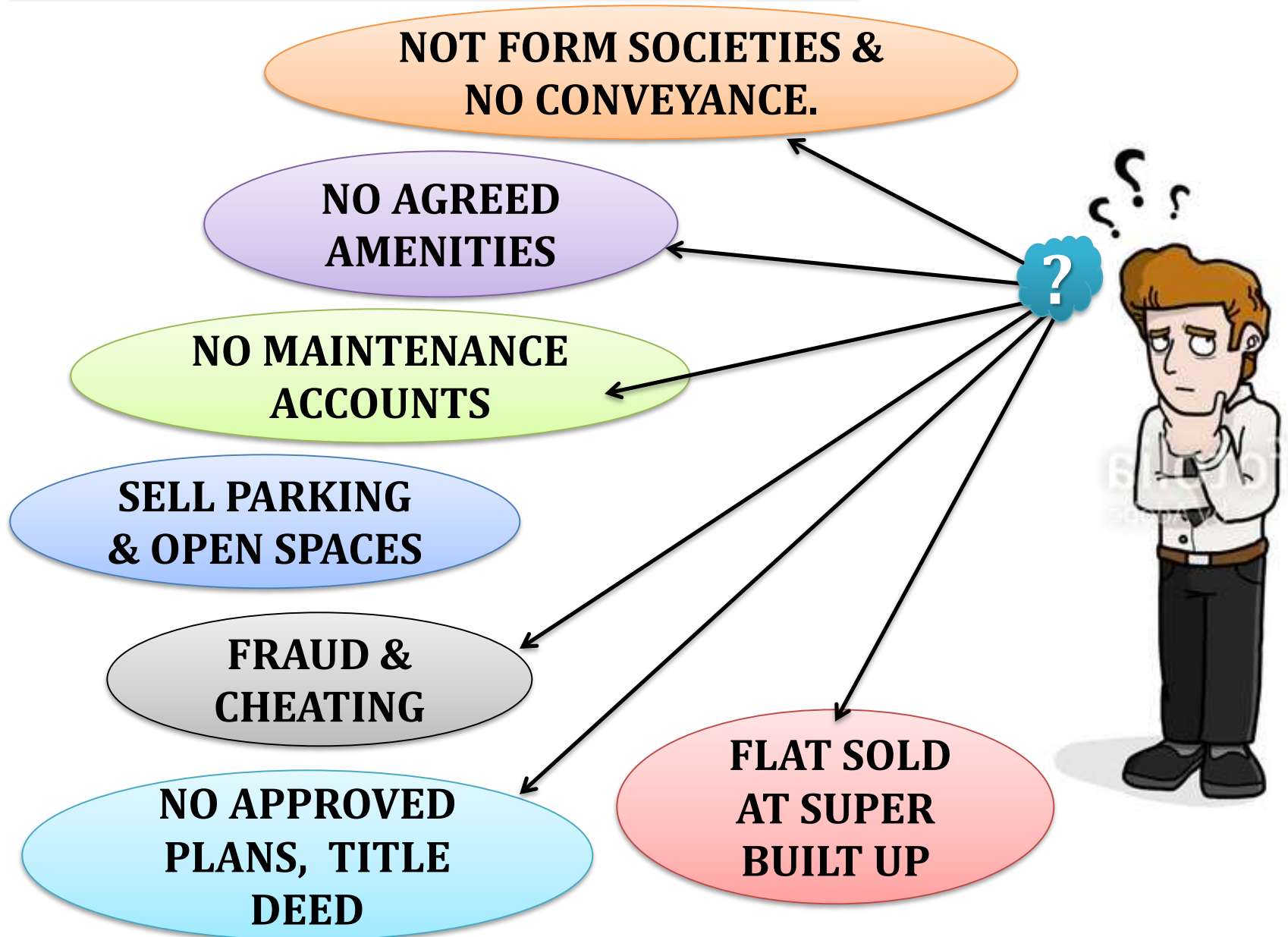
**NO EASY
REDRESSAL**

**DELAY in
POSSESSION**

NO OC & BCC

DEMAND IN CASH

WHY THIS Act IS REQUIRED..??



OBJECTS OF THE REAL ESTATE (R & D) ACT, 2016

APPELLATE TRIBUNAL

4

OBJECTS

Regulatory Authority

1

Regulation &
Development

2

Transparency
and Efficiency



3


Protecting
Consumer
Interest

Intro: The Real Estate (Regulation and Development) Act, 2016

The Central and state Govt to notify the Rules in six months and Establish the Real Estate Authority & Appellate Tribunal in 1 yr.



Regulator: RERA- To register RE projects, RE Agents, Monitor, supervise, redress disputes, Control & protect all stakeholders.



The law is not Retrospective but applicable to all on going projects and new projects- Commercial, residential, plotting etc..

