

BACKGROUND MATERIAL

Guide on Setting up Practice of Real Estate Consultancy: Compliance, Advisory and Evolving Frontiers

2025



Committee for Members In Practice
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

GUIDE ON SETTING UP PRACTICE OF REAL ESTATE CONSULTANCY: COMPLIANCE, ADVISORY AND EVOLVING FRONTIERS



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

© The Institute of Chartered Accountants of India

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic, mechanical, photocopying, recording, or otherwise without prior permission, in writing, from the publisher.

DISCLAIMER:

The views expressed in the book are of the author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).

The information cited in this book is of the opinion of the authors and maybe drawn from other sources. While every effort has been made to keep the information cited in this book error free, the Institute or any office of the same does not take the responsibility for any typographical or clerical error which may have crept in while compiling the information provided in this book.

First Edition : 10th November, 2025

Committee : Committee for Members in Practice in association with
Committee on Commercial Laws, Economic Advisory & NPO Cooperative

E-mail : cmp@icai.in

Website : <https://www.icai.org>

Published by : The Publication & CDS Directorate on behalf of
The Institute of Chartered Accountants of India
ICAI Bhawan, Post Box No. 7100,
Indraprastha Marg, New Delhi - 110 002 (India)

Printed by : Nova Publications & Printers Pvt. Ltd.
Faridabad - 121 004, Haryana (India)
November | 2025 | P4021 (New)

Foreword

Real estate is a cornerstone of India's economic development and a reflection of its aspirations for inclusive, sustainable growth. From shaping urban skylines to driving employment and investment, the sector mirrors the nation's aspirations for sustainable growth. Over the past decade, reforms such as the Real Estate (Regulation and Development) Act, GST, and evolving municipal and state frameworks have transformed how projects are conceived, financed, and delivered.

This comprehensive Background Material for the Workshop on setting up a new practice in Real Estate Advisory is a timely initiative of the Institute of Chartered Accountants of India (ICAI). It distills a complex web of laws, tax provisions, financial structures, and professional opportunities into a practical reference for Chartered Accountants and allied professionals. By blending regulatory insight with real-world applications from RERA compliance and redevelopment to GST, FEMA, and emerging technologies such as AI, the material equips practitioners to guide stakeholders across the entire real estate value chain.

I would like to express my sincere appreciation to CA. Madhukar N Hiregange, Chairman, and CA. Satish Kumar Gupta, Vice-Chairman of the Committee for Members in Practice, and to CA. Abhay Chhajed, Chairman, and CA. Pramod Jain, Vice-Chairman of the Committee on Commercial Laws, Economic Advisory & NPO Cooperative (CCNPO), for their guidance, collaboration, and sustained support in shaping this initiative. Their visionary leadership and thoughtful contributions, together with the efforts of committee members, have added immense value to this material, embodying ICAI's spirit of excellence, teamwork, and dedication to professional growth.

This background material is designed to empower Chartered Accountants, industry participants, policymakers, and investors to tap into the vast opportunities of the real estate sector, enabling them to discharge their professional and business responsibilities with clarity, efficiency, and foresight. In an era of rapid urban expansion and evolving regulations, ICAI remains committed to initiatives that strengthen professional expertise and contribute to the nation's sustainable growth in real estate.

CA. Charanjot Singh Nanda
President, ICAI

Date: 10th November 2025

Place: New Delhi

Preface

The real estate sector stands at the intersection of law, finance, technology, and urban development. It demands precision in structuring transactions, ensuring compliance, and advising a diverse range of stakeholders, developers, investors, housing societies, lenders, and regulators. Recognizing these needs, the Committee for Members in Practice of the Institute of Chartered Accountants of India (ICAI) has prepared this Background Material on Real Estate as a practical learning resource for members and other professionals.

This background material is not intended as a conventional publication or static textbook. It is designed as a hands-on companion for training programmes, and professional reference. Each chapter blends technical depth with practical guidance, taking readers through the entire life cycle of real estate activity covering land acquisition, project structuring, taxation, redevelopment, funding, compliance, audit, and emerging areas such as Alternative Investment Funds, REITs, and the use of Artificial Intelligence in practice. Real-world illustrations sections help translate knowledge into actionable insight.

Our objective is to enable Chartered Accountants to deliver informed, value-driven services that meet the highest standards of professional competence and ethics. By equipping members with current regulatory understanding, evolving market practices, and technological tools, this material supports transparent, efficient, and sustainable outcomes for the industry.

The Committee for Members in Practice (CMP) expresses its deep gratitude to the leadership of ICAI - CA. Charanjot Singh Nanda, President, and CA. Prasanna Kumar D, Vice-President, for their encouragement and vision in supporting this initiative. We acknowledge with appreciation the contributions of CA. Vinay Thyagaraj, CA. Ramesh Shankar Prabhu, CA. Arun Kumar Agarwal, CA. Lalit Ashok Pawar, CA. Lalitkumar Vithaldas Raithatha, CA. Sarthak Bhansali, CA. Amit Kumar Kedia, CA. Nitin Kumar Agrawal, Adv. CA. Shilpa Shingare, CA. Abhinav Welekar, CA. Jitendra Lohia, CA. Pinky G Bhonsley, CA. Sujatha Gopalamani, CA. Yogesh Kumar Goyal, CA. Anand Kumar Muthswamy in authoring this work, and the meticulous reviews by CA. Kamal Kant Jain, CA. Sanjeev Kumar Arora, CA. Nipun Singhvi, CA. Bhavesh Ramesh Nagda, CA. Shankar H. Teckchandani, CA. Rajesh Kumar TR, CA. Sanjay Kumar Ghiya, CA. Rajesh Sanghavi, CA. Vimal Punmiya, CA. S N Baheti, CA. Gautam Chaterjee & CA. Ajay Alipuria.

We also extend special appreciation to the Secretariat staff whose expertise and dedication have brought this background material to fruition. Their collective effort reflects ICAI's commitment to knowledge dissemination and nation-building.

As policies, market conditions, and technologies continue to evolve, this background material is meant to be a living reference. Feedback and suggestions for improvement are welcome at cmp@icai.in so that future updates remain timely and relevant. We trust it will serve as a valuable companion for professionals and stakeholders seeking to contribute meaningfully to India's dynamic real estate landscape.

CA. Madhukar N Hiregange
Chairman, Committee for Members
in Practice

CA. Abhay Chhajed
Chairman, Committee on Commercial
Laws, Economic Advisory & NPO
Cooperative

CA. Satish Kumar Gupta
Vice-Chairman, Committee for Members
in Practice

CA. Pramod Jain
Vice-Chairman, Committee on Commercial
Laws, Economic Advisory & NPO
Cooperative

Date: 10th November 2025

Place: New Delhi

Contents

1.	Introduction to Real Estate.....	1
1.1	Introduction.....	1
1.2	The Real Estate Industry- A Global and Indian Outlook	2
1.3	The Real Estate Value Chain	3
1.4	Know your customer – Various Stakeholders in the Real Estate Sector	4
1.5	Understanding the Requirements of the Stakeholder	5
1.6	Applicable Laws in Real Estate	6
1.7	Basic and Key Terminologies of Real Estate.....	9
1.8	Self Appraisal	11
2.	Legal Entity for Real Estate Transaction Structuring.....	14
2.1	Introduction.....	14
2.2	Risk Mitigation and Limited Liability	15
2.3	Ease of Fundraising and Investment Structuring.....	15
2.4	Tax Planning, Optimization not Tax Evasion	15
2.5	Continuity and Transferability	16
2.6	Regulatory Compliance and Transparency	16
2.7	Eligibility for Government Incentives and Schemes.....	16
2.8	Title Clarity and Record Keeping.....	16
2.9	Pooling of Assets and Joint Ventures.....	16
2.10	Segregation of Business Activities	17
2.11	Legal Enforcement and Contractual Clarity	17
2.12	Efficient Exit and Monetization Options	18
2.13	Access to Professional Management	18
2.14	Estate Planning and Succession in Family-Owned Businesses	18
2.15	Brand Building and Market Perception	18
2.16	Eligibility for Foreign Investment (FDI/FPI).....	19
2.17	Table Comparing the different types of entities and benefits etc.....	19
2.18	Conclusion.....	21

2.19	Self Appraisal	21
3.	Professionals Involved	24
3.1	Introduction.....	24
3.2	Key Professionals.....	24
3.2.1	Legal Advisor	24
3.2.2	Architect	25
3.2.3	Structural Engineer	27
3.2.4	MEP Consultants (Mechanical, Electrical, Plumbing).....	28
3.2.5	Civil Engineer / Construction Manager	30
3.2.6	Project Management Consultant (PMC).....	31
3.2.7	Quantity Surveyor / Cost Consultant	33
3.2.8	Environmental Consultant	35
3.2.9	Geotechnical Engineer	37
3.2.10	Landscape Architect	39
3.2.11	Finance Advisor / Chartered Accountant.....	40
3.2.12	Marketing and Sales Team / Agency	42
3.2.13	Real Estate Consultant / Broker	44
3.2.14	Urban Planner / Town Planner	45
3.2.15	Valuer / Registered Appraiser	46
3.2.16	Facility Management Consultant	47
3.3	Self Appraisal	48
4.	Study Module: No Objection Certificates (NOCs) in Real Estate Development	51
4.1	Introduction.....	51
4.2	Town and Country Planning Act in India – An Overview	51
4.3	Applicable Acts, Rules, and Regulations	53
4.4	Provisions, Forms, Important Orders, Notifications, Circulars, Checklists, SOPs, Case Law - Key NOCs Required for Real Estate Development	55
4.5	Important Case Laws.....	65
4.6	FAQs	65
4.7	Glossary	66
4.8	End of Chapter – Outcome	67

4.9	Reference Material	67
4.10	Self-Appraisal	68
5.	Alternative Investment Funds	71
5.1	Introduction to Alternative Investment Funds (AIFs)	71
5.2	Regulatory Framework	73
5.3	Fund Structure & Lifecycle	76
5.4	Real Estate Investment Trust	77
5.4.1	Introduction to Real Estate Investment Trust (REIT)	77
5.4.2	Regulatory Framework for REITs in India.....	79
5.4.3	Structure of a REIT in India	83
5.5	Small and Medium Real Estate Investment Trust.....	84
5.5.1	Introduction to Real Estate Investment Trust (REIT)	84
5.5.2	Regulatory Framework for REITs in India.....	87
5.5.3	Structure of a REIT in India	89
5.6	Self-Appraisal	90
6.	FEMA	93
6.1	Introduction- FEMA.....	93
6.2	Legal & Regulatory Framework	93
6.3	Foreign Exchange Management Act, 1999 (FEMA)	95
6.4	Provisions, Forms, important orders, notifications, circulars, Checklist, SOPs, Case Law.....	96
6.5	FAQ's	107
6.6	Glossary/Abbreviations.....	109
6.7	End of this chapter – Outcome	110
6.8	Reference Material	110
6.9	Self Appraisal – Session Learning Outcomes –	111
7.	Real Estate (Regulation and Development) Act 2016 - RERA.....	114
7.1	Introduction, Background and Overview.....	114
7.2	Registration, Extension, Revocation of A Real Estate Project-	121
7.3	Professionals Certificates under RERA	124
7.4	Chartered Accountant's Certificates under RERA	125

7.5	Financial Management under RERA -	126
7.6	RERA – Annual Audit of Accounts - 3 rd proviso to Sec 4(2)(I)(D) RERA Act 2016	131
7.7	Quarterly updates under RERA – mandatory compliance under RERA	134
7.8	The functions and duties of the promoter under the Act.....	140
7.9	Allottees under RERA - Rights and duties of allottees -	145
7.10	The Real Estate Regulatory Authority under the Act – Powers, Functions	147
7.11	Advertisement Compliance under RERA-.....	151
7.12	FAQs	158
7.13	Glossary	164
7.14	Outcome of This Chapter	164
7.15	Reference Material	164
7.16	Self Appraisal	165
8.	Redressal of Complaints in RERA	168
8.1	Introduction to RERA.....	168
8.2	Legal Provisions	168
8.3	Complaint by Aggrieved Party	168
8.4	Authorities to Hear the Complaints	169
8.5	Powers and Functions of the Authority	170
8.6	Powers of the Adjudication officer	172
8.7	Procedure for Filing Complaint	174
8.8	Process of Resolution.....	178
8.9	Application for Rectification of the Order u/s 39	180
8.10	Execution of the Orders u/s 40:	181
8.11	Self Appraisal	187
9.	Appeals under RERA.....	190
9.1	Introduction.....	190
9.2	Provisions of Appeal in RERA	190
9.3	Main Points for Consideration	191
9.4	Persons Who Can File an Appeal.....	191
9.5	Pre-Deposit by Promoter to Admit the Appeal (Proviso to Section 43(5))	192
9.6	Constitutional Validity of Section 43(5) of RERA	192

9.7	Procedure to be followed	195
9.8	Sufficient Cause	196
9.9	Appealable Orders.....	198
9.10	Manner of Filing Appeal.....	200
9.11	Documents to Accompany Memorandum of Appeal.....	200
9.12	Powers of Appellate Tribunal.....	201
9.13	Additional Powers of the Appellate Tribunal	202
9.14	Hearing of Appeal.....	203
9.15	Orders of the Appellate Tribunal.....	204
9.16	Execution of Appellate Tribunal Orders	205
9.17	Self Appraisal	206
10.	Professional Opportunities for CAs in Redevelopment Projects (Maharashtra and India)	209
10.1	Introduction.....	209
10.2	Objective and Importance of This Chapter	209
10.3	How to Read and Understand This Material.....	210
10.4	Applicable Acts, Rules, and Regulations	211
10.4.1	Maharashtra Co-operative Societies Act, 1960 (MCS Act)	211
10.4.2	Real Estate (Regulation and Development) Act, 2016 (RERA)	212
10.4.3	Development Control Regulations:	212
10.4.4	Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 & Slum Rehabilitation Authority (SRA)	214
10.4.5	Other Relevant Laws and Regulations	215
10.5	Key Provisions, Forms, Templates, and Case Laws in Practice.....	217
10.5.1	Notable Provisions and Guidelines (Maharashtra Redevelopment)	218
10.5.2	Standard Forms and Templates	220
10.5.3	Step-by-Step Redevelopment Process (Checklist/SOP)	222
10.5.4	Significant Case Laws and Precedents;-	227
10.6	FAQs – Frequently Asked Questions (for CAs in Redevelopment Practice)	229
10.7	Glossary of Redevelopment Terms	234
10.8	End of Chapter – Outcome (Key Takeaways)	237

10.9	Reference Material (For Further Reading):-	239
10.10	Self Appraisal	241
11.	GST in Real Estate	244
11.1	Introduction	244
11.2	Objective and importance	245
11.3	How to Read and Understand GST for Real Estate	245
11.4	Extract of Relevant Statutory Provisions [ACT & RULES]	246
11.5	Frequently Asked Questions (FAQ's)	261
11.6	Glossary/Abbreviation	263
11.7	Outcome	264
11.8	Reference Material	265
11.9	Self Appraisal	265
12.	Notices under GST	268
12.1	Introduction	268
12.2	Objective and importance	268
12.3	Understanding Notices under GST	268
12.4	Provisions in GST relating to Real Estate sector	269
12.5	Legal framework	272
12.6	Learning Outcome	276
12.7	References	276
12.8	Self Appraisal	276
13.	Accounting for Real Estate Transactions	279
13.1	Introduction	279
13.2	Revenue Recognition (Accounting Purposes)	279
13.3	Cost of Construction and Cost Allocation	285
13.4	Inventory Valuation	292
13.5	Transparency and Unorganized Sector	296
13.6	Interconnection of Books of Accounts	297
13.7	Self Appraisal	302

