



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)



## **2 Days Seminar on Real Estate**

**Organized by**

**Committee on Economic, Commercial Laws and Economic Advisory of ICAI**

**Hosted by WIRC of ICAI**



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)



Physical  
Mode  
Only

11 CPE Hours  
Structured

## 2 Days Seminar on Real Estate

23<sup>rd</sup> and 24<sup>th</sup> Dec 2022 | 10:00 AM to 6:30 PM

Venue : ICAI Bhawan, 2<sup>nd</sup> Floor, BKC, Mumbai



Welcome Address &  
Opening Remarks



**CA. (Dr.) Rajkumar Satyanarayan Adukia**  
Chairman  
CECLEA, CPE Committee &  
Convener of Publication  
& CDS Directorate

Opening, Concluding  
Remarks & Vote of Thanks



**CA. Hans Raj Chugh**  
Vice-Chairman, CECL&EA and  
Chairman, Committee for MEPS &  
Committee on Career Counselling

Keynote Speaker



**Mr. Anand Gupta**  
Chairperson  
Housing and Rera  
Committee of BAI

Session Chairmen & Managing Committee Members of WIRC of ICAI



**CA. Murtuza Kachwala**  
Chairman



**CA. Yashwant Kasar**  
Vice-Chairman



**CA. Shweta Jain**  
Secretary



**CA. Piyush Chandak**  
Treasurer



**CA. Ketan Saiya**  
Chairman, WICASA

### Topics & Speakers

Day 1 : 23<sup>rd</sup> December, 2022

GST – Latest development under GST and  
Taxation in case of Development Agreement

11:00 AM – 1:30 PM (incl Tea Break)



**CA Jayesh Gogri**  
Mumbai

Relationship - RERA and other  
REAL Estate Laws

2:15 PM – 4:15 PM



**CA. Sunil Naik**  
Mumbai



**CA. Vinay Thyagaraj**  
Bengaluru

MahaREAT – Practice, Procedure tips and  
Important Orders of MahaREAT and its impact

4:30 PM – 6:30 PM



**Adv. Anil D Souza**  
Hon. Secretary Bar Association  
of RERA (Authority) and REAT  
(Appellate Tribunal) Advocates

Redevelopment of Real Estate –  
Practice and Procedures and Taxation

10:00 AM – 1:30 PM



**CA. Dilip Agrawal**



**CA. Vimal Punamia**



**CA. Tarun Ghia**

Day 2 : 24<sup>th</sup> December, 2022

Income Tax – Taxation for Landowners  
under Development Agreement  
(Individual / Non Individuals)

2:15 PM – 4:15 PM

Legal Documentation – Important and  
critical points to be considered while  
"drafting deeds"

4:30 PM – 6:00 PM



**Adv. Mithil Vinod Sampat**  
Advocate, Mumbai

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# Topic - Relationship -RERA other Real Estate Laws



**Sunil Naik**  
**Chartered Accountant**  
**Mumbai**



**Vinay Thyagaraj**  
**Partner, Venu & Vinay**  
**Chartered Accountants**  
**Bengaluru**





# Real Estate (unique)

Journey from  
Selling an  
Idea to  
Delivering  
the Product



# Why RERA in 2017 why not before ?????

*There is a time  
for everything*

# **RERA Intend to achieve –**

**Transparency**

**Standardisation**

**Speedy Redressal**

**Efficiency**

**Responsibility**

**Professionalism**

**Equality**

**Investor  
Confidence**

**Discipline**

**Accountability**

**Did we not have all, before RERA?**



If So, has RERA  
revolutionized the  
Real Estate Industry  
and changed  
everything ?