MOTHER OF REAL ESTATE DEVELOPMENT LAW -

Real Estate (Regulation & Development) Act, 2016

**Applicable All Over
All Over India
Except J & K**

**Implemented through
All the connected
Central & State
Law applicable**

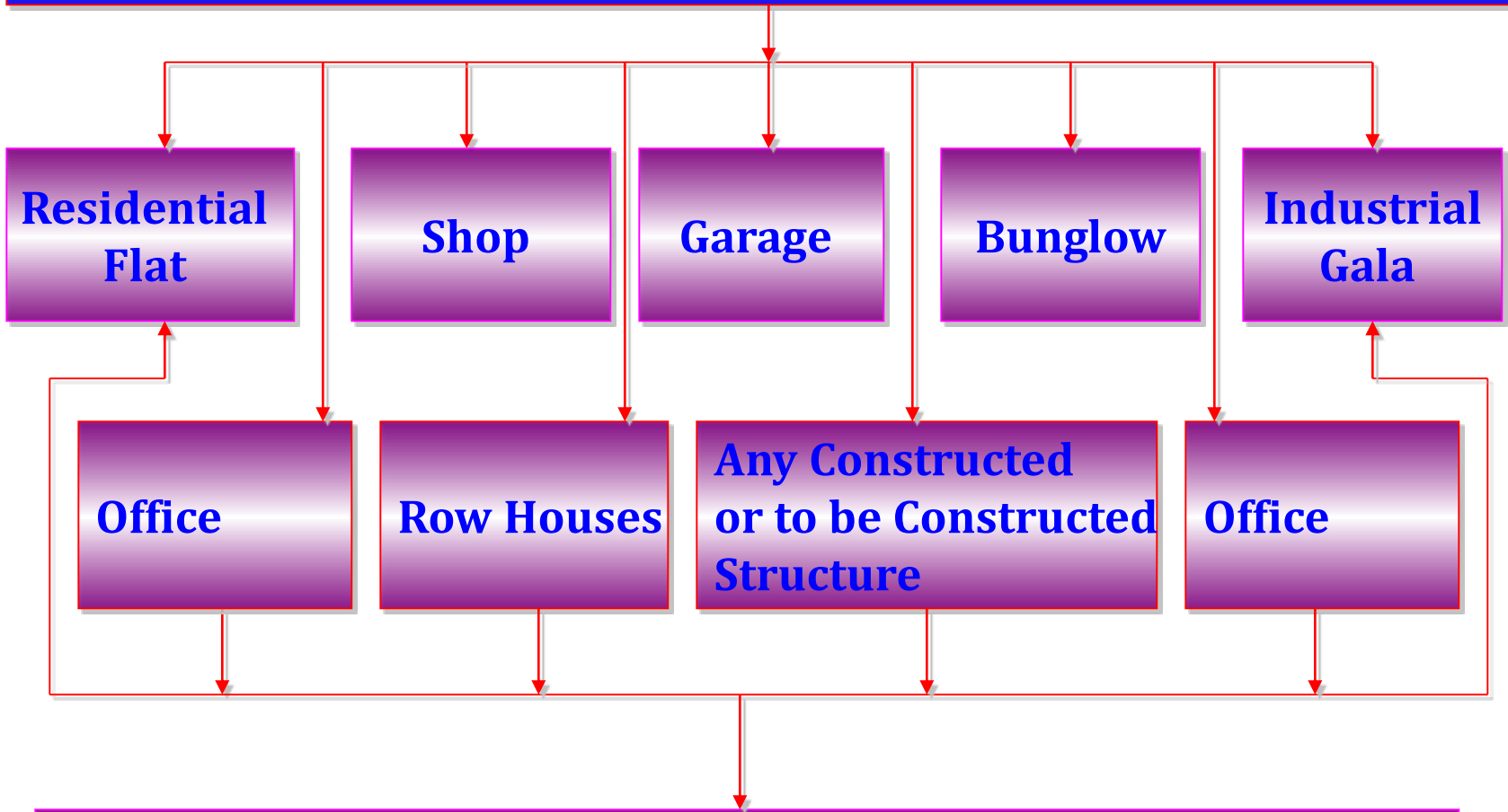
**Related to
Owning / acquiring
Rights**