14. Legal Documentation	305
14.1 Introduction.....	305
14.2 Objective	306
14.3 Practical Impact of Legal Documentation in Real Estate.....	306
14.4 Checklist Items	308
14.5 Glossary	310
14.6 Self Appraisal – Session Learning Outcomes	311
15. Drafting of Legal Documents, Contracts etc.....	314
16. Insolvency & Bankruptcy Code, 2016 and Real Estate Sector	330
16.1 Introduction and Legislative Background.....	330
16.1.1 Overview of the Insolvency and Bankruptcy Code (IBC), 2016	330
16.1.2 IBC Ecosystem Stakeholders	330
16.1.3 Legislative Journey.....	331
16.2 Key Objectives of the Code	331
16.3 Real Estate Sector under IBC Context.....	331
16.3.1 Multiplicity and Diversity of Homebuyer Claims.....	332
16.3.2 Conflict and Overlap with RERA.....	332
16.3.3 Multiple Projects Under One Legal Entity.....	332
16.3.4 Partial Defaults	332
16.3.5 Limited Awareness and Participation by Homebuyers.....	333
16.3.6 Project Delays and Liquidity Shortage.....	333
16.3.7 Assessment of Resolution Plan Viability	333
16.3.8 Valuation and Information Asymmetry.....	333
16.3.9 Judicial Delays and Extended Timelines	333
16.4 How to read & understand.....	333
16.5 Applicable Act, Rules, Regulations.....	335
16.5.1 Applicable Acts, Rules & Regulations – Real Estate Insolvency	335
16.5.2 Regulatory and Adjudicatory Authorities.....	337
16.5.3 Role of Regulatory Bodies	337
16.5.4 IBC Framework – Provisions, Regulations, Checklist, SOP, Case Laws	339
16.5.5 Legal Framework – IBC, RERA, and Consumer Protection Act.....	346

16.5.6	Homebuyer Claims and Committee of Creditors (CoC)	347
16.5.7	Resolution in Real Estate CIRP	353
16.5.8	Liquidation in Real Estate	359
16.5.9	Joint Development Agreement & Reverse CIRP	361
16.5.10	Landmark Case Laws	365
16.5.11	Coordination with Authorities & Regulatory Compliance	366
16.5.12	Checklist: Claim Filing by Homebuyers (Allottees) under Real Estate Insolvency (CIRP)	368
16.5.13	Checklist for Real Estate Insolvency Practice and CIRP Process:	369
16.5.14	Standard Operating Procedure (SOP) with Timelines – Real Estate Insolvency (CIRP):, structured phase-wise and tailored for Insolvency Professionals (IRP/RP), ARs, legal teams, and CoC members.	371
16.6	FAQs	374
16.7	Glossary / Abbreviations – Real Estate Insolvency	379
16.8	End of this chapter – Outcome	381
16.9	Reference Material	382
16.10	Self-Appraisal – Session Learning Outcomes	382
17.	Internal Audit in the Real Estate Sector (India).....	385
17.1	Objective and Importance.....	386
17.2	How to Read and Understand the Chapter.....	389
17.3	Acts, Rules, Regulations – relevant to Real Estate Projects	390
17.4	FAQs – Frequently Asked Questions (for All Stakeholders).....	398
17.5	Conclusion – Outcome of the Chapter.....	419
17.6	Self Appraisal – Session Learning Outcome	421
18.	Audit in Real Estate.....	426
18.1	GST Audit.....	426
18.1.1	Section 65. Audit by tax authorities	426
18.1.2	Section 66. Special audit.....	427
18.1.3	Rule 101. Audit.....	428
18.1.4	Rule 102. Special Audit	428
18.2	Tax Audit under Income Tax Act, 1961	428

18.2.1 Section 44AB.....	429
18.3 Audit under Limited Liability Partnership Act, 2007	431
18.4 Audit under Companies Act, 2013	432
18.4.1 Section 129: Financial Statement	432
18.4.2 Section: 139-147: Key Provisions for Audit compliances	432
18.5 Self Appraisal	444
19. Due Diligence and Assessment for Real Estate Projects	447
19.1 Introduction.....	447
19.2 Objective and Importance.....	447
19.3 How to Read and Understand This Module.....	448
19.4 Applicable Acts, Rules, and Regulations	448
19.5 Key Components of Real Estate Project Assessment.....	450
19.5.1 Market Assessment.....	450
19.5.2 Feasibility Studies	452
19.5.3 Financial Due Diligence.....	454
19.5.4 Development Control Regulations (DCR) Assessment	458
19.5.5 Transferable Development Rights (TDR)	460
19.5.6 Valuation Methodologies	461
19.5.7 Legal Due Diligence	463
19.5.8 Cost Escalation Analysis	467
19.6. Frequently Asked Questions (FAQs)	468
19.6.1 Market Assessment FAQs.....	468
19.7 Glossary of Terms	472
19.8 End of Chapter Outcomes	473
19.9 Reference Materials	474
19.10 Appendix A: Checklists for Due Diligence	476
19.11 Self Appraisal	485
20. The Resident Welfare Association – RWA's	488
20.1 Background and the concept of community living/group housing – Journey of RWA's	488
20.2 Legal Provisions and Governance Framework for RWAs – Journey of RWA's	489
20.3 Legal Framework Supporting RWAs.....	491

20.4	Importance of Registration and Compliance.....	492
20.5	Role of Bye-laws and Model Bye-laws	493
20.6	Formation of an RWA	494
20.7	Roles and Responsibilities of Promoters / Builders in Handover.....	496
20.8	Drafting Bye-laws and Rules for Internal Governance.....	497
20.9	Governance Structure of an RWA	498
20.10	Financial Management of an RWA	498
20.11	Operational Management of an RWA.....	499
20.12	Rights and Duties of Members / Residents	501
20.13	Legal Responsibilities and Liabilities.....	502
20.14	Legal Responsibilities in Handover from Builder to RWA.....	503
20.15	Technology and Best Practices for RWAs.....	505
20.16	Best Practices for RWAs	506
20.17	Challenges Faced by RWAs.....	507
20.18	Case Studies and Practical Examples.....	508
20.19	Examples of Efficient Financial and Operational Management for Residents' Welfare Associations (RWAs).....	510
20.20	Self Appraisal	513
21.	Capital Gains on Immovable Property	516
21.1	Basics regarding Capital Gain on Sale of Property	516
21.2	Basics concept of Joint Development Agreement (JDA) in Real Estate Sector	521
21.3	Method of Accounting.....	526
21.4	Some Important Aspects Regarding Conversion Of Capital Asset Into Stock In Trade And Vice Versa	530
21.5	Provision related to section 50C, 43CA and section 56(2)(x) of the Income Tax Act, 1961.....	534
21.6	Exemption of Capital Gains u/s. 54, 54B, 54EC & 54F of Income Tax Act, 1961.....	543
21.7	Redevelopment issues in case of Builders, Members, Landowner, Society, etc., ...	550
21.8	Some additional concepts with respect to Builders and Developers	562
21.9	Some additional concepts with respect to Capital Gains. Capital Asset.....	563
21.10	Self Appraisal	570

22. Study Material: Project Completion in Real Estate - Legal Framework, Certifications, and Liabilities.....	573
22.1 Introduction.....	573
22.2 Objective and Importance of this Chapter	574
22.3 How to Read and Understand	574
22.4 Applicable Acts, Rules, and Regulations	575
22.5. Provisions, Forms, Important Orders, Notifications, Circulars, Checklists, SOPs, and Case Laws.....	577
22.5.1 Understanding Project Completion under Various Laws	577
22.5.2 Liabilities and Risks for Stakeholders in Incomplete Projects	580
22.5.3 Is OC/CC Full Compliance Under RERA?	582
22.5.4 Important Judgments and Orders	583
22.5.5 Checklists and SOPs.....	584
22.6 FAQs 585	
22.7 Glossary	587
22.8 End of this Chapter – Outcome	588
22.9 Reference Material	589
22.10 Self Appraisal	590
23. AI in Real Estate Practice: Practical Applications for CAs	593
23.1 Introduction - AI in Real Estate.....	593
23.2 Objective and importance of this chapter	593
23.3 Understanding AI tools for real estate - A simple guide	594
23.4 Ready-to-use AI tools for key real estate activities	595
23.4.1 Land Identification and Acquisition	595
23.4.2 Project Planning and Development	595
23.4.3 Project Registration and RERA Compliance	595
23.5 Step-by-step guide to implementing AI tools in your practice.....	595
23.5.1 Getting Started with AI Tools - A Practical Approach	595
23.5.2 Sample Implementation Timeline	596
23.5.3 Practical Implementation Checklist.....	596
23.5.4 Common Implementation Pitfalls to Avoid	597

23.6	FAQs for CAs about AI in Real Estate	597
23.7	Glossary of Essential Terms.....	599
23.8	End of this chapter -- Outcome.....	601
23.9	Reference Material	601
23.10	Self Appraisal	602

Introduction to Real Estate

1.1 Introduction

Real estate refers to immovable property, which includes land, any building or structure constructed on it, and the rights associated with its ownership, development, and use.

In the Indian legal framework, the concept of real estate is primarily defined under the Transfer of Property Act, 1882, and the Registration Act, 1908. According to these statutes, real estate encompasses land, buildings, and the rights or benefits attached to the land such as rights of way, light, fisheries, and other interests. However, certain items like standing timber, growing crops, and grass are specifically excluded.

Thus, real estate is understood not only as the physical land and built structures, but also as the bundle of rights and interests that come with ownership.

Key Characteristics of Real Estate

- **Immobility:** Real estate is fixed in location; land and property cannot be moved from one place to another.
- **Tangible Asset:** It represents a physical asset that has a visible and material presence, which can be seen and touched.
- **Property Rights:** Ownership extends beyond the tangible asset to include a bundle of legal rights such as the right to use, sell, lease, or generate income from the property. These rights are central to the broader concept of real property.

Components of Real Estate

- **Land:** Refers to the physical surface of the earth, along with the airspace above it and the subsurface below.
- **Buildings and Structures:** All man-made constructions on land, such as residential houses, commercial complexes, industrial facilities, and other built environments.
- **Natural Resources:** Inherent natural components of the property, including trees, underground minerals, and water bodies affixed.
- **Improvements:** Denotes permanent enhancements made to the land to increase its usability and value—such as roads, utility networks, drainage systems, and boundary walls.

1.2 The Real Estate Industry- A Global and Indian Outlook

Global Perspective

The real estate sector is one of the most globally recognized and economically significant industries. It is a foundational asset class that touches nearly every aspect of economic life.

Globally, real estate is among the largest asset classes, valued at more than US \$300 trillion, surpassing the combined value of equities and bonds. It acts as a crucial catalyst for economic expansion, wealth generation, and urban development in various nations. Global best practices in the sector emphasize transparent regulation, standardized valuation methods, structured financing models, and robust risk management frameworks. These elements ensure stability, investor confidence, and sustainable growth. For financial professionals, this creates significant opportunities in areas such as investment structuring, compliance, taxation, valuation, and financial due diligence, positioning them as critical enablers of sound real estate development worldwide.

Key global trends:

- **Urbanization & Infrastructure Growth:** Rising urban population has accelerated demand for housing, commercial spaces, and smart city infrastructure.
- **Global Capital Flows:** Institutional investors, sovereign wealth funds, and pension funds allocate a significant share to real estate (through direct ownership, REITs, and private equity funds).
- **REITs & Fractional Ownership:** Real Estate Investment Trusts (REITs) have emerged as a transparent, liquid investment vehicle in developed markets like the US, UK, Singapore, and Australia.
- **Sustainability & ESG:** Green buildings, energy-efficient housing, and environmentally responsible construction are gaining prominence worldwide.
- **Technology:** AI-driven property valuation, blockchain-based title registries, digital brokerage platforms, and smart building solutions are reshaping the industry

Indian Perspective

Real estate is a foundational pillar of any economy, influencing infrastructure, employment, investment, and urban development. India's real estate sector is the second-largest employer after agriculture and contributes nearly 7% to India's GDP, with projections to reach 13% by 2030. The sector is expected to touch US\$1 trillion in market size by 2030 (IBEF, NITI Aayog). In India, this sector is governed by a complex legal and regulatory framework, with laws like RERA, the Transfer of Property Act, and the GST Act, along with various state-specific land and stamp duty laws, shaping its operations.

Globally and in India, modern real estate markets are typically segmented into the following major sub-sectors:

- **Residential** – housing, apartments, and plotted development
- **Commercial** – office spaces, business parks, corporate campuses
- **Retail** – shopping malls, high-street retail, mixed-use centres
- **Hospitality** – hotels, resorts, serviced apartments
- **Industrial & Logistics** – warehouses, logistics parks, distribution hubs, manufacturing facilities (factories), etc.
- **Specialty Real Estate** (healthcare, senior living, student housing, co-living, etc.)

1.3 The Real Estate Value Chain

The real estate industry operates through a complex, multi-stage value chain that extends far beyond the mere construction or sale of property. It encompasses land acquisition, project development, financing, regulatory compliance, marketing, and sales, with each stage involving a diverse set of stakeholders like landowners, developers, financial institutions, regulators, and end-users. This interdependence creates both opportunities and challenges, requiring professional expertise to navigate effectively. For Chartered Accountants and financial professionals, a deep understanding of this value chain is essential, as their role is integral to transaction structuring, financial oversight, compliance management, transparent reporting, and taxation, ensuring both investor confidence and sustainable sectoral growth.

Stages of the Real Estate Value Chain

(i) Land Acquisition & Identification

- (a) Identifying suitable land based on location, zoning, and market demand.
- (b) Conducting title checks, due diligence, and acquisition negotiations.

(ii) Planning & Approvals

- (a) Engaging urban planners, architects, and legal experts to design the project.
- (b) Obtaining statutory approvals from municipal authorities, RERA, environmental boards, etc.

(iii) Design & Development

- (a) Architectural and structural design.
- (b) Engineering planning (MEP, civil, landscape, sustainability).
- (c) Construction execution by developers or contractors.

(iv) Finance & Investment

- (a) Structuring project financing, funding, and cost management.
- (b) Investor relations, co-ownership models, and financial planning.

(v) Construction and development

- (a) Construction of the real estate as per sanctioned plan
- (b) Development as per the promises made / delivery

(vi) Marketing & Sales

- (a) Branding, positioning, and promoting the project to buyers and investors.
- (b) Sales strategies, lead management, and client relationship management.

(vii) Handover & post-handover assistance/Services

- (a) Property handover, documentation, and legal compliance.
- (b) Facility management, maintenance, and customer support.

1.4 Know your customer – Various Stakeholders in the Real Estate Sector

The real estate ecosystem comprises various stakeholders—each playing a distinct role in the development, financing, regulation, and management of property assets. A professional can provide targeted services to each stakeholder, addressing their specific financial, legal, and compliance needs. The table below outlines key stakeholder categories, their role in the sector, and the specialized services that can be offered to them.

Stakeholder	Brief Description	Examples of Services Offered
Real Estate Developers & Builders	Entities that plan, construct, and sell real estate projects such as residential, commercial, or industrial properties.	- Project costing - Financial modelling - Tax planning - RERA compliance - JV structuring - Funding advisory
Landowners & Joint Development Partners	Individuals or entities owning land who sell to or partner with developers for project development under revenue or area-sharing terms.	- JDA structuring - Capital gain planning - Valuation - Due diligence - Income recognition
Investors & Investment Funds (PE, AIF, REITs)	Entities or individuals investing capital into real estate projects expecting financial returns.	- Investment Due diligence - Fund structuring - Deal advisory - Exit planning - Compliance

Housing Societies & RWAs	Resident-managed associations responsible for operations, maintenance, or redevelopment of housing complexes.	- Audit - Tax compliance - Budgeting - Redevelopment feasibility - Agreement structuring
Homebuyers & Individual Investors	End-users or retail investors purchasing real estate for personal use or investment.	- Tax planning - Legal verification - Investment viability - Loan advisory
Financial Institutions & Lenders	Banks, NBFCs, and institutions financing real estate projects or property purchases.	- Project Due diligence - Escrow audits - Fund utilization review - Borrower profiling
Regulators & Authorities	Statutory bodies such as RERA, urban development authorities, or municipal corporations.	- Certification filings - Compliance audits - Advisory to regulations
Contractors & Suppliers	Vendors providing materials, labor, and services for real estate construction and infrastructure.	- GST compliance - Working Capital planning - Contract Cost structuring - Risk Management Consulting - Labour Law Compliances
Property & Facility Managers	Entities or professionals managing property maintenance and facility operations post-construction.	- MIS setup - Accounting systems - Statutory filings - Cost management

1.5 Understanding the Requirements of the Stakeholder

To effectively understand a real estate client and offer the most relevant and value-added consulting services, the consultant should understand the client profile across **five key dimensions**: identity, project, financials, compliance, and goals.