# Let us look into existing Laws / Statutes of Real Estate

## 1. Central Laws

1. Specific to Real Estate
2. General Business Laws
  1. Taxation Laws
    1. Direct Taxes
    2. Indirect Taxes
  2. Benami transactions / PMLA
  3. Insolvency and Bankruptcy Code
  4. Special Economic Zones (SEZs)
  5. FEMA / FDI
  6. Labour Laws
  7. Arbitration and conciliation Act
  8. SARFAESI ACT

## 2. State Laws

## 3. Municipal Laws

1. Contract Act 1872 –
2. Transfer of Property Act –
3. Indian Stamp Act, 1899 and Registration Act, 1908
  
1. Rent control Act
2. Urban development and
3. Town and Country Planning
4. Property tax,
5. Ownership of property,
6. Building bye-laws,
7. Land pooling, Land ceiling, Land zoning and Land use,
8. Environmental protection Act
9. Slum rehabilitation/redevelopment,

# Compliances under RERA

Registration

Section 3

Documents

Renewal / Extension

Section 6

Further Extension

Section 7

Takeover

Section 8

# Compliances under RERA

Quarterly Updates

Section 4

70% Deposit

Annual Audit

Section 4

Utilisation

Advertisement

Section 12

Defect Liability

Section 14

5 years – Impact on Costing

# Compliances under RERA

Agreement

Section 13

Clauses

Modification

Section 14

2/3<sup>rd</sup> Consent

Transfer

Section 15

2/3<sup>rd</sup> Consent

Insurance

Section 16

# Compliances under RERA

Transfer of Title

Section 17

Common Area /  
Carpet Area

Default – Refund, int,  
Comp

Section 18

MCLR +2 %

Allottees

Section 19

Timely Payment

Complaints

Section 31



# Real Estate Regulatory Authority

## Regulator of Real Estate Projects



Regulate and monitor the progress of real estate projects from  
Registration to Completion.

# RERA

Regulation

- Sec 3 to Sec 8 – Registration, Rejection, Extension, Revocation

Advertisement, Modification, Transfer, Agents, Agreement for Sale, Transfer of Titles

- 70 / 30 Collections
- Compliances – Quarterly Filing
- Annual Audit
- Follow mandatory Practices under RERA

Promotion

- Sec 32 of the Act

Recommendations to the Government to improve the RE –

- Single window clearance
- Encourage investments
- Grading of the projects -

- Digitization of land records for conclusive property titles with title guarantee

Efficient

- Timely delivery of the project
- Equal Rate of Interest

Professional involvement –  
Architect  
Engineer  
Chartered Accountant

Transparent

- Information available online
- Functions and Duties of Promoters
- Rights and Duties of Allottees

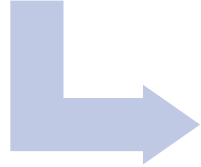
Protect The Interest Of Consumers

- Adjudication mechanism –
- AO, Appellate
- Conciliation of disputes

# PROJECT LIFE CYCLE

Preparation

- Business Plans
- Due Diligence
- Feasibility



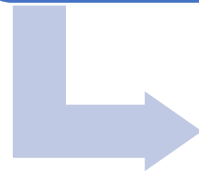
Start

- Statutory Approvals
- NOC's
- RERA Registration
- Bank / Financing



During the Development

- 70 / 30 Collections
- Compliances – Quarterly Filing
- Annual Audit
- Follow mandatory Practices under RERA



End of the project Development

- Project Completion
- Reporting of Completion
- Funds withdrawn
- Association formation



Post Completion / Handover

- Mortgage Release
- Loan / Hypothecation
- Sec 17

- Modification
- Extension
- Change of professionals
- Customer Complaints

- Handover of Corpus funds to the Association
- Handover title deeds / documents
- Handover Approvals, plans, NOC
- Handover Drawings – plumbing, electricals

# RERA – Real Estate Industry Regulator

Most of the statute refers the definition of RERA –

1. Income Tax
2. GST
3. IBC

E.g., Definitions of  
Allottee, Promoter, Real Estate Project, Carpet Area, etc

# RERA – Custodian of Information

1. During Registration –
  1. Estimated cost and breakup
  2. Source of funds and costs
  3. Promoters' details contribution
  4. Detailed specification, facilities, amenities – to assess the cost
2. During Development of the Project
  1. Quarterly updates
  2. Annual Audits
  3. Modification
3. End of the Project
  1. Professional certificates



# RERA – Financial data available

1. During the application for grant of registration of Real Estate Project
2. Estimated Cost of Real Estate Project
  1. Estimated Land Cost
    1. Land acquisition cost
    2. TDR / FSI
    3. Approval costs
    4. Borrowing cost on land
  2. Estimated Construction Cost
    1. Onsite Cost
    2. Offsite Cost
    3. Taxes
    4. Borrowing costs
    5. Other costs