Freehold Rights

Concerned with :
(1) Apartments
(2) Plotted development
(3) Buildings

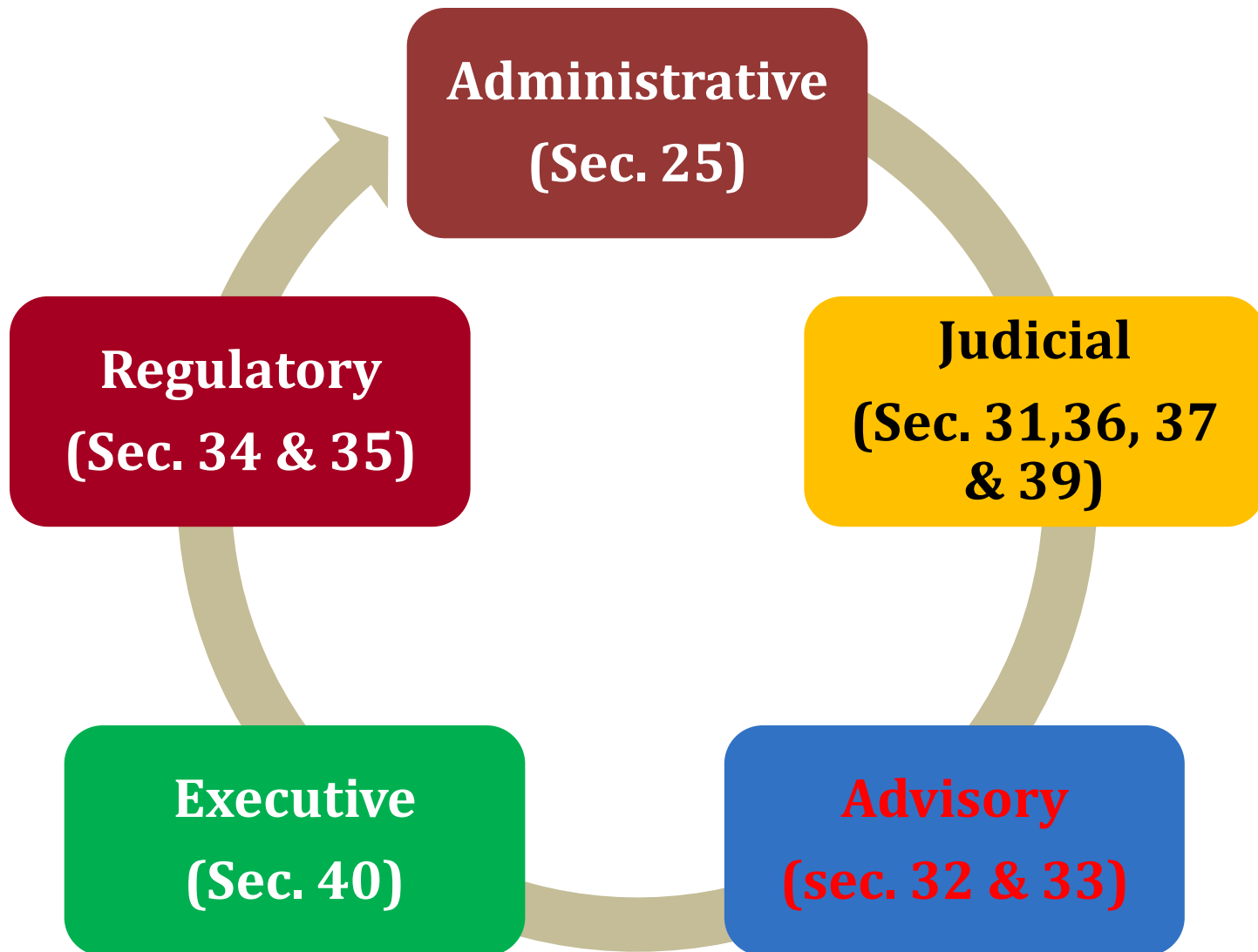
Leasehold Rights

APARTMENTS = INDEPENDENT UNIT/FLAT

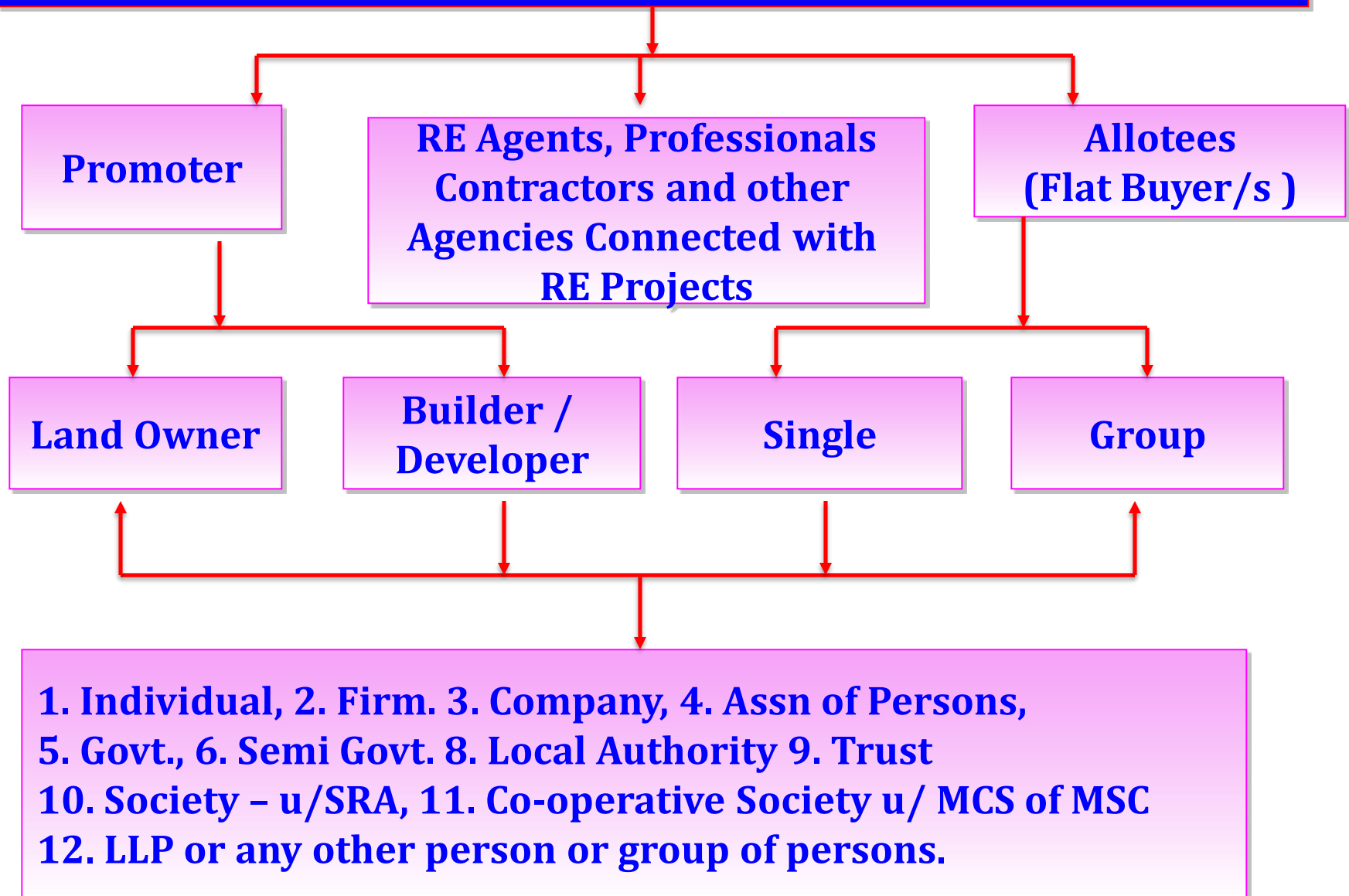


Provided or agreed to be provided by the Promoter
To the Purchaser for a Consideration

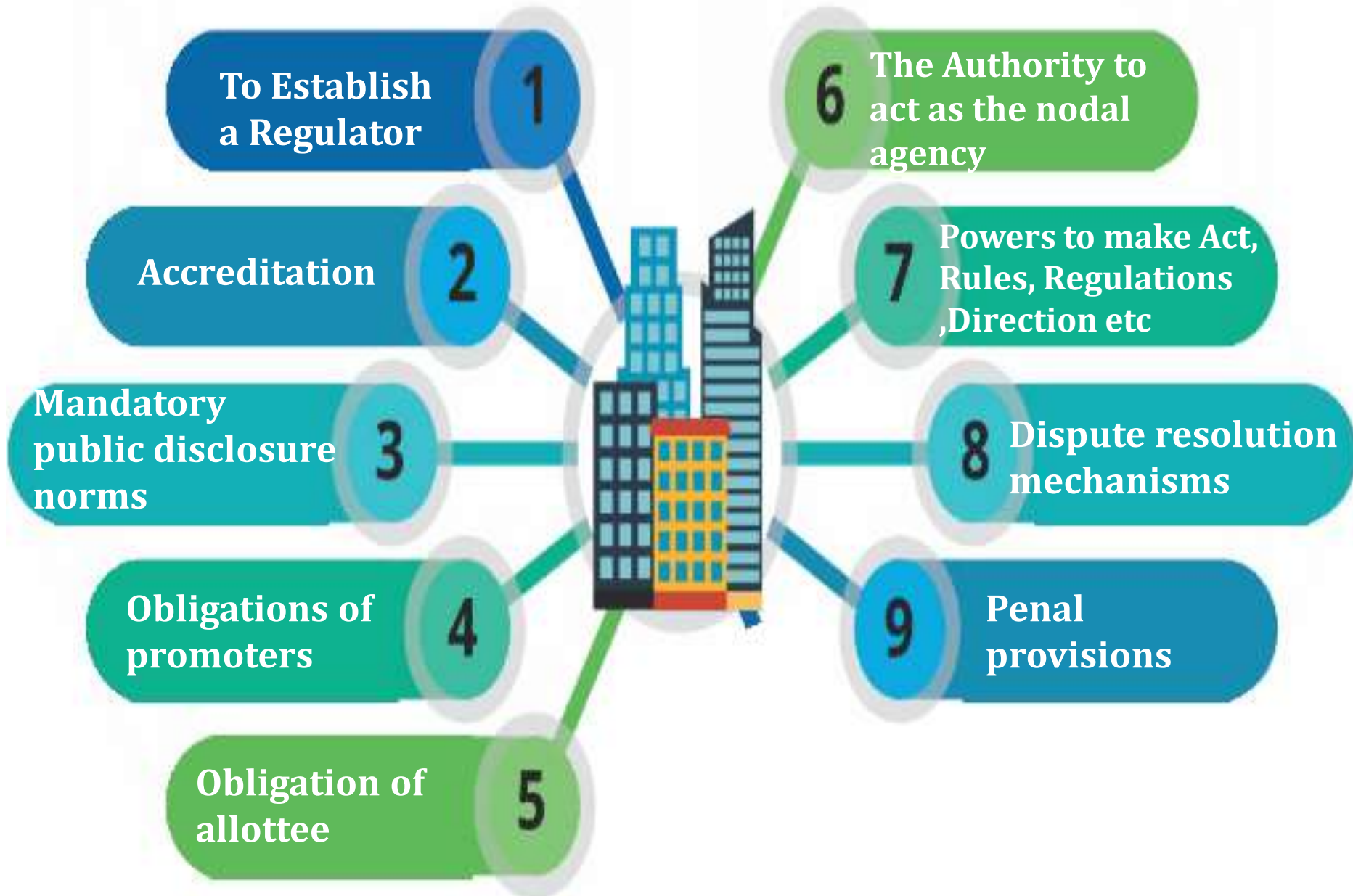
FUNCTIONS OF RERA



PARTIES ON WHOM OBLIGATIONS ARE MADE APPLICABLE under RERA



THE SALIENT FEATURES OF THE RERDA-2016



REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS



U/S. 3 COMPULSORY REGISTRATION OF REAL ESTATE PROJECT

FOR DEVELOPMENT OF ANY IMMOVABLE PROPERTY IN PHASES OR OTHERWISE And All Pending Projects where OC is not received within 3 months And New Project before offer for sale.