Here's a structured list of **pertinent questions**:

1. Client Profile & Background

- (a) What is the nature of stakeholder? (Developer, investor, landowner, society, etc.)

- (b) What is the legal structure of the entity? (Proprietorship, LLP, Pvt Ltd, Society, Trust, etc.)
- (c) How long have they been in the real estate sector?
- (d) Who are the key decision-makers?

2. Projects & Operations

- (a) How many projects are currently active or in the pipeline?
- (b) What is the typical scale (area, cost, type) of the projects?
- (c) Are the projects residential, commercial, plotted development, or mixed-use?
- (d) Are the projects done independently or via JVs/JDs?

3. Financial & Taxation Aspects

- (a) What are the primary sources of project funding? (Own capital, loans, PE, AIF, advances, etc.)
- (b) Are project-wise financials and cost centers maintained?
- (c) Are there any cash flow issues or upcoming financial milestones?
- (d) How are the GST and income tax filings currently managed?

4. Regulatory & Compliance

- (a) Are the projects required to be registered under RERA?
- (b) Has the client previously faced any RERA notices or litigation?
- (c) Are there any pending approvals from municipal or regulatory bodies?

5. Expectations & Goals

- (a) What specific support or outcome they expect from the services? (Audit, funding, structuring, tax savings, compliance, etc.)
- (b) What are the challenges currently faced in the real estate operations?
- (c) What is the timeline within which deliverables are expected?

1.6 Applicable Laws in Real Estate

The real estate industry in India operates within a highly regulated legal framework that spans property ownership, development, financing, taxation, and compliance. Understanding these laws is essential for real estate professionals, developers, investors, and consultants to ensure legal soundness and meet statutory obligations. The following table outlines the key central, state, and sector-specific laws that govern real estate activities, along with a brief description of each:

Law	Jurisdiction	Brief Description
Real Estate (Regulation and Development) Act, 2016 (RERA)	Central	Regulates the real estate sector to protect homebuyers and promote transparency; mandates registration of projects and agents, disclosure of project details, and fund monitoring.
Transfer of Property Act, 1882	Central	Governs the transfer of immovable property including sale, lease, gift, mortgage, and exchange.
Indian Contract Act, 1872	Central	Regulates legally binding agreements including development agreements, sale agreements, and contractor contracts.
Registration Act, 1908	Central	Mandates registration of documents related to transfer of immovable property such as sale deeds, lease deeds, and agreements for sale.
Income Tax Act, 1961	Central	Covers taxation of capital gains, TDS, and real estate project income
Goods and Services Tax (GST) Act, 2017	Central	Applicable to under-construction properties, development rights, works contracts, and input tax credits for real estate.
Companies Act, 2013	Central	Regulates corporate compliance for developer companies, including audit, financial reporting, and governance.
Benami Transactions (Prohibition) Act, 1988	Central	Prohibits holding real estate in the name of another person to curb black money and ensure transparency in property ownership
FEMA (Foreign Exchange Management Act)	Central	Regulates foreign investment in real estate by NRIs, PIOs, and foreign entities; strict norms for repatriation and ownership.
SEBI (REITs) Regulations	Central	Regulates Real Estate Investment Trusts (REITs) to allow fractional ownership and trading of commercial real estate portfolios.

Trusts Act / Societies Registration Act / Cooperative Societies Act	State	Applicable to housing societies or trusts owning land or managing redevelopment.
Indian Stamp Act, 1899	State	Governs the stamp duty applicable on real estate documents (implemented by states).
Land Revenue Codes / Urban Land Ceiling Acts	State	Regulate land conversion, landholding ceilings, and agricultural-to-non-agricultural land use.
Municipal Corporation Acts and Development Control Regulations	State	Govern development permissions, property tax, occupancy certificates, and local assessments. Zoning, permissible FSI, height, set-backs – defined by local authorities (Municipal Corporations / Urban Development Authorities).
Slum Rehabilitation Acts (e.g., Maharashtra SRA Act)	State	Regulate redevelopment of slum land and incentivize developers through FSI/TDR.
Environmental Laws (e.g., Environment Protection Act, 1986)	Sectoral	EC (Environmental Clearance) for large projects, waste management, green norms.
Labour Laws	Sectoral	Compliance with PF, ESI, labour welfare for construction workers (Contract Labour Act, BOCW Act).
Fire Safety & Building Safety Norms	Sectoral	Approval from local fire department, disaster preparedness, fire NOC.
Air and Water (Prevention and Control of Pollution) Acts	Sectoral	Consent to establish and operate – especially for large or industrial/commercial projects.
Electricity and Water Laws	Sectoral	Permissions from distribution companies and water authorities (municipal/local bodies).
Indian Easements Act, 1882	Central	Governs easement rights, licenses, and rights of way affecting property use.
Specific Relief Act, 1963	Central	Provides remedies for the enforcement of civil rights when a party to a contract does not fulfil their obligations. Applicable in

		real estate contracts, since monetary damages are often inadequate, considering each property is unique.
Arbitration and Conciliation Act, 1996	Central	Provides a legal framework for resolving disputes outside courts.
Apartment Ownership Acts	State	This law governs the ownership, transfer, and management of individual apartments/flats in a building. Each state in India has its own Apartment Ownership Act (e.g., <i>Maharashtra Apartment Ownership Act, 1970</i> ; <i>Delhi Apartment Ownership Act, 1986</i>).
Rent Control Acts	State	Provides a legal mechanism for fixing fair rent and resolving disputes between landlords and tenants. Rent restrictions affect rental income projections and hence, valuation.
Consumer Protection Act, 2019 (CPA 2019)	Central	Provides speedy redressal of consumer grievances through consumer commissions. Covers unfair trade practices, defective goods, deficient services, and misleading advertisements.

1.7 Basic and Key Terminologies of Real Estate

Core Construction & Project Development Terms

Term	Meaning
FSI / FAR (Floor Space Index / Floor Area Ratio)	Ratio of built-up area to the total plot area, as permitted by local authority.
Development Rights (TDR / FSI Transfer)	Transferable rights allowing developers to use additional FSI elsewhere.
RERA Carpet Area	Net usable floor area excluding walls, balconies, shafts—defined under RERA.
Built-up Area	Carpet area + thickness of walls + balconies/terrace.
Common Area	Areas used jointly by all residents—e.g., corridors, club house, garden – defined under rera
Setback/Margin	Minimum open space to be left from the property boundary as per regulations.

Basement / Podium	Sub-grade or grade-level floors usually for parking, utilities, or amenities.
Stilt Floor	A partially open ground floor space usually used for parking.
Super Area	The total area of a property, including the Built-Up Area and a proportionate share of common areas like lobbies, elevators, gyms, and clubhouses.
Pre-launch / Soft Launch	Early-stage marketing before approvals

Construction Lifecycle & Planning

Term	Meaning
Construction Linked Plan (CLP)	Payment schedule linked to stages of construction (e.g., plinth, slab, finishing).
Possession Certificate / Occupancy Certificate (OC)	Legal document certifying building's readiness for occupation, issued by local authority.
Commencement Certificate (CC)	Approval to begin construction post sanction of plans.
Completion Certificate (CC)	Confirms that construction is as per sanctioned plans and local bye-laws.
Approved Plan / Sanctioned Plan	Official architectural plans approved by the authority.
Encumbrance Certificate	Document certifying that the property is free from legal dues or mortgages.
Mutation Entry	Updating ownership records in local land revenue records post transfer.

Agreements & Financial Structuring

Term	Meaning
Agreement for Sale (AFS)	Registered agreement between builder and buyer outlining obligations and payments.
Development Agreement	Agreement between landowner and developer to develop the land (with revenue or area share).
Joint Development Agreement (JDA)	Specific type of development agreement where landowner and developer share revenue/units.
Revenue Share / Area Share Model	Mode of sharing project outputs—either monetary or via constructed area.

Escrow Account	A monitored account where project funds are deposited and used as per lenders norms.
Construction Finance / Project Loan	Funding obtained for the purpose of construction, repaid from project cash flows.
Project IRR / ROI	Internal Rate of Return / Return on Investment from the real estate project.
Allotment Letter	Initial confirmation issued to buyer with unit details and payment plan.
Builder Buyer Agreement (BBA)	Legal agreement governing sale, terms, and possession.
Title Deed / Sale Deed	Legal document transferring ownership
Land Use Conversion (CLU / NA Order)	Change of land use from agricultural to non-agricultural purposes.
Zoning Regulations	Permissible land use as per master plan

1.8 Self Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1.	Attended full session			
2.	Fully present and heard the speaker			
3.	Understood the Topic, Subject			
4.	Helpful to expand / Start Practice / advice			
5.	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Legal Entity for Real Estate Transaction Structuring

2.1 Introduction

The formation of a legal entity is a critical step in conducting real estate transactions and business in India. It is not merely a procedural formality but a foundational requirement that defines, protects, and governs the rights, responsibilities, and liabilities of all parties involved.

When advising on the appropriate legal structure, several key factors must be considered. These include compliance with central and state-specific real estate laws, tax regulations, sector-specific statutes, ownership structures, capital contribution, profit distribution, foreign investment guidelines, borrowing capacity, risk mitigation strategies, and the legal enforceability of contracts, as well as the personal liabilities of the stakeholders. A comprehensive evaluation of these aspects ensures the smooth execution and timely delivery of real estate projects.

Taxation is an integral aspect of both transactions and the broader business model. Effective tax planning—conducted within the boundaries of applicable laws—can optimize both product costs and profit margins. It is essential that such planning aims at tax efficiency without resulting in tax evasion. The tax implications of various legal structures should therefore be carefully assessed when selecting the most suitable entity for real estate development.

For instance, if a real estate developer intends to acquire land and construct residential apartments, operating through a registered entity—such as a Private Limited Company or a Limited Liability Partnership (LLP)—ensures that contracts are executed in the name of the entity, thereby limiting personal liability. On the other hand, individuals transacting in their personal capacity may face increased personal exposure, reduced tax efficiency, and limited access to institutional financing. In cases involving joint ventures or foreign investment, forming a Special Purpose Vehicle (SPV) enables a clear delineation of ownership interests and ensures compliance with Foreign Direct Investment (FDI) regulations.

Legal entities not only provide a buffer against potential legal disputes but also facilitate smoother dispute resolution and enhance investor confidence in high-value property transactions. Accordingly, understanding and implementing the appropriate legal structure is not just advisable—it is essential to the success of real estate ventures in India.

The following points should be kept in mind by professionals while advising on the appropriate legal entity for a real estate project or transaction:

2.2 Risk Mitigation and Limited Liability

Forming a legal entity such as a Private Limited Company, LLP, or Trust helps in separating the personal assets of promoters from business liabilities. In case of disputes, loan defaults, or litigations related to property (e.g., land encroachment, title defects), the legal entity shoulders the responsibility—not the individual. This protects the promoter from personal financial losses. For real estate developers or aggregators dealing in high-value projects, this risk protection is vital.

However, for small and medium projects, the promoters may prefer the Partnership firm as a legal entity. Partnership firm is suited for small and medium sized projects. The partnership firm gives a flexibility, confidentiality of the information or transactions. However, one should remember that the liability of the partners is unlimited.

Further, the post introduction of IBC, it is the important to consider the impact of IBC in case of the failure to settle the liabilities of the project. Liability of one project should not hamper or risk the entity as whole. Hence, even the lenders are recommending the promoters to have a separate SPV for each project. We Professionals should understand the requirements of the Client, sources (men, material, money) required for the project and advice accordingly.

2.3 Ease of Fundraising and Investment Structuring

Legal entities provide a recognized structure for raising capital through equity, debt, or venture investments. Primary goal of entity selection shall include simple borrowing from the banks or financial institutions.

For instance, Privet Limited Company, Limited Liability Partnership, REITs (Real Estate Investment Trusts) and AIFs (Alternate Investment Funds) can only invest in registered entities, not individuals. Entities make due diligence easier for investors and banks, who prefer lending or investing in structured formats with proper documentation and control mechanisms.

In recent years, the NBFC's are lending is by way of issuance of Debentures rather simple lending. So, the promoter entity should be capable of issuance of Debentures and raise the funds for the project. i.e., minimum private limited company structure is mandatory. Professionals can structure investment deals, perform due diligence, prepare financial models, and handle investor reporting obligations.

2.4 Tax Planning, Optimization not Tax Evasion

Legal entities allow for better tax structuring, taking advantage of corporate tax benefits, depreciation on building assets, GST input credits, and other fiscal incentives (like Section 80-IBA for affordable housing projects). For example, LLPs may offer tax pass-through benefits, while companies might benefit from concessional tax rates under Section 115BAA. Individuals, on the other hand, may be subject to higher personal income tax slabs without many

deductions. Professionals should understand the various tax laws for structuring the transaction / entities in most tax-efficient ways.

2.5 Continuity and Transferability

Entities such as companies or LLPs offer perpetual succession. In case of sizeable real estate project, the future is always uncertain. Hence the concept of corporate structure is inevitable. Even if the promoter's demise or change, the legal entity continues to own and manage the property. This ensures business continuity. For large land banks or commercial rentals, continuity is crucial for long-term leasing contracts or redevelopment plans. The corporate entity structure allows the inclusion of new investors or exits the investors or merger, or demerger options shall be available for accommodating the unforeseen events

2.6 Regulatory Compliance and Transparency

Legal entities are subject to statutory audits, financial disclosures, and regulatory filings (like MCA compliance or RERA registration). This brings transparency and accountability to real estate transactions, helping avoid mischiefs and increasing buyer and investor confidence. The Professionals play a vital role in advising the stakeholders of the projects to comply with all the provisions of the transaction and the business.

2.7 Eligibility for Government Incentives and Schemes

Many state and central government schemes (like PMAY, CLSS subsidies, SEZs, or Smart City incentives) are accessible only to entities with proper registration. These schemes may offer tax holidays, stamp duty concessions, or infrastructure support. A proprietary firm or individual may not qualify. We professionals should be aware of these applicable schemes, benefits, conditions etc, in turn to advise to the stakeholders.

2.8 Title Clarity and Record Keeping

When a legal entity purchases a property, all documentation—title deeds, mutation, tax receipts—are held in the entity's name. This ensures clear traceability, reduces title disputes, and facilitates easier resale or leasing. Moreover, systematic record-keeping under corporate governance ensures better compliance. Professionals can assist in maintaining the digital property registers, perform title audits, and prepare due diligence reports for clients or investors.

2.9 Pooling of Assets and Joint Ventures

A legal entity enables Joint Development Agreement (JDA), joint ventures (JVs) or Special Purpose Vehicles (SPVs) for large-scale developments.

A Joint Development Agreement (JDA) is a popular arrangement in the Indian real estate sector, where a landowner collaborates with a real estate developer to develop a property. Under a JDA, the landowner contributes land, and the developer undertakes the responsibility

of construction, obtaining approvals, marketing, and sales. The revenue generated from the project (either in cash or kind such as a share of developed units) is then shared between the landowner and the developer based on pre-agreed terms.

JDA's are advantageous in urban areas where landowners may not have the resources or expertise to develop their property, and developers want to avoid the upfront cost of acquiring land. The agreement typically includes details about revenue sharing ratios, development timelines, responsibilities of each party, and the methodology for allocation of constructed area or proceeds.

Joint Development Agreements play a crucial role in real estate development in India, balancing landowner contributions with developer expertise. While JDA's offer financial and strategic benefits, they also bring complex tax implications. Direct tax laws focus primarily on capital gains and deferment mechanisms, especially for individuals and HUFs. Indirect tax (GST) implications revolve around the exchange of development rights and construction services, with evolving interpretations and periodic amendments by the government. These structures allow pooling of funds, expertise, and land resources while defining clear rights and obligations.

The knowledge of various statutes is important for the professionals to advice on these transactions. Professionals should remember that the protection of the transactions should be goal rather than protecting individual parties' interest in the transaction. Once the transaction is succeeded, all stakeholders to the transactions will be benefitted

2.10 Segregation of Business Activities

The promoters may have multiple business or multiple business at multiple locations. It is always recommended to have a separate entity for each real estate project / venture. This helps manage project-wise profitability, isolate risks, and align with investor expectations. It also assists in easier exit or divestment from a specific project entity. However, one should remember the cost of the compliance and loss of opportunities if any. Eg., loss or deficit of one project be set off against another project if the business are under one entity.