# RERA – Custodian of Information – Quarterly Update

## 1. Quarterly updates -

### 1. Professional certificate Copies - Architect, Engineer, CA

#### 1. Chartered Accountant –

1. Estimated Cost

**2. Incurred Cost**

3. Sold Inventory

4. Total Sale Value

5. Total Collections

6. Total / Balance Receivables

7. Unsold inventory and ASR Value thereon

8. Eligible to withdraw money from project Bank Account

9. Amount already withdrawn from project Bank Account

10. Balance eligible to withdraw based on the CA certificate

# RERA – Accounting and Reconciliation

1. What is the definition of Cost Incurred - is the Act or any other statutes defined
  - a. Is it Cost accrued or paid or hybrid
2. Amount realized from the Allottees
3. Books of Accounts – Audited / unaudited
4. Income Tax
5. GST
6. Legal
7. Inventory data
8. Receivable statement to the Banker against the borrowings
9. Unsold inventory units given to Banker against the borrowings
10. Authority order / Adjudication Officer order / Tribunal Order and financial impact – Refund, Delay Compensation, Compensation etc

# RERA – GST

## Notification 3 /2019 issued by GST has imported the definition from RERA -

1. So very important for promoter to understand the definition under RERA before filing the GST returns for ongoing project.
2. Further, GST is relying on % of Completion of development work as per RERA Quarterly return for the month of Mar 20XX for passing on the benefit of input Tax Credits
3. Sold units / Collections
4. Expenses incurred
5. Stagewise time schedule of the project
6. Schedule of payment
7. Percentage of Completion of the project

# RERA – GST

1. GST liability either on advance or on happening of event / supply
  1. For real estate business – as per agreement
    1. Total collection details available in CA Certificates
    2. Sold units available in quarterly updates and further certified by CA
    3. Schedule of payment as per agreement
    4. Stagewise work / services available
  
2. Reconciliation –
  1. Sold units \* schedule of payment based on stagewise work = VALUE
    1. if this VALUE is less than the amount collected (individually)
    2. Look at the GST impact – demand due but not raised / not collected



## RERA AND GST

### RCM on Services

Goods Transport Agency (GTA)	Recovery Agent	Insurance Agent
Legal Service by Advocates	Development Rights	Long Term lease of Land
Arbitral Tribunal	Author	Sponsorship Service
Director Service	Renting of any motor vehicle	Security services
Music composer, photographer, artist, or the like	Members of Overseeing Committee to RBI	<b>Service by Central Govt./State Govt/ Union Territory/ Local Authority</b>
Business Facilitator	Individual Direct Selling Agents other than a body corporate, partnership or LLP to bank or (NBFCs)	lending of securities under Securities Lending Scheme, 1997 ("Scheme") of SEBI

**GO BACK AND CHECK WHETHER GST IS DISCHARGED UNDER RCM**

# RERA – GST Reconciliation

1. GST is payable as and when payment is due as per the agreement / advance collection
2. Abatement under GST for land value i.e 1/3<sup>rd</sup> Value
3. Deemed Consideration for flat allotted to Landowner under JDA
4. Non GST Supply & Exempt Supply
5. Stock transfers if any

# RERA – GST other charges

## Single Agreement of Sale – consolidated consideration – Rate of GST for other than construction – Composite Supply or not -

1. Other Charges – Puranik Builders Limited – ARA Maharashtra 68/2019-20-52
2. Preferential Location Charges – DLF HAAAR 2020-21/07
3. Facilities and amenities charges – Rajasthan ARA in Richwell Enterprises Pvt Limited
4. Right to use the common areas - AAAR Bengal Peerless Housing Development company
5. Right to use the Car parking space – AAAR Bengal Peerless Housing Development company
6. External development and internal development charges – Ashina Housing Limited HAAAR 2020-21/02

# RERA – GST – Cancellation of unit

Homebuyers will soon be able to claim GST paid on construction services through a defined procedures as recommended by the GST Council -

As on date, there is no procedure to claim refund of tax borne by unregistered buyers in cases where the contract/agreement for supply of services, like construction of flat/house and long-term insurance policy, is cancelled and the time period of issuance of credit note by the concerned supplier is over. “The Council recommended amendment in CGST Rules, 2017, along with issuance of a circular, to prescribe the procedure for filing application of refund by the unregistered buyers in such cases,” a statement issued post GST Council meeting on 17<sup>th</sup> Dec 2022.