REGISTRATION EXEMPTED

AREA DOES NOT EXCEED 500 SQ.METERS OR Less than 8 Units

All Completed Projects Where OC is Granted.

RENOVATION OR REPAIRS WHICH DOES NOT INVOLVE REALLOTMENT & MARKETING

U/S. 4 DISCLOSURE OF INFORMATION BY THE PROMOTER

By Registration of the Project for development of immovable property in specified form by paying prescribed fees and by submitting information.

No & Size of Layout, phases

Proposed Project & facilities

Approvals for each phase

Declaration by Promoter

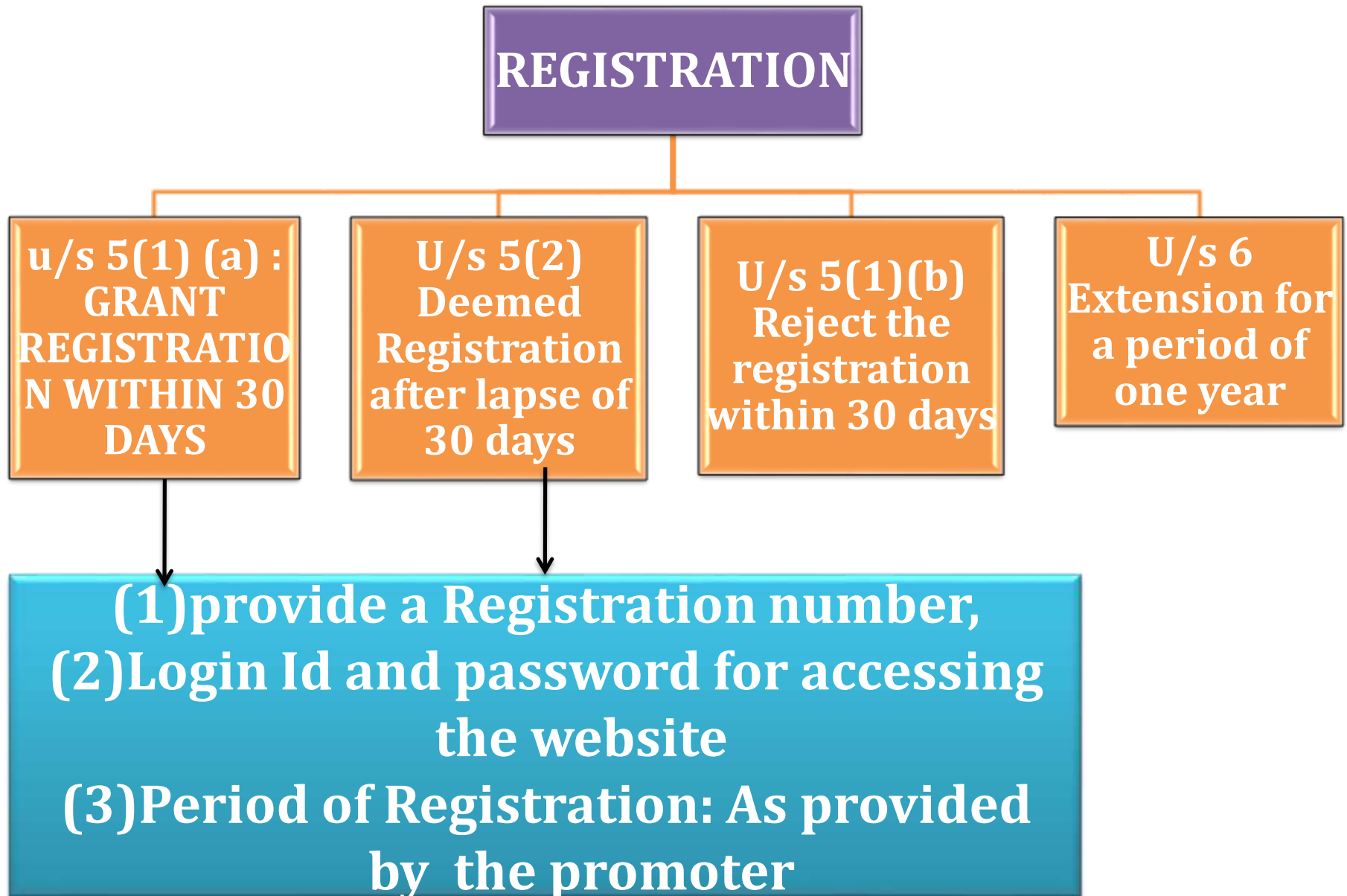
He has Title & land is free from Encumbrances & Specimen of Agreement for sale Conveyance deed Allotment letter etc