2.11 Legal Enforcement and Contractual Clarity

Contracts executed through legal entities offer stronger enforceability under the provisions of the Indian Contract Act and the Companies Act. This becomes particularly important in high-value agreements such as lease deeds, construction contracts, Joint Development Agreements (JDA's), and Development and Marketing Agreements (DMA's). Entity-based contracts are generally preferred by corporate tenants, foreign investors, and public sector undertakings due to the legal certainty, transparency, and accountability they offer.

Professionals advising on such transactions should ensure that all contractual documents and deeds are carefully drafted with the support and guidance of qualified legal experts. Proper

legal vetting not only enhances enforceability but also mitigates the risk of future disputes and ensures compliance with applicable laws and regulations.

2.12 Efficient Exit and Monetization Options

Legal entities enable strategic exits through share transfer, business sales, merger, de merger, slump sale or listing on exchanges. Selling a company that holds real estate is often more tax-efficient than selling the property directly. Moreover, entities can be restructured to accommodate mergers or strategic partnerships with minimal stamp duty impact.

2.13 Access to Professional Management

A legal entity allows for appointment of directors, professional directors, independent directors, managers, CFOs, and legal officers. This brings professionalism and transparency to operations. Unlike individual ownership, decision-making is streamlined through defined roles and responsibilities, increasing efficiency and accountability. Professionals can play all these roles, act as advisors, or assist in throughout the business.

2.14 Estate Planning and Succession in Family-Owned Businesses

A significant portion of real estate businesses in India are family-run enterprises, often spanning multiple generations. In such cases, forming a legal entity—such as a private limited company, LLP, or family trust can play a crucial role in institutionalizing the business and ensuring smooth succession planning. Legal entities provide a formal structure through which ownership, management, and control can be clearly defined and transferred across generations in an organized and dispute-free manner.

For instance, a family holding company can serve as the central vehicle to own and manage real estate assets, while family members hold shares in proportion to their entitlement. These shares can be allocated or restructured through mechanisms such as wills, family constitutions, shareholder agreements, or trust deeds. This approach avoids the physical division or fragmentation of immovable property, which is often difficult to execute and may diminish the commercial value of the asset.

Moreover, having a defined legal framework helps prevent future disputes among legal heirs and promotes continuity in business operations. It also allows for better governance, smoother onboarding of professional management if required, and increased investor or lender confidence. In essence, legal entities serve as effective tools to protect family wealth, preserve the integrity of real estate holdings, and facilitate long-term sustainability of the business. Professionals generally associated with these families from generations, will have better idea, knowledge, relationships with the family members to advice on the same.

2.15 Brand Building and Market Perception

Entities have formal names, logos, websites, and reputations. Buyers and tenants perceive entity owned properties as more credible. It helps in building brand equity over time. For

example, "XXXXXX Properties" or "AAAAAA Enterprises" carry weight in market perception something an individual promoter can't easily replicate. Professionals can build brand aligned financial strategies, ensure financial reputation through audits, and help during IPOs or brand valuation.

2.16 Eligibility for Foreign Investment (FDI/FPI)

Real estate companies in India can receive Foreign Direct Investments (FDI) or FPI, but only through entity structures, not individuals. 100% FDI is allowed in townships, infrastructure, and leasing (with certain restrictions). Entity formation is thus mandatory for attracting offshore funds or forming cross-border Joint Ventures (JVs). CAs can facilitate FEMA compliance, advise on RBI reporting, structure FDI flows, and monitor use of funds under applicable laws.

2.17 Table Comparing the different types of entities and benefits etc

Legal Entity	Direct Tax Implications	Indirect Tax (GST) Implications	Advantages	Disadvantages	Professional Advice
Individual	- Taxed at slab rates (up to 30%) - Limited deduction - Capital gains applicable on sale	- Cannot claim GST input credit - GST payable on sale of under construction property	- Simple compliance - No registration costs	- No limited liability- Less tax efficient- Limited financing access	Not recommended for large or commercial projects. Suitable only for personal investment. Avoid mixing personal assets with business.
Proprietorship	- Income taxed in proprietor's hands (slab rates) - Capital gains apply	- Not eligible for ITC - Treated as an individual for GST	- Simple to set up and operate	- Unlimited liability - Difficult to raise capital-No succession continuity	Not advisable for high-risk or high-investment real estate. Suitable for small traders. Use only for entry-level or localized operations.

Partnership Firm	- Flat 30% tax + surcharge/cess - Share of profits tax-free in partners' hands - Deductions allowed	- Eligible for GST registration and ITC - GST applicable on JDA/development rights	- Pooling of capital - Shared responsibility	- Unlimited liability- Limited investor interest - Less formal governance	Ensure proper partnership deed with clauses on real estate, capital, exit strategy. Ideal for small-scale developments.
LLP (Limited Liability Partnership)	- Flat 30% tax - No dividend distribution tax (DDT) - Profit sharing exempt	- Eligible for GST input - Complex in JDA involving landowners	- Limited liability - No audit up to ₹40 lakh turnover (GST)	- FDI restrictions - Somewhat complex compliance vs. partnership	Balanced option for medium-sized ventures. Best for structured deals without external shareholders. Ensure proper tax planning to avoid disguised capital gains.
Private Limited Company	- 22% tax under 115BAA - MAT applicable - Capital gains taxed separately - Dividend taxed in shareholder's hands	- Eligible for ITC - Must comply with GST on JDAs and lease/rental income	- Separate legal entity - Easy access to capital- Professional management	- Higher compliance - Formal audits required - Dividend taxed again in hands of shareholders	Recommended for serious developers, large joint ventures, or those seeking funding. Allows equity investment and structured deals. CAs should ensure MAT, GST optimization,

					and ICDS alignment.
Limited Company (Public)	- 22% tax (or concession al rate under 115BAA) - Tax on capital gains - Dividend taxed in investor's hands	- Full GST compliance - Requires extensive disclosures	- Access to IPOs and foreign capital - Strong governanc e and branding	- High compliance cost - Board structure required	Best suited for large-scale infrastructure or housing companies. Necessary for REITs or companies targeting FDI. Ensure corporate tax planning and investor compliance.

2.18 Conclusion

In India's complex and fast-changing real estate sector, forming a legal entity is not just helpful, it is a smart and necessary step. It helps in reducing risks, managing taxes better, attracting investors, meeting legal requirements, planning for litigation free ownership. A well-structured legal setup brings clarity, transparency, and room for growth, whether you are a small, medium or a large company / promoter.

It also creates valuable opportunities for Chartered Accountants, who can support the business as advisors, auditors, tax planners, and strategic consultants at every stage of the project. As the industry grows with more institutional investment, stricter regulations, customer driven, having the right legal structure with experienced, expert professional advice will be a key factor for success.

2.19 Self Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1.	Attended full session			
2.	Fully present and heard the speaker			
3.	Understood the Topic, Subject			
4.	Helpful to expand / Start Practice / advice			
5.	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 3

Professionals Involved

3.1 Introduction

The real estate sector encompasses a comprehensive value chain, and each stage of this chain involves specialized professionals whose expertise ensures the project's legal compliance, technical accuracy, financial viability, and market appeal. Success in real estate is highly dependent on the effective coordination among these professionals. Legal advisors safeguard compliance with laws and regulations; architects, engineers, and planners ensure functional, safe, and sustainable design; finance and accounting experts manage project funding and taxation; and marketing and sales teams drive customer engagement and revenue generation. Emerging professionals such as sustainability consultants, urban planners, and technology specialists are increasingly becoming critical to creating efficient, modern, and high-value projects.

Understanding the roles, responsibilities, and interconnections of these professionals is essential for anyone involved in real estate, whether as an investor, consultant, or service provider. This chapter provides a structured overview of the key professionals operating across the real estate value chain, illustrating how their collaboration drives value creation, mitigates risks, and contributes to successful outcomes.

3.2 Key Professionals

3.2.1 Legal Advisor

A legal advisor, often a real estate attorney, plays a crucial role in property-related matters, acting as a safeguard for clients involved in various transactions and disputes. Their expertise ensures that these processes are legally sound and that the client's interests are protected. The legal professionals represent different stakeholders through the life cycle of the project. i.e., for promoters, for investors, for lenders, for home buyers, for association etc. Here's a breakdown of their key roles:

- (a) **Ensuring Legal Compliance:** Real estate transactions are governed by numerous laws and regulations at the local, state, and central levels. A legal advisor ensures that all these are complied with, preventing potential legal issues and penalties. They stay updated on the latest changes in real estate laws and advise clients accordingly.
- (b) **Drafting and Reviewing Contracts:** A significant part of a real estate transaction involves various legal documents, the most critical being the purchase agreement. Legal advisors draft, review, and negotiate these contracts to ensure they are legally

sound, reflect the client's interests, and are free from ambiguities that could lead to future disputes.

- (c) **Conducting Due Diligence and Title Verification:** Before a property transaction is finalized, it's crucial to verify the property's title to ensure it is clear of any encumbrances like liens, mortgages, or pending legal claims. A legal advisor conducts thorough title searches to identify any potential issues that could affect the ownership rights. They also perform due diligence on other aspects of the transaction, such as zoning regulations, environmental concerns, and property disclosures.
- (d) **Resolving Disputes and Litigation:** In case of property disputes, such as boundary issues, contract breaches, or title claims, legal advisors represent their clients, offering guidance on legal strategies. They can negotiate settlements, represent clients in mediation or arbitration, and, if necessary, litigate in court to protect their client's rights.
- (e) **Providing Legal Advice and Guidance:** Legal advisors offer expert advice on various real estate matters, helping clients understand their rights, obligations, and potential liabilities. They can explain complex legal terms and the implications of different clauses in real estate documents.

In essence, a legal advisor in real estate provides crucial expertise and guidance, ensuring that property transactions are conducted legally, smoothly, and in the best interests of their clients. Their involvement minimizes risks and helps avoid potential legal pitfalls, making them an indispensable part of any significant real estate endeavour.

3.2.2 Architect

An architect with respect to real estate projects plays a multifaceted role that goes far beyond just designing buildings. They are integral to the entire lifecycle of a real estate project, from initial concept to the final built environment. Here's the role of an Architect in the lifecycle of the project development -

3.2.2.1 Conceptualization and Design:

- (a) **Understanding promoter Need:** Architects work closely with developers, investors to understand their vision, requirements, and objectives for the project i.e., residential, commercial, mixed development, office space and for sale, for lease, for rentals etc
- (b) **Feasibility Studies:** They assess the site's potential and limitations, considering factors like topography, zoning regulations, environmental impact, and budget constraints to determine the project's viability.
- (c) **Schematic Design:** Architects create initial sketches, conceptual drawings, and space plans to translate the client's needs into a tangible design.

- (d) **Design Development:** They refine the schematic design, developing detailed plans, elevations, and material specifications. This phase involves integrating structural, mechanical, electrical, and plumbing systems (MEP).
- (e) **Creating Architectural Drawings:** They produce comprehensive sets of drawings and specifications that serve as the blueprint for construction.⁸ These documents detail every aspect of the building, ensuring clarity for contractors and other stakeholders.

3.2.2.2 Regulatory Compliance and Permitting

Understanding the Building Codes and Regulations, the Architects possess a deep understanding of local, state, and national building codes, zoning bylaws, and safety regulations. They ensure that the design complies with all legal requirements. Securing Permits: They prepare and submit necessary documents to obtain planning permissions and building permits from relevant authorities, streamlining the approval process.

3.2.2.3 Enhancing Value and Sustainability:

- (a) **Optimizing Space and Functionality:** Architects design spaces that are not only aesthetically pleasing but also functional, efficient, and enhance the user experience. They consider factors like natural light, ventilation, and flow to create comfortable and productive environments.
- (b) **Sustainable Design:** Increasingly, architects integrate sustainable design principles, incorporating energy-efficient systems, eco-friendly materials, and practices that minimize the building's environmental impact. This can lead to long-term cost savings and enhance the property's marketability.
- (c) **Increasing Property Value:** Well-designed and thoughtfully executed architectural projects often have higher market value and appeal to potential buyers or tenants. Unique design features and attention to detail can set a property apart.

3.2.2.4 Advice through the life cycle of the project

The **architect plays a central and continuous role** from the inception to the completion of a real estate project. Acting as the key coordinator, the architect integrates the efforts of all other professionals involved, such as engineers, contractors, consultants, and vendors ensuring seamless collaboration throughout the project lifecycle. Based on the approved design and development scheme, the architect prepares the **Bill of Quantities (BOQ)** and initiates the tendering process by inviting bids from various agencies. He or she also evaluates the tenders and assists the promoter in selecting the most suitable vendors or service providers. The architect is responsible for certifying running bills and approving payments at various stages, ensuring financial and technical discipline. Beyond overseeing construction, the architect remains involved until project completion, issuing all necessary certifications required for obtaining **Occupancy Certificates (OC)** and **Completion Certificates (CC)** from the statutory and planning authorities

In summary, the architect in real estate acts as a visionary, a problem-solver, a technical expert, and a project manager. Their role is crucial in creating functional, safe, aesthetically pleasing, and sustainable spaces that meet the needs of clients, comply with regulations, and enhance the value of the real estate asset. Hiring an architect can lead to a smoother development process, cost savings in the long run, and a higher quality end product.

3.2.3 Structural Engineer

A structural engineer plays a vital, though often behind-the-scenes, role in the real estate industry. Their primary focus is ensuring the safety, stability, and durability of buildings and other structures. Their contributions throughout the project are as follows -

3.2.3.1 Design and Analysis of Structural Systems

- (a) **Creating Structural Plans:** Based on architectural drawings and project requirements, structural engineers design the framework of a building, including foundations, columns, beams, slabs, walls, and the roof. They determine the size, type, and arrangement of structural elements needed to support the intended loads.
- (b) **Performing Load Calculations:** They analyse all potential loads a structure might face, including dead loads (weight of the building itself), live loads (occupants, furniture, snow, etc.), wind loads, seismic loads (in earthquake prone areas), and other environmental factors.
- (c) **Ensuring Structural Integrity:** Through complex calculations and modelling, they ensure the structure can safely withstand these loads without collapsing or experiencing excessive deformation.
- (d) **Material Selection:** Structural engineers specify the appropriate materials (steel, concrete, timber, masonry, etc.) based on their strength, durability, and cost-effectiveness for the specific application.

3.2.3.2 Ensuring Safety and Compliance:

- (a) **Adhering to Building Codes and Regulations:** They have a thorough understanding of local, state, and national building codes and ensure that their designs meet all safety standards and legal requirements.
- (b) **Providing Safe and Habitable Spaces:** Their work directly contributes to the safety and well-being of building occupants by designing structures that are resistant to failure.

3.2.3.3 Collaboration and Coordination:

- (a) **Working with Architects:** Structural engineers collaborate closely with architects to integrate the structural design seamlessly with the architectural vision. They find solutions that are both structurally sound and aesthetically pleasing.

- (b) **Coordinating with Other Engineers:** They work with mechanical, electrical, and plumbing (MEP) engineers to ensure that all building systems are compatible and don't compromise the structural integrity.
- (c) **Liaising with Contractors:** During the construction phase, they may review shop drawings, answer questions, and conduct site visits to ensure the construction aligns with the design intent and quality standards.

3.2.3.4 Risk Assessment and Problem Solving:

- (a) **Identifying Potential Structural Issues:** They can assess existing buildings for structural deficiencies, damage (from natural disasters, age, or poor construction), and potential risks.
- (b) **Developing Remedial Solutions:** When structural problems are identified, they design repair or strengthening solutions to ensure the safety and longevity of the building.
- (c) **Providing Expert Testimony:** In cases of structural failure or disputes, they act as expert witnesses, providing their professional opinion and analysis.

3.2.3.5 Due Diligence in Real Estate Transactions:

- (a) **Property Inspections:** Structural engineers can conduct inspections of properties being bought or sold to identify any existing or potential structural issues that could affect the property's value or safety. This is particularly important for older buildings or those with visible signs of structural problems.
- (b) **Providing Condition Reports:** Their reports offer valuable insights into the structural health of a property, helping buyers make informed decisions and potentially negotiate repair costs.

In essence, structural engineers are the guardians of a building's stability and safety. Their expertise is crucial at every stage of a real estate project, from initial design to construction and even the assessment of existing properties. Their work strengthens the functionality and longevity of the built environment, making them indispensable professionals in the real estate industry.