# RERA – Income Tax

1. At least 10% of the total revenue as per agreements of sale or any legally enforceable documents are realised at reporting date in respect of each of the contracts; When the stage of completion of the project reaches 25% or more (where construction of development cost is incurred 25% or more of the total cost apart from cost of land)
  - a. What is % of Completion
  - b. Who Certifies % of Completion
  - c. Is RERA % of Completion can be considered for Income Tax
  - d. Is Financial % of Completion is the reference to Income Tax
  
2. Valuation of inventory at the end of the year
  - a. Cost incurred as per RERA
  - b. Is the same for Income Tax



# RERA – Income Tax

1. Recognition of Revenue as per Income Tax Provisions
  1. Minimum completion of development work – 25 %
  2. Minimum collection of money from the customers - 10 % of unit cost.
  
2. Expenses incurred and RERA CA Certificates are issued -
  1. Check the **TDS deduction** and remittance as per Books of Accounts
  2. Advance payments may be shown in RERA as incurred
  
3. If project is eligible U/s 80 IBA of the Act – matching of expenses and profits thereon

# RERA – Inventory – borrowing etc

1. Sold and unsold inventory in the project as per plan and registration
2. As reported by CRM to RERA
3. As per CA certificates – Table A and Table B – sold / unsold units
4. Receivable statements given to the banker against CC/OD / Borrowings
5. In case of Area sharing agreement – collect the details of landowner sold / unsold / collections – reporting to RERA
6. Reconciliation of Carpet Area / UDS in the project

# RERA – Agreement of Sale

RERA Agreement for Sale – Standardized / Uniform contract document – across Real Estate Industry/business – minimal scope for modification

Read more at: <https://taxguru.in/corporate-law/rera-agreement-sale-standardized-uniform-contract-document.html>

*The Supreme Court on November 8, 2021, said that a model builder-builder agreement was a matter of extreme public importance, and asked the central government to file its reply on the matter.*

*“This is an important matter where the issue is about the need to frame a model builder-buyer agreement under the RERA. The government has the power to do so... a group of homebuyers has come to the court. This is not an adversarial matter. This is a very important issue of public interest. Kindly help us,” a bench of Justices DY Chandrachud and AS Bopanna told Additional Solicitor-General KM Nataraj, and asked him to file a reply by November 22, 2021.*

# RERA – Sec 17 – Common Areas to the Association

1. Association of Allottees / Owners are different entity
2. Sec 17 mandates to transfer of common areas to the allottees of association (Sec 2(n) – Common Area include entire project Land)

By virtue of retrospective amendment to the 'Scope of Supply' by inserting clause (aa) in section 7(1) of the Act, mutuality concept between association and members has been removed. In other words, members and association are two different persons.

# RERA and IBC

RERA is a sectoral law, akin to securities / insurance, to infuse transparency and accountability in a sector hitherto unregulated. IBC is a framework to address issues of insolvency and subsequent liquidation of entities / companies, cutting across sectors -

The 2018 amendment inserted an explanation to the definition of 'financial debt' under Section 5(8) of the IBC to provide that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. The term 'allottee' and 'real estate project' had their meaning assigned through the Real Estate (Regulations and Development) Act, 2016.

The fact that RERA is in addition to and not in derogation of other laws (Section 88) makes it clear that remedies under RERA to allottees were intended to be additional and not exclusive remedies.

# RERA and ASCI

## The Advertising Standards Council of India (ASCI)

The Consumer Complaints Council is ASCI's heart and soul. It is the dedicated work put in by this group of highly respected people that has given tremendous impetus to the work of ASCI and the movement of self-regulation in the advertising.

1. **Truthful & Honest** - Truthful, fair and non-derogatory to competitors. Advertisements should not be misleading and plagiarized
2. **Non-Offensive to public** - Within the bounds of generally accepted standards of public decency and propriety.
3. **Against harmful products/unsafe situations** - Not used indiscriminately for the promotion of products, hazardous or harmful to society or to individuals particularly minors, to a degree unacceptable to society at large.
4. **Fair in Competition** - Ensure that Advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market place and the canons of generally accepted competitive behavior in business are both served.