Project to be Completed as per Terms Of Registration And schedule of completion

Project to be Completed Within the period Of sanction by Competent Authority

70% of Realized amt to be deposited in a separate a/c In Sch. Bank For meeting cost Of project

U/s 5 GRANT AND U/s 6 EXTENSION OF REGRN



U/S. 7 RECOVATION OF REGISTRATION OF REAL ESTATE PROJECT

**On complaint
by
any Stakeholders**

**Suo moto based
on any information,
Audit Report etc**

U/s8 :Consequence of Revocation or Lapse

**Debar
the
promoters
From
Execution &
Accessing
Website**

**Complete the
Project
by the
association
of allottees or
in any other
manner.**

**Declare as
Defaulter
And
Display
Photographs
In All States
Website.**

**Freeze the
Dedicated
account and
Transfer the
balance
To complete the
project**

U/S. 9 COMPULSORY REGISTRATION OF REAL ESTATE AGENT & U/s 10 Functions.

U/s 9 No unregistered Real Estate Agents shall facilitate sale of registered projects with RERA.

U/s 10 Functions of Real Estate Agent

Not to Facilitate sale of unregistered projects

Maintain the books of a/c

Not to involve in any unfair trade practices.

Facilitate for all information & Docs

Any other functions prescribed

OBLIGATIONS OF PROMOTERS :

Sec-3

- Register the project with the authority before offer to sell.

Sec- 4

- Upload 5 yrs track record and project details on website.

Sec 4

- deposit 70% of buyers in a separate scheduled bank account, to be used for land cost and construction after certified by Architect , Engineer and Chartered Accountants. & Audit .

Sec 11

- Disclose all the details of the project to customer

OBLIGATIONS OF PROMOTERS :

Sec-11

- **Form the society on booking majority flats**

Sec- 12

- **Liabe for damages for any misinformation in Advt.**

Sec -13

- **Register the agreement before receiving more than 10%**

Sec 14

- **Adhere to approved plans & project specifications
Promoter is liable for 5 years defect liability**

OBLIGATIONS OF PROMOTERS :

Sec-15

- **NOC from 2/3rd and Authority to create third party interest**

Sec- 16

- **Take insurance of Title and building**

Sec -17

- **Transfer the title within 3 months of OC**

Sec 18

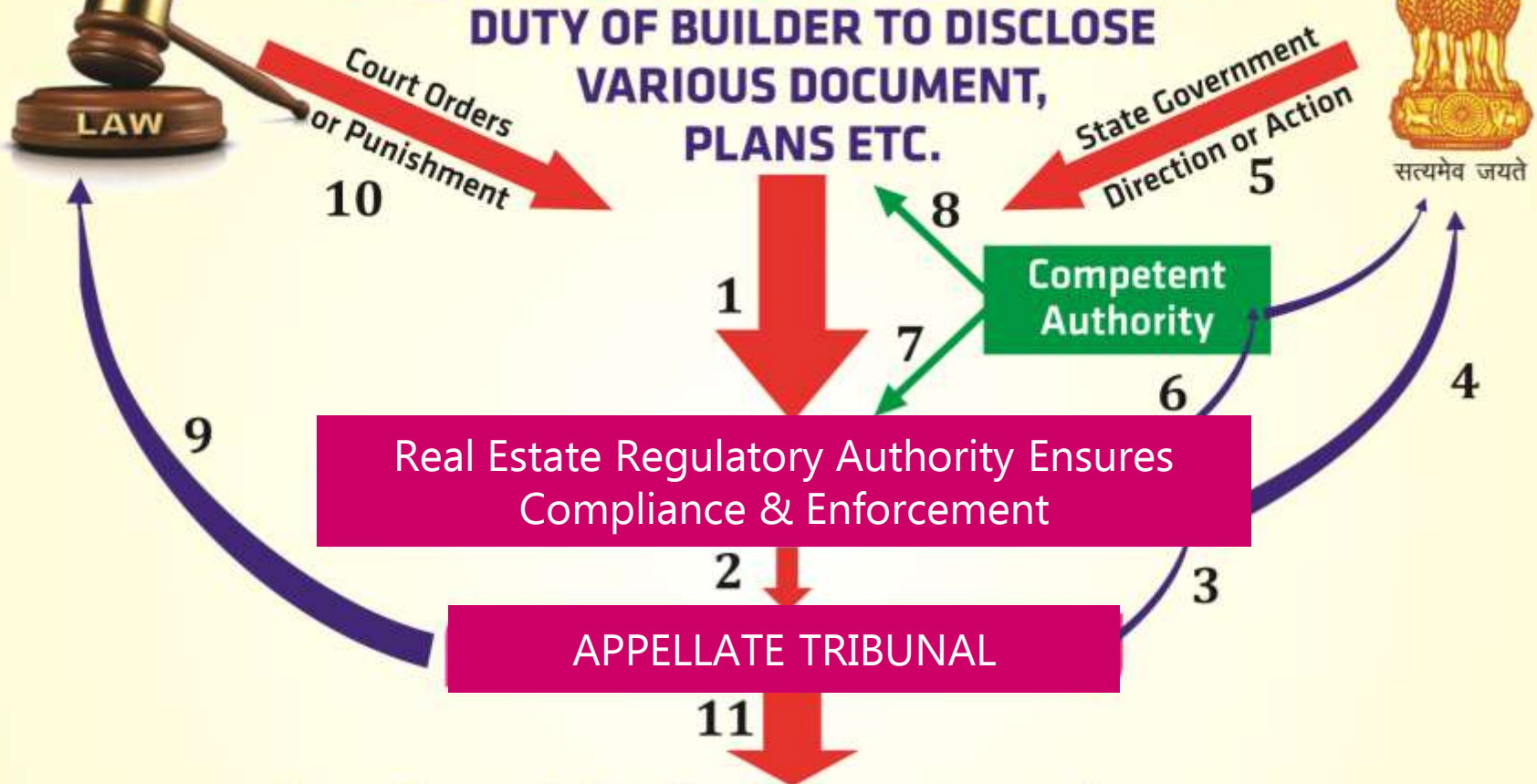
- **Refund , compensation and interest on default.**