3.2.4 MEP Consultants (Mechanical, Electrical, Plumbing)

MEP (Mechanical, Electrical, and Plumbing) consultants play a critical role in the real estate industry by ensuring that buildings are functional, safe, comfortable, and efficient. They are involved in various stages of a real estate project, from initial planning to post-construction. Here's a detailed look at their responsibilities:

3.2.4.1 Design and Planning of Building Systems:

- (a) **Mechanical Systems:** MEP consultants design Heating, Ventilation, and Air Conditioning (HVAC) systems to regulate temperature, humidity, and air quality. They

select appropriate equipment, calculate heating and cooling loads, and design ductwork and piping systems.

- (b) **Electrical Systems:** They plan and design the entire electrical infrastructure, including power distribution, lighting systems, emergency power, fire alarm systems, security systems, and communication networks. This involves determining power requirements, designing wiring layouts, and specifying electrical components.
- (c) **Plumbing Systems:** MEP consultants design water supply and distribution systems for potable water, sanitary drainage systems for wastewater, and specialized plumbing for fire protection and other needs. They ensure proper pipe sizing, material selection, and compliance with plumbing codes.

3.2.4.2 Ensuring Regulatory Compliance and Safety:

- (a) **Building Codes and Standards:** MEP consultants have a thorough understanding of local, state, and national building codes, safety regulations, and energy efficiency standards. They ensure that all MEP system designs comply with these requirements.
- (b) **Permitting:** They often assist in preparing and submitting necessary documents to obtain permits for the installation of MEP systems.
- (c) **Safety:** A primary concern for MEP consultants is designing systems that are safe for building occupants, including fire safety, electrical safety, and proper ventilation to prevent health issues.

3.2.4.3 Enhancing Efficiency and Sustainability:

- (a) **Energy Efficiency:** MEP consultants focus on designing energy-efficient systems that reduce operational costs and minimize the environmental impact of buildings. This includes specifying high-efficiency equipment, incorporating renewable energy sources where feasible, and optimizing system design for energy conservation.
- (b) **Water Conservation:** In plumbing design, they consider water-efficient fixtures and systems to reduce water consumption.
- (c) **Sustainable Design Practices:** MEP consultants often contribute to green building certifications like LEED by incorporating sustainable design principles into their work.

3.2.4.4 Project Management and Cost Control:

- (a) **Budgeting:** MEP consultants provide cost estimations for the design and installation of MEP systems.
- (b) **Value Engineering:** They may suggest alternative materials or design solutions to optimize costs without compromising performance or safety.
- (c) **Construction Administration:** They often oversee the installation process to ensure it aligns with the design and budget.

3.2.4.5 Building Performance and Longevity:

- (a) **System Integration:** MEP consultants ensure that all mechanical, electrical, and plumbing systems are well-integrated and function efficiently together.
- (b) **Maintainability:** They consider the long-term maintenance and operational aspects when designing systems.
- (c) **Building Automation:** They may design building automation systems to centrally control and monitor MEP installations for optimal performance and energy management.

In the real estate sector, the expertise of MEP consultants is crucial for creating buildings that are not only structurally sound and aesthetically pleasing but also comfortable, safe, efficient, and compliant with regulations. Their work directly impacts the functionality, operational costs, and overall value of a property.

3.2.5 Civil Engineer / Construction Manager

Both Civil Engineers and Construction Managers play crucial, yet distinct, roles in the real estate development and construction process. While their responsibilities often overlap and require close collaboration, their core focuses and expertise differ.

3.2.5.1 Role of a Civil Engineer in Real Estate:

Civil engineers are primarily concerned with the design, planning, and infrastructure aspects of a real estate project. Their responsibilities include:

- (a) **Site Analysis and Feasibility Studies:** Evaluating the suitability of a site for the intended development, considering factors like soil conditions, topography, drainage, and environmental impact.
- (b) **Infrastructure Design:** Designing essential infrastructure such as roads, water supply and distribution systems, sewage and drainage systems, and other utilities.
- (c) **Structural Design:** Designing the structural framework of buildings to ensure stability and safety against various loads (dead, live, wind, seismic).
- (d) **Geotechnical Engineering:** Analysing soil and rock mechanics to design foundations and earthworks.
- (e) **Environmental Engineering:** Assessing and mitigating the environmental impact of the project, ensuring compliance with environmental regulations.
- (f) **Regulatory Compliance and Permitting:** Ensuring that designs comply with local, state, and federal building codes, zoning bylaws, and environmental regulations, and assisting with obtaining necessary permits.
- (g) **Materials Testing and Quality Control:** Ensuring the quality of construction materials through testing and inspection.

In essence, civil engineers lay the groundwork for a real estate project, ensuring that the site is suitable, the infrastructure is well-designed, and the structures are safe and stable. They focus on the technical aspects of the land and the physical structures.

3.2.5.2 Role of a Construction Manager in Real Estate:

Construction Managers are primarily responsible for the overall execution, coordination, and management of the construction phase of a real estate project. Their responsibilities include:

- (a) **Project Planning and Scheduling:** Developing detailed construction schedules, identifying milestones, and managing the project timeline.
- (b) **Budget Management:** Creating and managing the project budget, tracking expenses, and ensuring cost-effectiveness.
- (c) **Contractor and Subcontractor Management:** Hiring, supervising, and coordinating the work of general contractors, subcontractors, and other construction personnel.
- (d) **Resource Management:** Allocating and managing labour, materials, equipment, and other resources efficiently.
- (e) **Site Management:** Overseeing day-to-day operations on the construction site, ensuring safety, and maintaining order.
- (f) **Quality Control:** Implementing and enforcing quality standards to ensure the construction meets the required specifications.
- (g) **Safety Management:** Developing and implementing safety protocols to ensure a safe working environment for all personnel on site.
- (h) **Reporting and Documentation:** Providing regular progress updates to the stakeholders and maintaining detailed project documentation.
- (i) **Risk Management:** Identifying potential risks and developing mitigation plans.
- (j) **Ensuring Legal Compliance:** Ensuring all construction activities comply with relevant laws, regulations, and permits.

In essence, construction managers are the leaders and organizers of the construction process, ensuring that the project is completed on time, within budget, to the required quality, and safely. They focus on the logistical, financial, and administrative aspects of building the project.

3.2.6 Project Management Consultant (PMC)

A Project Management Consultant (PMC) plays a pivotal and often overarching role in real estate development projects. They act as a client's advocate and strategic partner, providing expertise and guidance throughout the entire project lifecycle, from conceptualization to completion. Their primary goal is to ensure the project is delivered on time, within budget, to

the required quality, and in alignment with the client's objectives. Here's a breakdown of the key roles and responsibilities of a PMC in real estate:

3.2.6.1 Project Conceptualization and Planning

- (a) Feasibility Studies:** Assisting in evaluating the viability of a project by analysing market conditions, financial projections, and potential risks.
- (b) Defining Project Scope:** Working with the client to clearly define project objectives, deliverables, and constraints.
- (c) Developing Project Management Plans:** Creating comprehensive plans that outline the project's strategy, schedule, budget, resource allocation, communication protocols, and risk management strategies.
- (d) Stakeholder Management:** Identifying and managing the expectations of all stakeholders involved, including developers, investors, architects, engineers, contractors, and regulatory bodies.

3.2.6.2 Design and Procurement Management:

- (a) Consultant Selection:** Assisting the client in selecting and managing architects, engineers (structural, MEP, civil), and other specialized consultants.
- (b) Design Coordination:** Ensuring effective communication and collaboration between the design team members to avoid conflicts and ensure a cohesive design.
- (c) Value Engineering:** Identifying opportunities to optimize project costs without compromising quality or functionality during the design phase.
- (d) Procurement Strategy:** Developing and implementing strategies for the procurement of contractors, subcontractors, and materials.
- (e) Tender Management:** Managing the tendering process, including preparing tender documents, evaluating bids, and recommending the selection of contractors.
- (f) Contract Negotiation:** Assisting the client in negotiating contracts with consultants and contractors.

3.2.6.3 Construction Management and Supervision:

- (a) Site Management:** Overseeing construction activities on-site to ensure adherence to the project plan, specifications, and safety regulations.
- (b) Schedule Management:** Monitoring project progress against the schedule, identifying potential delays, and implementing corrective actions.
- (c) Budget Control:** Tracking project expenses, managing change orders, and ensuring the project stays within budget.

- (d) **Quality Assurance and Control:** Implementing and monitoring quality control procedures to ensure the construction meets the required standards.
- (e) **Risk Management:** Identifying potential risks during construction and developing mitigation strategies.
- (f) **Communication and Reporting:** Providing regular progress reports to the client and facilitating effective communication between all project stakeholders.
- (g) **Health, Safety, and Environment (HSE) Management:** Ensuring compliance with HSE regulations and implementing safety protocols on site.

3.2.6.4 Project Completion and Handover:

- (a) **Snagging and Defect Management:** Overseeing the identification and rectification of any defects or deficiencies before handover.
- (b) **Commissioning and Testing:** Ensuring that all building systems (MEP, etc.) are properly commissioned and tested.
- (c) **Documentation and Handover:** Managing the collection and handover of all project-related documents, including as-built drawings, warranties, and operation manuals.
- (d) **Project Closure:** Formalizing the completion of the project and ensuring all contractual obligations are met.

In essence, a Project Management Consultant acts as the conductor of the real estate development orchestra. They bring expertise in planning, organizing, and managing complex projects, ensuring that all the different players (architects, engineers, contractors, etc.) work together harmoniously to achieve the client's vision efficiently and effectively. Their involvement can significantly reduce risks, improve project outcomes, and provide the client with peace of mind.

3.2.7 Quantity Surveyor / Cost Consultant

A Quantity Surveyor (QS), also known as a Cost Consultant or Cost Manager, plays a vital role in the real estate industry by managing and controlling the costs associated with construction projects. They act as financial experts, ensuring that projects are completed within budget while meeting the required quality standards and legal regulations. Their involvement spans the entire project lifecycle, from the initial concept to final completion.

3.2.7.1 Pre-Construction Phase:

- (a) **Feasibility Studies and Cost Planning:** QS professionals conduct feasibility studies to assess the financial viability of a project. They prepare initial cost estimates and develop detailed cost plans to establish a realistic budget. This involves analysing client requirements, benchmarking against similar projects, and considering various design options.

- (b) Procurement Advice and Tender Management:** They advise on procurement strategies, prepare tender documents (including Bills of Quantities - BoQ), evaluate bids from contractors, and assist in contract negotiations to secure the best value for the client. The BoQ is a crucial document that lists all the items of work with their quantities and unit rates.
- (c) Risk Assessment and Value Engineering:** QS professionals identify and assess potential financial risks associated with the project. They also contribute to value engineering exercises, exploring cost-effective alternatives without compromising quality or functionality.

3.2.7.2 Construction Phase:

- (a) Cost Control and Monitoring:** They closely monitor project expenditures against the budget, track variations, and report on the financial status of the project. This helps in identifying potential cost overruns early on and implementing corrective measures.
- (b) Valuation of Work and Payments:** QS professionals measure and value the work completed by contractors and subcontractors, ensuring accurate and timely payments based on the contract terms. They prepare interim payment certificates and manage the payment process.
- (c) Contract Administration:** They play a crucial role in administering the construction contract, ensuring that all contractual obligations are met by all parties involved. This includes managing variations, dealing with claims, and resolving contractual issues.
- (d) Quality Assurance and Compliance:** While not directly responsible for quality control, QS professionals ensure that the project adheres to the agreed specifications and that costs are aligned with the required quality standards and legal regulations.

3.2.7.3 Post-Construction Phase:

- (a) Final Account Preparation:** They prepare the final account, which summarizes all the project costs and ensures that all payments have been made correctly. This marks the end of the financial agreement for the project.
- (b) Cost Analysis and Reporting:** QS professionals analyse the actual costs incurred on the project, compare them with the initial budget, and prepare final cost reports for the client.

In essence, a Quantity Surveyor / Cost Consultant acts as a financial guardian for real estate projects. They provide expert advice on cost management, ensure financial transparency, mitigate risks, and strive to deliver projects that are both economically viable and of high quality. Their skills in cost estimation, contract management, and financial control are invaluable to developers, investors, and other stakeholders in the real estate industry.

3.2.8 Environmental Consultant

The role of an Environmental Consultant in real estate is becoming increasingly critical due to growing awareness of environmental sustainability, stricter regulations, and the potential financial and reputational risks associated with environmental issues. They provide expert advice and services to developers, investors, property owners, and other stakeholders throughout the lifecycle of a real estate project.

3.2.8.1 Environmental Due Diligence:

- (a) **Site Assessments (Phase I and II Environmental Site Assessments - ESAs):** Consultants conduct thorough investigations of a property's history and current condition to identify potential or existing environmental contamination, such as soil and groundwater contamination, presence of hazardous materials (like asbestos or lead paint), and underground storage tanks.
- (b) **Risk Assessment:** They evaluate the potential environmental liabilities associated with a property, helping clients understand the risks involved in a transaction or development.
- (c) **Regulatory Compliance Review:** They assess the property's compliance with local, state, and national environmental laws and regulations.
- (d) **Historical Records Review:** Analysing past land uses, permits, and environmental incidents to identify potential concerns.

3.2.8.2 Environmental Impact Assessment (EIA):

- (a) **Identifying Potential Impacts:** For new developments or significant redevelopments, consultants conduct EIAs to predict the potential environmental consequences of the project, including impacts on air and water quality, noise levels, biodiversity, traffic, and socio-economic factors.
- (b) **Developing Mitigation Measures:** Based on the assessment, they propose measures to avoid, minimize, or compensate for negative environmental impacts.
- (c) **Stakeholder Consultation:** They may facilitate consultations with regulatory agencies, local communities, and other stakeholders to address environmental concerns.
- (d) **Preparing EIA Reports:** Compiling comprehensive reports that document the assessment process, findings, and proposed mitigation measures, which are often required for regulatory approvals.

3.2.8.3 Regulatory Compliance and Permitting:

- (a) **Navigating Environmental Regulations:** Consultants possess in-depth knowledge of complex environmental regulations and assist clients in understanding and complying with them.

- (b) **Obtaining Environmental Permits:** They prepare and submit applications for various environmental permits required for development and construction activities.
- (c) **Liaising with Regulatory Agencies:** They act as a point of contact with environmental authorities, facilitating communication and ensuring a smooth permitting process.

3.2.8.4 Sustainable Development and Green Building:

- (a) **Advising on Sustainable Practices:** Consultants guide clients on incorporating sustainable design and construction practices, such as energy efficiency, water conservation, and the use of sustainable materials.
- (b) **Green Building Certifications:** They assist in obtaining green building certifications like LEED, BREEAM, or GRIHA, which can enhance a property's market value and appeal to environmentally conscious tenants or buyers.
- (c) **Waste Management Planning:** Developing strategies for minimizing construction and operational waste and promoting recycling.

3.2.8.5 Remediation and Cleanup:

- (a) **Developing Remediation Plans:** If contamination is identified, consultants develop plans to clean up the affected areas in accordance with regulatory requirements.
- (b) **Overseeing Remediation Activities:** They manage and supervise the implementation of remediation plans, ensuring the work is done effectively and safely.
- (c) **Monitoring and Reporting:** Conducting post-remediation monitoring to ensure the effectiveness of the cleanup efforts and preparing necessary reports for regulatory agencies.

3.2.8.6 Environmental Management Systems (EMS):

- (a) **Developing and Implementing EMS:** For property management companies or large organizations, consultants can help develop and implement EMS to manage their environmental aspects and impacts systematically.
- (b) **Auditing and Compliance Monitoring:** Conducting environmental audits to ensure ongoing compliance with regulations and the EMS.

In summary, Environmental Consultants play a crucial role in the real estate sector by:

- (a) Identifying and mitigating environmental risks and liabilities.
- (b) Ensuring compliance with environmental laws and regulations.
- (c) Promoting sustainable development practices.
- (d) Enhancing the value and marketability of properties through green building initiatives.
- (e) Protecting human health and the environment.

Their expertise is essential for making informed decisions, avoiding costly environmental issues, and contributing to a more sustainable and responsible real estate industry.