**RERA – False representation, Unfair Trade Practices, misleading, not intended to offer etc**

## RERA and Arbitration

### Presence of Arbitration Clause in Agreement of Sale –

1. The fact that RERA is in addition to and not in derogation of other laws (Section 88) makes it clear that remedies under RERA to allottees were intended to be additional and not exclusive remedies.
2. A complaint against DSK Developers had been filed for delay of possession @DSK Mayurban, Pirangut; of the flats by DSK Developers by the affected party. The contract entered into between the parties stated that in situation of any conflict, the dispute shall be taken up before the arbitrating authority.
3. The MahaRERA bench of B D Kapadnis and the Adjudicating Officer heard the matter ruling out that Section 18 of the RERA Act provides for dispute to be brought up before the relevant local authority formed under the RERA Rules. The RERA supersedes and has an overriding effect over the provisions of Arbitration Act, 1996 (section 8 of the Arbitration and Conciliation Act,) since RERA has been enacted after the said Arbitration Act'1996.
4. A MahaRERA bench thereby, imposed penalty ordering the violator to pay 10.05% interest on Rs 4.54 lakh from July 1, 2017 until possession of the property in dispute hasn't been handed over. The MahaRERA further laid down that such complaint was “maintainable under law” and acknowledged the parties as “necessary part” within the purview of law.

# RERA and SARFAESI

## RERA Prevails Over SARFAESI ; Homebuyers Can Move RERA Authority Against Bank's Recovery Actions : Supreme Court

The Supreme Court upheld a Rajasthan High Court judgment which held that Real Estate Regulatory Authority can entertain complaints by home buyers against the bank which took possession of a real estate project as a secured creditor (Union Bank Of India vs Rajasthan Real Estate Regulatory Authority)



## RERA Bank Account Guidance to Bankers for Operation & Maintenance of RERA Bank Account

Bankers have to ask the promoters to provide the Certificate as per the Act for withdrawals from the RERA bank account.

The Banks have to ensure that the withdrawal is within the limit of the project progress/financial progress certified by the CA in Form

# Stakeholders and CA's Role

1. Promoter – Developer / Builder
2. Promoter – Landowners
3. Allottees – Customers
4. Professionals – CA's, Engineers, Architects
5. Bankers of RERA Designated Bank Account
6. Lenders – Construction Finance
7. Lenders – Housing Loans to Customers
8. Government Agencies / Govt Agency
9. Legal Professionals
10. Other Revenue Authorities – GST, IT
11. RERA Authorities

# Role of CA's

1. Decision regarding Entity creation to implement the Project – **Ind, PF, LLP, Co**
2. Purchasing an Agricultural Land with the intention to convert into Non-Agricultural Land and propose a plot layout scheme – **Revenue Laws, Taxation**
3. Acquiring Development rights from a Landlord under Revenue Sharing or Area Sharing arrangement – **IT, RERA, GST, Legal, stamp duty, viability**
4. Acquiring Development rights from another Developer as a co-developer along with the existing Developer – **in case of stressed projects**
5. Obtain RERA registration and initiating the Project Execution.
6. Mobilization and structuring the funds for the Real Estate Project
7. Completion of Project and handover to association

# Opportunities for CA's

## Traditional and Core Services –

1. Advisory
2. Accounting
3. Auditing
4. Direct / Indirect Tax Advisory
5. Funding / borrowing arrangements from the financial institutions
6. DPR – Detailed project report drafting
7. Drafting and implementation of SOP's / policies / procedures

# Opportunities for CA's

## Specialised Services under Real Estate –

1. Structuring of Project – Investors, VC's, NCD's
2. Documentation – MOU, JDA etc
3. REIT
4. FDI
5. SWAMIH Fund advisory
6. Liasoning Services
7. Title Insurance advisory
8. Regulatory Advisory Services – RERA,
9. Advise on Affordable Housing projects – on various models



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**Committee on Economic, Commercial Laws and Economic Advisory of ICAI**

**And**

**WIRC of ICAI**