WORKING OF RERA 2016

**DUTY OF BUILDER TO DISCLOSE
VARIOUS DOCUMENT,
PLANS ETC.**



सत्यमेव जयते



**Compliance & Service delivery as per Agreement
Rules & Laws is Improved**



Flat buyer, RTI activist & common man may file RTI applications & write complaints to
REGULATORY AUTHORITY & APPELLATE AUTHORITY,
to get orders passed against builder.

REAL ESTATE Regulatory Authority : Not a separate Approval Authority

1

**Promoters:
To get approval from
Competent Authority:
Planning and local
Authority like PMC,
MCGM etc.**

2

**Screening Authority
between Promoter &
Purchasers
Collect all the
Information ,Approval,
Documents & persons
involved in the
execution of RE Project
& Grant Registration &
Redress Disputes**

3

**Flat
Purchasers
and
Consumer to
transact with
Promoters.**

RERDA- 2016

Chapter I : Preliminary : Sec 1 and 2

**Chapter II: Registration Of Real Estate Project And
Registration Of Real Estate Agents – Sec 3 to 10**

Chapter III : Functions And Duties Of Promoter – Sec 11 to 18

Chapter IV : Rights And Duties Of Allottees - Sec 19

Chapter V: The Real Estate Regulatory Authority- Sec 20-40

Chapter VI : Central Advisory Council - Sec 41 and 42

Chapter VII : The Real Estate Appellate Tribunal : Sec 43 to 58

Chapter VIII : Offences, Penalties And Adjudication: 59 to 72

Chapter IX : Finance, Accounts, Audits And Reports: 73 to 78

Chapter X : Miscellaneous : Sec 79 to 92

RIGHT TO LEGAL REPRESENTATION

**As per Section 56
of the Act**

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graph TD; A[As per Section 56 of the Act] --- B[Chartered Accountant]; A --- C[Cost Accountant]; A --- D[Company Secretary]; A --- E[Advocate];
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**Chartered
Accountant**

**Cost
Accountant**

**Company
Secretary**

Advocate

Are authorized to appear on behalf of applicant or appellant before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer as the case may be

RIGHT TO LEGAL REPRESENTATION

Thus only above professionals are authorised under the Act to :

- ✓ Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- ✓ Represent a person before real estate appellate tribunal.
- ✓ Represent a person before any other competent authority for any other purpose under Real Estate (Regulation and Development) Act, 2016.

OFFENCES AND PENALTIES

Section	Offence	Penalty
59(1)	Contravention of S-3 i.e. failure to obtain registration.	Upto 10% of cost of project as per RERA.
59(2)	Contravention of any other provision of (other than S-3) or of rules made there under.	Punishable with a term extended upto 3 yrs. Or with fine which may extend upto further 10% of the cost of project or with both.

OFFENCES AND PENALTIES

Section	Offence	Penalty
60	Provides false information or contravenes the provisions of sec.4 – Application for registration with RERA	Penalty upto 5% of cost of project.
61	Contravention of any other provisions of the Act.	Penalty upto 5% of cost of project.

OFFENCES AND PENALTIES

Section	Offence	Penalty
62	Non Registration by Estate Agents or contraventions of section 9 and 10 regarding registration of estate agents with RERA	Rs.10,000/- during which such default continues which may cummulative extend upto 5% of cost of plot/flat/ Apt for which sale and purchase has been facilitated as per RERA.
63	Failure to comply with the orders of Authority by the Promoter	Penalty for every day during which the default continues, which may be cummulative upto 5% of cost of project.

OFFENCES AND PENALTIES

Section	Offence	Penalty
64	Failure to Comply with the Orders of Appellate Tribunal by Promoter	Punishable with imprisonment for a term which may extend upto 3 years or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of project.
65	Failure to comply with the orders of Authority by the Real Estate Agent.	Penalty for every day during which the default continues, which may be cummulatively upto 5% of cost of plot/flat as the case may be for which sale /purchase done.

OFFENCES AND PENALTIES

Section	Offence	Penalty
66	Failure to Comply with the Orders of Appellate Tribunal by real estate agent	Punishable with imprisonment for a term which may extend upto 1 year or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of flat/Apt as the case may be done.
67	Failure to comply with the orders of Authority by the Allottee.	Penalty for every day during which the default continues, which may be cummulative upto 5% of cost of plot/flat as the case may be for which sale /purchase done.