3.2.9 Geotechnical Engineer

A Geotechnical Engineer plays a foundational and crucial role in the real estate industry, particularly during the planning, design, and construction phases of any development. Their expertise lies in understanding the behaviour of earth materials (soil and rock) and how they will interact with proposed structures. This knowledge is essential for ensuring the safety, stability, and long-term performance of buildings and infrastructure.

Here's a breakdown of their key responsibilities in real estate:

3.2.9.1 Site Investigation and Characterization:

- (a) **Soil Exploration:** Geotechnical engineers plan and supervise site investigations, which involve drilling boreholes, excavating test pits, and conducting in-situ testing (e.g., Cone Penetration Tests - CPT, Standard Penetration Tests - SPT) to collect soil and rock samples and data.
- (b) **Laboratory Testing:** They analyse the collected samples in a laboratory to determine their physical and mechanical properties, such as strength, compressibility, permeability, and plasticity.
- (c) **Subsurface Profiling:** Based on the investigation and testing results, they develop a detailed understanding of the subsurface conditions, including the types of soil and rock present, their layering, and the groundwater table.

3.2.9.2 Foundation Design:

- (a) **Foundation System Selection:** Based on the soil conditions, structural loads, and project requirements, geotechnical engineers recommend the most appropriate foundation system (e.g., shallow foundations like footings and rafts, or deep foundations like piles and piers).
- (b) **Bearing Capacity Analysis:** They calculate the bearing capacity of the soil to determine the maximum load that the foundation can safely support without failure.
- (c) **Settlement Analysis:** They predict the amount and rate of settlement that the structure might undergo over time and design the foundation to minimize differential settlement, which can cause structural damage.
- (d) **Design of Retaining Structures:** For projects involving excavations or changes in ground elevation, they design retaining walls, slopes, and other earth support systems to ensure stability.

3.2.9.3 Slope Stability Analysis:

- (a) **Identifying Potential Slope Instability:** For developments on or near slopes, geotechnical engineers assess the stability of the existing slopes and identify potential risks of landslides or slope failures.
- (b) **Designing Slope Stabilization Measures:** If instability is identified, they design stabilization measures such as slope grading, retaining walls, soil nailing, and drainage systems.

3.2.9.4 Earthwork Design and Construction:

- (a) **Excavation and Fill Design:** They provide recommendations for safe and efficient excavation and fill operations, including slope angles, compaction requirements, and material suitability.
- (b) **Erosion and Sediment Control:** They may advise on measures to control erosion and sediment runoff during construction to protect the environment.

3.2.9.5 Seismic Design Considerations:

- (a) **Seismic Hazard Assessment:** In earthquake-prone regions like parts of India, geotechnical engineers assess the seismic hazard at the site and determine the expected ground shaking intensity.
- (b) **Liquefaction Analysis:** They evaluate the potential for soil liquefaction (loss of strength due to shaking) and recommend mitigation measures if necessary.
- (c) **Seismic Foundation Design:** They incorporate seismic considerations into the foundation design to ensure the structure can withstand earthquake forces.

3.2.9.6 Groundwater Management:

- (a) **Groundwater Studies:** They investigate groundwater conditions, including the depth of the water table, flow direction, and potential impact on the project.
- (b) **Drainage Design:** They design drainage systems to control groundwater levels and prevent water-related problems like hydrostatic pressure and frost heave.

3.2.9.7 Pavement Design:

- (a) **Road and Pavement Design:** For real estate developments that include roads and parking areas, geotechnical engineers design the pavement structure based on the subgrade soil conditions and anticipated traffic loads.

3.2.9.8 Construction Monitoring and Quality Control:

- (a) **Foundation Inspection:** They often inspect the construction of foundations to ensure they are built according to the design and specifications.

- (b) **Compaction Testing:** They perform tests to verify that soil fills are compacted to the required density.
- (c) **Problem Solving:** They provide expert advice and solutions to any geotechnical issues that may arise during construction.

They provide the essential groundwork (literally and figuratively) for safe, stable, and durable real estate developments, mitigating risks associated with the ground and ensuring the long-term success of the project. Their expertise helps prevent costly structural failures and ensures the safety of occupants.

3.2.10 Landscape Architect

The role of a Landscape Architect in real estate is multifaceted, contributing significantly to the aesthetic appeal, functionality, sustainability, and ultimately, the value of a property.

3.2.10.1 Enhancing Property Value and Appeal:

- (a) **Curb Appeal:** Landscape architects design visually appealing outdoor spaces, creating a positive first impression for potential buyers or tenants. Well-manicured lawns, colourful flower beds, and strategically placed trees significantly enhance a property's curb appeal.
- (b) **Increased Property Value:** Professionally designed and installed landscaping can increase a property's value by as much as 15% or even yield an ROI of 100% to 200% or more. Buyers are often willing to pay a premium for properties with attractive and functional outdoor spaces.
- (c) **Creating Outdoor Living Spaces:** Landscape architects design patios, decks, outdoor kitchens, and seating areas that seamlessly blend with the architecture, effectively expanding the living space and enhancing the quality of life for residents.
- (d) **Aesthetic Variety:** They strategically select and arrange diverse plant species, textures, and colours to create visually interesting landscapes that evolve throughout the year.
- (e) **Visual Connectivity:** Landscape architects ensure a smooth visual flow between the interior and exterior spaces of a property, often using similar design elements and materials to create a cohesive look.

3.2.10.2 Improving Functionality and Usability:

- (a) **Functional Layout:** They design outdoor spaces to serve specific purposes, considering factors like pathways, lighting, accessibility, and recreational areas.
- (b) **Privacy and Screening:** Landscape architects strategically use plants and landforms to create privacy screens and buffer noise, enhancing the comfort and enjoyment of the property.

- (c) **Stormwater Management:** They design landscapes that effectively manage stormwater runoff through features like rain gardens and permeable pavements, preventing erosion and potential flooding.
- (d) **Energy Efficiency:** Through the strategic placement of trees and shrubs, landscape architects can provide natural shade, reducing the need for air conditioning and lowering energy costs. Green roofs also contribute to insulation and reduce heat absorption.

3.2.10.3 Promoting Sustainability and Environmental Benefits:

- (a) **Sustainable Practices:** Landscape architects often incorporate native and drought-tolerant plants, reducing the need for excessive watering and maintenance. They may also implement rainwater harvesting systems and other eco-friendly practices.
- (b) **Ecological Balance:** By selecting native plants, they support local ecosystems, attract pollinators, and enhance biodiversity.
- (c) **Air Purification:** Trees and plants absorb carbon dioxide and release oxygen, contributing to improved air quality around the property.
- (d) **Mitigating Urban Heat Island Effect:** Green spaces and vegetation help to lower temperatures in urban areas, combating the heat island effect.

3.2.10.4 Navigating Regulations and Planning:

- (a) **Site Analysis and Planning:** Landscape architects conduct thorough site analyses to understand the property's unique characteristics, including topography, existing vegetation, drainage, and climate, informing their design decisions.
- (b) **Zoning and Regulations:** They assist property owners and developers in complying with local zoning laws and environmental regulations, ensuring that landscape designs meet all necessary requirements.
- (c) **Land Planning:** On a larger scale, landscape architects contribute to land planning for new developments, considering ecological, scenic, and recreational aspects.

In essence, landscape architects play a crucial role in transforming real estate into more valuable, functional, sustainable, and aesthetically pleasing environments that enhance the quality of life for occupants and contribute positively to the surrounding community. They bring a unique blend of creativity, technical knowledge, and environmental awareness to the real estate development process.

3.2.11 Finance Advisor / Chartered Accountant

The roles of a Finance Advisor and a Chartered Accountant (CA) are important in the real estate sector, providing essential financial expertise and guidance to individuals, businesses, and developers involved in property transactions and investments apart from statutory

compliances. While their specific focuses might differ slightly, both play vital roles in ensuring financial prudence and success in this significant asset class.

A Finance Advisor in real estate acts as a strategic partner, helping clients steer the complex financial landscape of property transactions and investments. Their responsibilities often include:

- (a) **Financial Planning and Goal Setting:** They work with clients to understand their financial goals related to real estate, whether it's purchasing a home, investing in commercial properties, or planning for retirement through real estate assets. They help define investment strategies aligned with these goals.
- (b) **Mortgage and Financing Advice:** Finance advisors guide clients through the intricacies of securing financing, including mortgages, loans, and other funding options. They help compare different lenders, understand loan terms, and determine the most suitable financing structure based on the client's financial situation.
- (c) **Investment Analysis:** They analyse the financial viability of potential real estate investments, considering factors like cash flow, return on investment (ROI), potential appreciation, and associated risks. They help clients make informed decisions based on sound financial principles.
- (d) **Tax Planning (General):** While not always tax specialists like CAs, finance advisors provide general guidance on the tax implications of real estate transactions and ownership, advising clients on potential tax benefits and liabilities.
- (e) **Risk Management:** They help clients identify and mitigate financial risks associated with real estate investments, such as interest rate fluctuations, market downturns, and vacancy risks.
- (f) **Portfolio Diversification:** For investors, finance advisors help integrate real estate into a broader investment portfolio, ensuring diversification and alignment with overall financial objectives.
- (g) **Market Analysis:** They often provide insights into current market trends, property values, and economic factors that could influence real estate decisions.
- (h) **Negotiation Support (Financial Aspects):** They can assist clients in understanding the financial implications of offers and counteroffers during property transactions.

A Chartered Accountant brings in-depth financial accounting, taxation, and regulatory expertise to the real estate sector. Their key roles include:

- (a) **Tax Planning and Compliance:** CAs specialize in the tax aspects of real estate, including income tax, GST implications on property transactions, and stamp duty considerations. They ensure compliance with all relevant tax laws and help clients optimize their tax positions.

- (b) **Financial Statement Preparation and Analysis:** For real estate businesses and developers, CAs are crucial in preparing accurate financial statements, analysing financial performance, and providing insights for better decision making.
- (c) **Due Diligence:** During property acquisitions or mergers involving real estate companies, CAs conduct financial due diligence to assess the financial health and identify potential risks or liabilities.
- (d) **Audit and Assurance:** They perform audits of real estate companies to ensure financial transparency and compliance with accounting standards and regulations.
- (e) **Transaction Structuring:** CAs advise on the most tax efficient and legally sound structures for real estate transactions, such as joint ventures, partnerships, or special purpose vehicles (SPVs).
- (f) **Valuation Services:** They may provide property valuation services based on financial data and accounting principles.
- (g) **Regulatory Compliance:** CAs ensure that real estate businesses comply with various financial regulations and reporting requirements i.e., RBI, SEBI, RERA etc.

In summary, both Finance Advisors and Chartered Accountants play critical but distinct roles in the real estate sector. Finance Advisors focus on broader financial planning, investment advice, and financing options, while Chartered Accountants specialize in accounting, taxation, and regulatory compliance. Their combined expertise is invaluable for navigating the financial complexities and achieving success in the real estate market.

3.2.12 Marketing and Sales Team / Agency

The role of the Marketing and Sales Team/Agency is absolutely vital in the real estate sector. They are the engine that drives demand, connects properties with potential buyers or tenants, and ultimately facilitates successful transactions.

3.2.12.1 Creating Awareness and Generating Leads:

- (a) **Market Research:** They conduct thorough market research to understand target audiences, competitor activities, and current market trends. This informs their marketing strategies and helps identify potential customer segments.
- (b) **Branding and Positioning:** For developers and individual properties, they create a strong brand identity and position the offering effectively in the market to attract the right audience.
- (c) **Digital Marketing:** Leveraging online platforms is crucial. This includes:
 - (i) **Website Development and Optimization:** Creating user-friendly websites with detailed property information, high-quality visuals, and virtual tours.

- (ii) **Search Engine Optimization (SEO):** Ensuring properties and agencies rank high in relevant online searches.
- (iii) **Social Media Marketing:** Engaging with potential customers, showcasing properties, and building brand awareness on platforms like Facebook, Instagram, and LinkedIn.
- (iv) **Email Marketing:** Nurturing leads and keeping potential buyers/tenants informed about new listings and offers.
- (v) **Online Advertising (PPC):** Running targeted ad campaigns on search engines and social media to reach specific demographics.
- (d) **Traditional Marketing:** While digital is key, traditional methods still play a role:
 - (i) **Print Advertising:** Placing ads in newspapers, magazines, and property brochures.
 - (ii) **Outdoor Advertising:** Utilizing billboards and hoardings in strategic locations.
 - (iii) **Direct Mail:** Sending out flyers and brochures to targeted areas.
- (e) **Public Relations (PR):** Building positive media coverage and managing the reputation of developers and agencies.
- (f) **Events and Exhibitions:** Participating in property expos and organizing open houses to showcase properties directly to potential buyers.

3.2.12.2 Engaging and Converting Potential Customers:

- (a) **Lead Management:** Efficiently capturing, qualifying, and nurturing leads generated through various marketing channels.
- (b) **Property Showings and Tours:** Organizing and conducting property viewings, highlighting key features and benefits to potential buyers/tenants.
- (c) **Building Relationships:** Establishing rapport and trust with clients to understand their needs and preferences.
- (d) **Providing Information and Guidance:** Offering detailed information about properties, neighbourhoods, legal processes, and financing options relevant to the market.
- (e) **Negotiation Skills:** Representing their clients' interests and skilfully negotiating terms and conditions of sale or lease agreements.
- (f) **Sales Presentations:** Delivering compelling presentations that showcase the value proposition of the property.
- (g) **Handling Objections:** Addressing concerns and providing solutions to potential buyers/tenants.

3.2.12.3 Facilitating Transactions and Providing After-Sales Support:

- (a) Documentation and Paperwork:** Assisting clients with the necessary documentation and procedures involved in property transactions.
- (b) Coordination with Other Parties:** Liaising with lawyers, financial institutions, and other stakeholders to ensure a smooth transaction process.
- (c) Post-Sales Follow-up:** Maintaining communication with clients after the sale or lease to ensure satisfaction and potentially generate referrals.
- (d) Customer Relationship Management (CRM):** Utilizing CRM systems to manage client interactions and track progress throughout the sales cycle.

3.2.12.4 Providing Market Feedback and Strategic Insights:

- (a) Gathering Customer Feedback:** Collecting valuable feedback from potential buyers/tenants to understand their preferences and identify areas for improvement.
- (b) Reporting and Analysis:** Providing regular reports on marketing campaign performance, sales metrics, and market trends to inform future strategies.
- (c) Competitive Analysis:** Monitoring the activities of competitors in the real estate market and identifying opportunities and threats.

In essence, the Marketing and Sales Team/Agency acts as the crucial bridge between the properties available and the individuals or businesses seeking them. Their strategic marketing efforts generate awareness and interest, while their skilled sales professionals guide potential customers through the decision-making process, ultimately driving successful real estate transactions and contributing significantly to the growth of the property market in the region. Without an effective marketing and sales function, even the most exceptional properties may struggle to find their ideal buyers or tenants.

3.2.13 Real Estate Consultant / Broker

The role of a Real Estate Consultant/Broker is absolutely pivotal in the real estate sector. They act as intermediaries and trusted advisors, guiding clients through the complexities of buying, selling, leasing, and investing in properties. Their expertise and services benefit a wide range of stakeholders.

3.2.13.1 For Buyers:

- (a) Understanding Needs and Preferences:** They take the time to understand the buyer's specific requirements, budget, lifestyle, and preferred locations.
- (b) Property Sourcing and Shortlisting:** Leveraging their market knowledge and network, they identify properties that match the buyer's criteria and present a curated shortlist.

- (c) **Property Viewings and Inspections:** They arrange and accompany buyers on property viewings, highlighting key features and potential drawbacks.
- (d) **Providing Market Insights:** They offer valuable information about property values, market trends and investment potential.
- (e) **Negotiation:** They act as the buyer's advocate, skilfully negotiating the price and terms of the purchase agreement with the seller or their agent.
- (f) **Assisting with Documentation:** They guide buyers through the often-complex paperwork involved in a real estate transaction, ensuring they understand the legal and financial aspects.
- (g) **Connecting with Other Professionals:** They can connect buyers with other essential service providers like home loan providers, lawyers, and property inspectors.

3.2.13.2 For Sellers:

- (a) **Property Valuation:** They provide an accurate assessment of the property's market value based on current trends, comparable sales, and the property's unique features.
- (b) **Marketing and Promotion:** They develop and implement marketing strategies to attract potential buyers, including online listings, professional photography, virtual tours, open houses, and advertising.
- (c) **Property Presentation Advice:** They offer guidance on how to stage the property to maximize its appeal to potential buyers.
- (d) **Handling Inquiries and Showings:** They manage inquiries from interested parties and coordinate property viewings.
- (e) **Negotiation:** They represent the seller's interests and negotiate offers to achieve the best possible price and terms.
- (f) **Managing the Transaction Process:** They guide sellers through the paperwork, coordinate with the buyer's agent, and ensure a smooth closing process.

In essence, Real Estate Consultants/Brokers act as trusted advisors and facilitators, simplifying the often-complex process of real estate transactions. Their expertise, negotiation skills, and market knowledge are invaluable assets for anyone looking to buy, sell, lease, or invest in property. They bring efficiency, transparency, and professionalism to the real estate market, ensuring smoother and more successful outcomes for their clients.

3.2.14 Urban Planner / Town Planner

Urban Planners, also called Town Planners, are professionals trained to design, organize, and regulate the use of land and infrastructure in urban and regional settings. They are experts in zoning, land-use planning, infrastructure design, and regulatory compliance. In India, they are

usually graduates or postgraduates in Urban / Town Planning (B. Plan / M. Plan) and often members of the Institute of Town Planners, India (ITPI).

Unlike architects who focus mainly on individual buildings, urban planners look at the bigger picture, ensuring that entire communities, neighbourhoods, and regions are functional, sustainable, and aligned with long-term growth plans.

Urban Planners function as **advisors, coordinators, and designers** throughout the real estate value chain:

(i) Assessment & Research:

- (a) Study the site, surrounding area, demographics, and infrastructure.
- (b) Analyse government policies, zoning laws, environmental requirements, and future city plans.

(ii) Planning & Design:

- (a) Prepare **land-use plans**, zoning proposals, and project layouts.
- (b) Ensure integration of roads, utilities, public spaces, and amenities.
- (c) Incorporate **sustainability measures** such as green spaces, water management, and energy efficiency.

(iii) Coordination with Stakeholders:

- (a) Collaborate with developers, architects, engineers, legal advisors, environmental consultants, and municipal authorities.
- (b) Facilitate approvals from statutory authorities such as **municipal corporations, RERA, environmental boards, and planning departments**.

(iv) Regulatory Compliance:

- (a) Ensure projects meet all **local, state, and national planning regulations**.
- (b) Identify potential compliance risks and provide mitigation strategies.

(v) Implementation & Monitoring:

- (a) Oversee the execution of the approved plans during construction.
- (b) Monitor adherence to master plans, land-use policies, and approved layouts.

3.2.15 Valuer / Registered Appraiser

Valuers or Registered Appraisers are professionals trained to assess and determine the market value of land, buildings, or ongoing real estate projects. They are critical in providing an independent, credible, and professional valuation that informs financing, investment

decisions, taxation, and legal compliance. In India, they are often members of professional bodies such as the Institution of Valuers (IOV) or registered under other bodies like IBBI.

Roles & Responsibilities:

- (i) **Property Inspection & Data Collection:** Conduct site visits, inspect physical attributes, and collect market and legal data.
- (ii) **Valuation Analysis:** Apply methodologies such as Market Approach, Income Approach, and Cost Approach to determine accurate property values.
- (iii) **Reporting & Certification:** Prepare formal valuation reports for banks, investors, developers, and legal authorities, adhering to professional standards.
- (iv) **Advisory Role:** Advise on pricing strategies, project feasibility, investment decisions, and dispute resolution.

3.2.16 Facility Management Consultant

Facility Management Consultants specialize in the operation and maintenance of real estate assets after construction. They ensure buildings, infrastructure, and amenities remain functional, safe, and efficient. They may operate independently or through facility management firms.

Roles & Responsibilities:

- **Planning & Advisory:** Develop comprehensive facility management plans, including maintenance schedules, resource allocation, and vendor management.
- **Operations Management:** Oversee daily operations of residential, commercial, or industrial properties; coordinate security, housekeeping, utilities, and technical services.
- **Maintenance & Sustainability:** Implement preventive and corrective maintenance programs for electrical, mechanical, plumbing, and structural systems; advise on sustainable building practices.
- **Monitoring & Reporting:** Track operational performance, costs, and service quality; provide reports and dashboards to owners and developers.

In India, Facility Management Consultants do not have a statutory licensing body like architects or Chartered Accountants. However, professional credibility is established through membership in recognized professional associations and certifications. The International Facility Management Association (IFMA) – India Chapter and the Building Owners and Managers Association (BOMA) promote best practices, training, and professional standards in the field. Consultants may also obtain certifications such as Facility Management Professional (FMP), Sustainability Facility Professional (SFP), or a Certified Facility Manager (CFM) from IFMA, or diplomas from institutions like the National Institute of Building Management (NIBM). These certifications validate expertise in building operations, maintenance, sustainability, and

overall facility management, enhancing trust and reliability for developers, investors, and property owners.

3.5 Self Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Study Module: No Objection Certificates (NOCs) in Real Estate Development

4.1 Introduction

This module provides comprehensive information on No Objection Certificates (NOCs) required for sanctioning building plans and layout projects across different states in India. As land is a state subject under the Indian Constitution, each state has developed its own regulatory framework governing land use, development, and construction activities.

The module covers the various NOCs required for sanctioning building plans and layout projects under Development Control Regulations (DCRs) and Regional Town Planning Acts, with specific focus on five major states: Maharashtra, Karnataka, Tamil Nadu, Gujarat, and Uttar Pradesh. Special attention is given to regional variations within states, such as the distinct regulations applicable to Mumbai compared to other parts of Maharashtra.

For Chartered Accountants advising clients in the real estate sector, understanding these NOCs is crucial for ensuring compliance, mitigating risks, and facilitating smooth project execution.

4.2 Town and Country Planning Act in India – An Overview

The Town and Country Planning Act is a legislative framework used by various Indian states to regulate urban and rural land use, infrastructure development, and zoning policies to promote systematic and sustainable urban growth. While there is no single central Act, each state in India has its own version of the Town and Country Planning legislation, modelled on similar principles.

Key Objectives

- (a) **Planned Development:** Ensures balanced growth of urban and rural areas through Master Plans and Zonal Plans.
- (b) **Land Use Regulation:** Controls conversion of land (e.g., from agricultural to residential or commercial).
- (c) **Zoning and Infrastructure:** Provides rules for zoning (residential, commercial, industrial) and provisions for roads, drainage, parks, and public utilities.
- (d) **Public Welfare:** Aims to create livable, efficient, and sustainable communities with proper amenities.

Examples of State Acts

- (a) Karnataka: Karnataka Town and Country Planning Act, 1961
- (b) Tamil Nadu: Tamil Nadu Town and Country Planning Act, 1971
- (c) Kerala: Kerala Town and Country Planning Act, 2016
- (d) Madhya Pradesh: M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973
- (e) Maharashtra: Follows MRTP Act, 1966 (Maharashtra Regional and Town Planning Act) – a more evolved version of town planning law

How It Works

- (a) Master Plan Preparation: Prepared by the state's planning authority (e.g., BDA in Bengaluru, CMDA in Chennai).
- (b) Zoning Regulations: Each land parcel is categorized for a specific use.
- (c) Development Permissions: All construction and layout approvals must align with the Master Plan and zoning norms.
- (d) Public Participation: Draft plans are published for public objection and suggestion.
- (e) Land Acquisition and Reservation: Provides mechanisms for acquisition of land for roads, schools, parks, etc.

1. Development Control Regulations (DCR) are a set of rules and guidelines laid down by urban local bodies and planning authorities to regulate land use, building design, and construction practices in a city or region. Their importance in real estate development, particularly in redevelopment projects, is critical and multifaceted:

- (a) Ensures Planned Urban Growth** - DCR helps in maintaining orderly and sustainable development by regulating the density, height, setbacks, land use, and building coverage in different zones of a city.
- (b) Legal Framework for Construction** - All real estate projects must comply with DCR to obtain approvals. It provides the legal basis for permissible construction, avoiding violations and penalties.
- (c) Guides Building Design and Layout** - DCR defines crucial parameters such as Floor Space Index (FSI), parking requirements, open space, fire safety norms, and ventilation standards, ensuring functional and safe building design.
- (d) Supports Infrastructure Planning** - By controlling population density and built-up area, DCR helps city planners manage infrastructure needs like roads, water supply, sewage, and public amenities efficiently.

- (e) **Essential for Redevelopment Projects** - In redevelopment, DCR governs how much additional construction is allowed (e.g., through increased FSI or TDR), ensuring that new developments are viable, compliant, and beneficial to existing occupants.
- (f) **Promotes Transparency and Accountability** - With clearly laid out rules, DCR brings transparency in the approval process and helps developers, architects, and authorities work within defined boundaries.
- (g) **Protects Public and Environmental Interests** - DCR incorporates environmental and social considerations, such as green spaces, setback rules, and light and air provisions, enhancing urban liveability.

4.3 Applicable Acts, Rules, and Regulations

(a) National Level Frameworks

- (i) Real Estate (Regulation and Development) Act, 2016 (RERA)
- (ii) Environmental Protection Act, 1986
- (iii) The Aircraft Act, 1934 (for Height NOCs)
- (iv) The Ancient Monuments and Archaeological Sites and Remains Act, 1958
- (v) Water (Prevention and Control of Pollution) Act, 1974
- (vi) Air (Prevention and Control of Pollution) Act, 1981
- (vii) The Electricity Act, 2003 (for Electricity NOCs)
- (viii) The Cantonments Act, 2006 (for Cantonment Board NOCs)
- (ix) National Highways Act, 1956 (for NHAI NOCs)
- (x) Control of National Highways (Land and Traffic) Act, 2002 (for NHAI NOCs)
- (xi) National Waterways Act, 2016 (relevant for Irrigation NOCs near national waterways)
- (xii) Indian Telegraph Act, 1885 (for overhead electrical lines and underground cables)
- (xiii) The Right of Way Policy for Telecom Infrastructure, 2016 (relevant for developments near communication infrastructure)

(b) State-Specific Acts and Regulations

Maharashtra

- (i) Maharashtra Regional and Town Planning Act, 1966
- (ii) Maharashtra Municipal Corporations Act, 1949

- (iii) Mumbai Municipal Corporation Act, 1888
- (iv) Development Control and Promotion Regulations for Greater Mumbai, 2034
- (v) Unified Development Control and Promotion Regulations for Maharashtra, 2020

Karnataka

- (i) Karnataka Town and Country Planning Act, 1961
- (ii) Karnataka Municipal Corporations Act, 1976
- (iii) Bangalore Development Authority Act, 1976
- (iv) Bangalore Building Byelaws, 2003 (revised)

Tamil Nadu

- (i) Tamil Nadu Town and Country Planning Act, 1971
- (ii) Tamil Nadu District Municipalities Act, 1920
- (iii) Chennai City Municipal Corporation Act, 1919
- (iv) Tamil Nadu Combined Development and Building Rules, 2019

Gujarat

- (i) Gujarat Town Planning and Urban Development Act, 1976
- (ii) Gujarat Provincial Municipal Corporations Act, 1949
- (iii) Gujarat Comprehensive Development Control Regulations, 2017
- (iv) Gujarat Infrastructure Development Act, 1999

Uttar Pradesh

- (i) Uttar Pradesh Urban Planning and Development Act, 1973
- (ii) Uttar Pradesh Municipal Corporation Act, 1959
- (iii) Uttar Pradesh Building and Development Bylaws, 2018
- (iv) Uttar Pradesh Development Authorities (Regulation of Building Operations) Act, 1956

4.4 Provisions, Forms, Important Orders, Notifications, Circulars, Checklists, SOPs, Case Law - Key NOCs Required for Real Estate Development

4.4.1. Environmental Impact Assessment Authority NOC

	Issuing Authority
Issuing Authority	a) State Environmental Impact Assessment Authority (SEIAA) or b) Ministry of Environment, Forest and Climate Change (MoEFCC)
When Required	a) Building projects $\geq$ 20,000 square meters built-up area b) Township projects $\geq$ 50 hectares Projects in Coastal Regulation Zones
Purpose	To ensure environmental sustainability and minimize adverse environmental impacts
Validity Period	Typically - 5 to 7 years
State Variations	a) Maharashtra: Additional requirements for projects in eco-sensitive zones b) Karnataka: Special provisions for Western Ghats region c) Tamil Nadu: Coastal zone-specific regulations d) Gujarat: Industrial corridor specific provisions e) UP: Specific requirements for NCR regions
Application Process	a) Submit Form 1/Form 1A along with pre-feasibility report b) Environment Impact Assessment (EIA) study (if required) c) Public consultation (for Category A projects) d) Appraisal by Expert Appraisal Committee e) Grant of Environmental Clearance with specific conditions
Environmental Clearance Checklist – Application	f) Form 1 (Application form) completed with all project Details g) Pre-feasibility report h) Environmental Impact Assessment report (if applicable) i) Risk Assessment study (if applicable) j) Conceptual site and layout plans k) Environmental Management Plan l) NOC from other relevant departments (if applicable) m) Public hearing proceedings documentation (for Category A projects)

4.4.2. Fire NOC

	Issuing Authority
Issuing Authority	State Fire Service Department
When Required	a. Residential buildings above 15m height b. Commercial buildings c. Educational institutions d. Hospitals e. Industrial buildings
Purpose	To ensure adherence to fire safety norms and protection of life and property
Validity Period	1-3 years depending on state regulations
State Variations	a. Maharashtra: Mumbai Fire Brigade has distinct regulations b. Karnataka: Bangalore Fire Force regulations c. Tamil Nadu: Tamil Nadu Fire and Rescue Services requirements d. Gujarat: Gujarat Fire Prevention and Life Safety Measures Act e. UP: UP Fire Service specific requirements
Application Process	a. Submit application with building plans b. Inspection by Fire Department officials c. Compliance with recommendations d. Issuance of Provisional NOC (for construction) e. Final NOC after completion of construction
Fire NOC Checklist: Application	a. Application form with building Details b. Building plans showing fire safety measures c. Fire protection system plans d. Evacuation plan e. Fire safety installations Details f. Access for fire vehicles g. Water storage capacity for firefighting

4.4.3. Airport Authority NOC (Height Clearance)

	Issuing Authority
Issuing Authority	Airports Authority of India (AAI)
When Required	Projects within 20 km radius of airports or in funnel zone
Purpose	To ensure building heights don't interfere with aircraft operations
Validity Period	Typically valid for the specific project
State Variations	(a) Varies based on proximity to airports in each state (b) Mumbai: Stricter height restrictions due to airport location (c) Bangalore: Electronic City has special provisions
Application Process	(a) Submit application on NOCAS portal (https://nocas2.aai.aero) (b) Site coordinates and proposed height Details (c) Evaluation by AAI (d) Issuance of NOC with permissible height
Airport Authority NOC Checklist:	(a) NOCAS portal application form (b) Site latitude and longitude coordinates (c) Location map showing distance from airport (d) Site elevation Details (e) Proposed building height (f) Survey of India toposheet reference

4.4.4. Water and Sewerage Department NOC

	Issuing Authority
Issuing Authority	Municipal Water Supply and Sewerage Boards
When Required	For all new construction projects requiring water connection and sewerage services
Purpose	To ensure adequate water supply and proper sewage disposal
Validity Period	Usually for the duration of the project
State Variations	(a) Maharashtra: MCGM for Mumbai, Municipal Corporation or council for respective area and MJP for other areas (b) Karnataka: BWSSB for Bangalore (c) Tamil Nadu: CMWSSB for Chennai (d) Gujarat: Municipal Corporations (e) UP: Jal Sansthan/Jal Nigam

Application Process	(a) Submit application with site plan and requirements (b) Technical feasibility study (c) Payment of connection charges (d) Issuance of NOC

4.4.5. Pollution Control Board NOC

	Issuing Authority
Issuing Authority	State Pollution Control Boards
When Required	(a) Large residential projects (b) Commercial complexes (c) Industrial buildings
Purpose	To control air, water, and noise pollution
Validity Period	Typically 5 years
State Variations	(a) Maharashtra Pollution Control Board (MPCB) (b) Karnataka State Pollution Control Board (KSPCB) (c) Tamil Nadu Pollution Control Board (TNPCB) (d) Gujarat Pollution Control Board (GPCB) (e) UP Pollution Control Board (UPPCB)
Application Process	(a) Submit application with project Details (b) Site inspection (c) Installation of pollution control measures (d) Consent to Establish followed by Consent to Operate