OFFENCES AND PENALTIES

Section	Offence	Penalty
68	Failure to Comply with the Orders of Appellate Tribunal by the allottee.	Punishable with imprisonment for a term which may extend upto 1 year or with fine for every day during which such default continues, which cumulatively extend upto 10% of the estimated cost of flat/Apt as the case may be.
69	Offence committed by Company- Every officer at the relevant time and also the company shall be liable to pay the penalty.	Every Director officer or manager who is liable to discharge the duties shall be considered as committed the offence and shall be accordingly committed.

RERDA- 2016

Sec 70

- **Compounding of offence by court by levying penalty as per Rules**

Sec 71

- **Adjudication on Sections 12,14, 18 and 19**

Sec 72

- **Factors to be considered for Adjudicaiton**

REGISTRATION OF REAL ESTATE PROJECT

- **CA to** understand the various elements involved in the initial stage of the project till the completion of the project
- The title of the land and the various issues
- Review the Development Control Regulations FSI, TDR etc, approved and Proposed Plans
- Review Allotment letter, advertisement material, receipts, booking letter, web site contents, agreement for sale and the conveyance deed, agreements to be executed with the contractor and the service providers etc.
-

REGISTRATION OF REAL ESTATE PROJECT

- Designing the various policy documents and other compliances as may be required from time to time.
- Coordinate with the various professionals involved in the process of registration of the real estate project
- Upload the information on the website for registration of the project and attend the hearing if required to get the project registered with RERA.

REGISTRATION OF REAL ESTATE PROJECT

- (A) Providing the detail list of the documents and information required for the registration of project.
- (B) Compilation of all the data and the documents provided by the promoter for the purpose of the registration.
- (C) Study and verification of the data and documents so as to check whether it meets requirements under the RERA.
- (D) Uploading of all the information provided by the promoter on the website of RERA.
- (E) Preparation of declaration in form B.

PROJECT TRACKING DETAILS

- (1) Uploaded Information after due verification
- (2) Interact with other professionals like Architect, Engineer, Advocate and staff
- (3) Guide for RERA compliance
- (4) Review the project report details received from the architect, engineer and the Chartered Accountant.
- (5) Compile and verify last 5 years projects undertaken and completed or pending since 2012-13 onwards till 2016-17. The various project details and its other details as per RERA requirements.

DRAFTING AND VETTING OF DOCUMENTS AS PER RERA REQUIRED FOR REGISTRATION

- (A) Draft allotment letter
- (B) Agreement for sale.
- (C) Conveyance Deed
- (D) Booking Letter.
- (E) Agreement with the Engineer and Architect
- (F) Advertisement material
- (G) All Standard documents required from customers.

RETAINERSHIP SERVICES

- (A) Providing the guidance to the promoters for the timely compliances to be made as per **RERA**.
- (B) Verification and the certification of records as per the **RERA** on quarterly basis.
- (C) Quarterly status uploading of the Project on the **RERA** portal.

CONSULTANCY ON MANAGEMENT OF THE FUNDS AS PER RERA

- (A) Review and monitor the bank account in which 70% of the money received from the buyers is maintained.
- (B) Review each of the certificates issued by the architect, engineer and the chartered accountant issued for the purpose of withdrawal of the funds from the designated account.
- (C) Review the utilization of 100% funds received from the customers and facilitates to complete the accounts and submit for audit as early as possible.

PREPARATION OF ANNUAL STATEMENT and AUDIT

- It will include the verification of various documents and records relating to following points.
- i). Details of the money received as the booking amount.
- ii). Withdrawals made accordingly are as per the guidelines given by the RERA.
- iii). All the agreements executed with the customers in for the particular project.
- iv). Whether amount collected from the particular project has been utilized for the same project.

K-RERA PROGRESS REPORT

* Till March 2021

1	Total number of Registered Real Estate Projects (online)	4
2	Total number of Registered Real Estate Projects (offline)	535
3	Total number of Registered New Projects	69
4	Total number of Registered Ongoing Projects	470
5	Total number of Registered Real Estate Agents (online)	6
6	Total number of Registered Real Estate Agents (offline)	133
7	Total number of cases received by Authority (Compalints)	465
8	Total number of cases received by Adjudicating Officer (Compensation)	237
9	Total number of cases disposed by Authority	232
10	Total number of cases disposed by Adjuducating Officer	80
11	Compensation and refund decreeded by Adjudicating Officer	₹ 9,29,53,700
12	Penalty Imposed by Authority	₹ 25,60,835

DISCLAIMER

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented.

-----CA. Ramesh S. Prabhu



Let us be Partner in Nation Building

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Let us empower each one of us by sharing knowledge. Let us Innovate, Get involved & Solve issues collectively within four corners of Law.

Thank you for Getting involved in the discussion!

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CHAIRMAN

MAHARASHTRA SOCIETIES WELFARE ASSOCIATION, CO-OPTED MEMBER OF TASK FORCE FOR NPOS & Co-ops OF MAHARASHTRA, CONVENER TO PREPARE GUIDANCE NOTE ON AUDIT OF DISTRICT AND STATE CO-OP BANKS –PUBLISHED BY PDC OF ICAI, CO-OPTED MEMBER OF CO-OP COMMITTEE (MAHARASHTRA) OF WIRC OF ICAI.