4.4.6. Agricultural Land Conversion NOC

	Issuing Authority
Issuing Authority	Revenue Department/Land Conversion Authority
When Required	When agricultural land is to be used for non-agricultural purposes
Purpose	To regulate land use change and protect agricultural resources
Validity Period	Permanent once converted
State Variations	(a) Maharashtra: Section 44A of MLR Code (b) Karnataka: Section 95 of Land Revenue Act (c) Tamil Nadu: Town and Country Planning Department (d) Gujarat: Revenue Department provisions (e) UP: Section 143 of UP Revenue Code

Application Process	(a) Submit application to Revenue Department (b) Site inspection (c) Payment of conversion fees (d) Issuance of NA Order/Conversion Certificate

4.4.7. Groundwater Authority NOC

	Issuing Authority
Issuing Authority	Central/State Ground Water Authority
When Required	When groundwater extraction is planned for the project
Purpose	To regulate and control groundwater extraction
Validity Period	2-5 years depending on area category
State Variations	Requirements vary based on groundwater availability zones
Application Process	(a) Submit application with water requirement Details (b) Hydrogeological report (if required) (c) Installation of water conservation measures (d) Payment of water abstraction charges (e) Issuance of NOC

4.4.8. Drainage Department NOC

	Issuing Authority
Issuing Authority	Municipal Drainage Department
When Required	When project may affect natural drainage patterns
Purpose	To ensure proper stormwater management and prevent flooding
Validity Period	Usually for the duration of the project
State Variations	(a) Mumbai: MCGM Stormwater Drainage Department (b) Other municipalities have similar departments
Application Process	(a) Submit application with drainage plan (b) Technical evaluation (c) Implementation of recommended measures (d) Issuance of NOC

4.4.9. Traffic Police NOC

	Issuing Authority
Issuing Authority	Traffic Police Department

When Required	For commercial buildings, educational institutions, hospitals, and other high traffic generating developments
Purpose	To assess and mitigate traffic impact of new developments
Validity Period	Usually one-time for the specific project
State Variations	Requirements vary based on local traffic conditions and road infrastructure
Application Process	(a) Submit application with traffic impact assessment (b) Site inspection (c) Implementation of traffic management measures (d) Issuance of NOC

4.4.10. Heritage Committee NOC

	Issuing Authority
Issuing Authority	Heritage Conservation Committee
When Required	For construction within heritage precincts or affecting heritage structures
Purpose	To preserve architectural, historical, and cultural heritage
Validity Period	Usually for the specific project
State Variations	Mumbai: Mumbai Heritage Conservation Committee Other cities have similar bodies for heritage protection
Application Process	(a) Submit application with detailed architectural plans (b) Presentation to Heritage Committee (c) Compliance with preservation requirements (d) Issuance of NOC

4.4.11. Electricity Department NOC

	Issuing Authority
Issuing Authority	State Electricity Distribution Companies
When Required	(a) For all new construction projects requiring power connection (b) For constructions near high-tension lines (c) For projects with high power requirements
Purpose	To ensure power supply feasibility and safety from electrical installations
Validity Period	Usually valid for the duration of the project

State Variations	(a) Maharashtra: MSEDCL/BEST (Mumbai) (b) Karnataka: BESCOM/HESCOM/Others (c) Tamil Nadu: TANGEDCO (d) Gujarat: GUVNL and subsidiaries (e) UP: UPPCL and distribution companies
Application Process	(a) Submit application with electrical load requirements (b) Technical feasibility assessment (c) Site inspection for HT line proximity (if applicable) (d) Payment of processing fees and infrastructure charges (e) Issuance of power feasibility NOC/clearance
Electricity Department NOC Checklist:	(a) Application form with project Details (b) Site plans showing electrical installation proximity (c) Electrical load calculations (d) Single line diagrams (e) Clearance Details from power lines (f) Transformer/substation requirements for larger projects (g) Safety compliance documentation (h) Fee payment proof

4.4.12. Cantonment Board NOC

	Issuing Authority
Issuing Authority	Cantonment Board under Ministry of Defence
When Required	(a) For any construction within Cantonment areas (b) For construction in areas adjacent to defence establishments
Purpose	To ensure development activities don't compromise defence interests and security
Validity Period	Usually for the specific project
State Variations	(a) Requirements uniform across cantonments but implementation may vary (b) Special provisions for security-sensitive zones near military installations
Application Process	(a) Submit application with detailed building plans (b) Security assessment and review (c) Compliance with Cantonment building regulations (d) Presentation to Cantonment Board (if required)

	(e) Issuance of NOC with specific conditions
Cantonment Board NOC Checklist:	(a) Application in the prescribed format (b) Property ownership documents (c) Site plans showing relationship to defence installations (d) Detailed building plans and elevations (e) Height particulars with reference to AOD (f) Security clearance documentation (g) Compliance undertaking (h) Fee payment proof

4.4.13. Irrigation Department NOC

	Issuing Authority
Issuing Authority	State Irrigation/Water Resources Department
When Required	(a) For construction near canals, dams, or irrigation channels (b) When project may affect irrigation water bodies or channels (c) For projects requiring water allocation from irrigation sources
Purpose	To protect irrigation infrastructure and ensure water availability for agriculture
Validity Period	Usually valid for the project duration
State Variations	(a) Maharashtra: Water Resources Department (b) Karnataka: Karnataka Irrigation Department (c) Tamil Nadu: PWD (Water Resources Organization) (d) Gujarat: Narmada Water Resources Department (e) UP: UP Irrigation Department
Application Process	(a) Submit application with site plan showing proximity to irrigation structures (b) Technical feasibility study (c) Site inspection by irrigation officials (d) Implementation of protective measures (if required) (e) Payment of prescribed fees (f) Issuance of NOC
Irrigation Department NOC Checklist:	(a) Application with project Details (b) Site plans showing distance from irrigation infrastructure

	(c) Topographical surveys showing drainage patterns (d) Protection measures for irrigation structures (e) Drainage management plans (f) Water withdrawal Details if applicable (g) Non-obstruction undertaking (h) Fee payment proof

4.4.14. National Highways Authority of India (NHAI) NOC

	Issuing Authority
Issuing Authority	National Highways Authority of India
When Required	(a) For construction within 60m from National Highway ROW (b) For direct access to National Highways (c) For utilities crossing National Highways
Purpose	To regulate development along highways and ensure road safety
Validity Period	Usually valid for the project duration
State Variations	Generally uniform across states but may vary based on highway classification and importance
Application Process	(a) Submit application to concerned NHAI Project Implementation Unit (b) Submit traffic impact assessment and access management plan (c) Site inspection by NHAI officials (d) Compliance with setback requirements and access specifications (e) Payment of prescribed fees (f) Issuance of NOC with specific conditions
NHAI NOC Checklist:	(a) Application in prescribed format (b) Site plans showing highway proximity (c) Access management plans (d) Traffic impact assessments (e) Drainage plans (f) Safety measure Details (g) Setback maintenance undertaking (h) Indemnity bond if required (i) Fee payment proof

4.4.15. State Highway Department NOC

	Issuing Authority
Issuing Authority	State Public Works Department (PWD)/Highway Department
When Required	(a) For construction within specified distance from State Highway ROW (b) For direct access to State Highways (c) For utilities crossing State Highways
Purpose	To regulate development along state roads and ensure road safety
Validity Period	Usually valid for the project duration
State Variations	(a) Maharashtra: Maharashtra PWD (b) Karnataka: Karnataka PWD (c) Tamil Nadu: Highways Department (d) Gujarat: Roads & Buildings Department (e) UP: UP PWD
Application Process	(a) Submit application to concerned PWD/Highway Division (b) Submit site plan showing relationship to highway (c) Traffic management and access plan (d) Site inspection by highway officials (e) Payment of prescribed fees (f) Issuance of NOC with specific conditions
State Highway Department NOC Checklist:	(a) Application to the relevant PWD division (b) Site plans showing highway proximity (c) Access plans with entry/exit Details (d) Drainage arrangements (e) Construction-phase traffic management (f) Setback compliance undertaking (g) Fee payment proof

Other applicable NOCs, depending on the nature of the real estate project:

- 1. Coast Guard / Coastal Zone Management NOC** – For projects near coastlines or in Coastal Regulation Zones (CRZ).
- 2. Forest Department / Tree Cutting NOC** – If the project involves the felling of trees or is located near reserved forests.
- 3. Telecom / Overhead Cable Clearance** – For tall structures near telecom infrastructure.

4. **Railway Authority NOC** – For projects adjacent to railway lines or land under railway control.
5. **Mining / Quarry Clearance** – If construction involves land with mining/quarry activities nearby.
6. **Hazardous Material / Storage NOC** – If the project involves the storage/use of chemicals or fuels.
7. **Special Economic Zone (SEZ) or Industrial Corridor Approval** – If the land is within a designated SEZ or corridor.

4.5 Important Case Laws

1. **Environmental NOC:** *Vellore Citizens Welfare Forum v. Union of India (1996)* - Established the principle that environmental protection is part of the right to life under Article 21 of the Constitution
2. **Development Regulations:** *Builder Association of India v. State of Maharashtra (2017)* - Upheld the validity of imposing conditions in Development Control Regulations
3. **Land Conversion:** *Bondu Ramaswamy v. Bangalore Development Authority (2010)* - Established principles for fair compensation in land acquisition cases

4.6 FAQs

Q1: Can construction begin before obtaining all necessary NOCs?

A1: No, construction should commence only after obtaining all mandatory NOCs. Starting construction without required NOCs may result in stop-work orders, penalties, or even demolition notices.

Q2: What is the typical timeline for obtaining Environmental Clearance?

A2: The timeline varies based on project category. Category B2 projects may receive clearance within 2-3 months, while Category A projects requiring EIA studies and public consultations may take 8-12 months.

Q3: Are NOC requirements different for redevelopment projects compared to new developments?

A3: Yes, redevelopment projects may have different NOC requirements, particularly relating to existing structures, tenant permissions, and heritage considerations. Some NOCs may be expedited for redevelopment, while additional NOCs may be required.

Q4: How do NOC requirements differ for commercial versus residential projects?

A4: Commercial projects typically require additional NOCs related to traffic impact, parking provisions, fire safety, and pollution control. Height restrictions, setback requirements, and environmental thresholds may also differ.

Q5: What happens if there are changes to the project after obtaining NOCs?

A5: Significant changes to project plans after obtaining NOCs generally require reapplication or amendments to the existing NOCs. Minor changes may be accommodated through a revision application, but this varies by authority.

Q6: Can the validity of NOCs be extended?

A6: Most NOCs can be extended through a renewal application, typically submitted 30-60 days before expiry. Extension requirements vary by authority and may involve compliance verification.

Q7: Are there fast-track options for obtaining NOCs?

A7: Some states have implemented single-window clearance systems and online application processes to expedite NOC issuance. Priority processing may be available for affordable housing or government priority projects.

Q8: How do NOC requirements vary for projects in special economic zones (SEZs)?

A8: Projects in SEZs often benefit from streamlined approvals through a single-window system. However, core environmental and safety NOCs remain mandatory, though they may be processed through SEZ authorities.

4.7 Glossary

Built-up Area: The total area covered by the building at all floor levels, including wall thickness and covered area.

Coastal Regulation Zone (CRZ): Areas along the coastline regulated under the CRZ Notification to protect coastal environments.

Development Control Regulations (DCR): Rules that govern the development of land and construction of buildings within a planning authority's jurisdiction.

Environmental Impact Assessment (EIA): A systematic process to identify and evaluate potential environmental impacts of a proposed project.

Floor Space Index (FSI): The ratio of a building's total floor area to the size of the land upon which it is built.

Funnel Zone: Area near airports where building height restrictions apply due to aircraft approach paths.

Layout Approval: Permission from the planning authority for subdividing land into plots with provision for roads, open spaces, and amenities.

Non-Agricultural (NA) Permission: Authorization to use agricultural land for non-agricultural purposes.

Occupancy Certificate: Document issued by the local authority certifying that a building complies with approved plans and is safe for occupation.

Premium FSI: Additional FSI that can be purchased from the planning authority by paying a premium amount.

Transferable Development Rights (TDR): Development rights awarded to landowners who surrender their land for public purposes, which can be used elsewhere or sold.

Urban Local Body (ULB): Local self-government institution responsible for administration of urban areas.

4.8 End of Chapter – Outcome

Upon completing this chapter, CA professionals will:

1. Understand the comprehensive landscape of NOCs required for real estate development across major Indian states
2. Be able to identify the specific NOC requirements for different types of projects
3. Know the relevant authorities, application processes, and timelines for obtaining various NOCs
4. Recognize state-specific variations in NOC requirements and procedures
5. Be equipped to guide clients through the regulatory compliance process effectively
6. Be able to anticipate potential compliance issues and implement mitigation strategies
7. Understand the financial implications of NOC requirements for project planning
8. Be familiar with key legal precedents and case laws related to development permissions

This knowledge will enable CA professionals to provide valuable advisory services to real estate developers, investors, and other stakeholders in the real estate sector, enhancing project viability and regulatory compliance.

4.9 Reference Material

1. Maharashtra Regional and Town Planning Act, 1966
2. Development Control and Promotion Regulations for Greater Mumbai, 2034
3. Karnataka Town and Country Planning Act, 1961
4. Tamil Nadu Combined Development and Building Rules, 2019
5. Gujarat Comprehensive Development Control Regulations, 2017
6. Uttar Pradesh Building and Development Bylaws, 2018
7. Real Estate (Regulation and Development) Act, 2016

8. Environmental Impact Assessment Notification, 2006 (as amended)
9. National Building Code of India, 2016
10. Coastal Regulation Zone Notification, 2019
11. Guidelines for obtaining NOC from Airports Authority of India
12. Central Ground Water Authority Guidelines
13. The Electricity Act, 2003 and State Electricity Distribution Codes
14. Control of National Highways (Land and Traffic) Act, 2002
15. NHAI (Amendment) Act, 2013 and Highway Administration Rules
16. State Highway Acts and Regulations (various states)
17. The Cantonments Act, 2006
18. Ministry of Defence Guidelines for construction in Cantonment areas
19. State Irrigation Acts and Canal Regulations
20. Guidelines for development of land in the vicinity of irrigation structures
21. Manual of Standards and Specifications for development along National Highways
22. Indian Electricity Rules, 1956 (as amended)
23. Guidelines for installation of electrical infrastructure in building complexes
24. State PWD Manuals and Highway Access Regulations

Note: For the most current regulations and requirements, always refer to the official websites of the respective authorities and the latest notifications/circulars.

4.10 Self-Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Alternative Investment Funds

5.1 Introduction to Alternative Investment Funds (AIFs)

(a) Definition of AIFs: As per Securities Exchange Board of India (Alternative Investment Fund) Regulations, 2012, Alternative investment funds mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which -

- (i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and
- (ii) is not covered under the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 or any other regulations of the Board to regulate fund management activities.

However, following funds shall not be considered as AIFs under SEBI AIF Regulations

- (i) family trusts set up for the benefit of 'relatives' as defined under Companies Act, 2013;
- (ii) ESOP Trusts set up under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 or as permitted under Companies Act, 2013;
- (iii) employee welfare trusts or gratuity trusts set up for the benefit of employees;
- (iv) holding companies as defined under sub-section 46 of section 2 of Companies Act, 2013;
- (v) other special purpose vehicles not established by fund managers, including securitization trusts, regulated under a specific regulatory framework;
- (vi) funds managed by securitisation company or reconstruction company which is registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; and
- (vii) any such pool of funds which is directly regulated by any other regulator in India;

Hence, AIFs in general parlance can be termed as a pooled investment vehicle that collects funds from investors (Indian or foreign) and invests them in accordance with a defined investment policy, for the benefit of its investors.

(b) Comparison with traditional investment vehicles

AIFs vary with traditional investment vehicles in terms of following:

- (i) AIFs invest in various asset classes such as real estate, private equity, hedge funds, and others where Traditional investment vehicles invest in equities, gold, bonds, and cash.
- (ii) AIFs require a higher minimum investment requirement in compare to traditional investment vehicles which require a lower investment amount that is available to general investors.
- (iii) Only HNIs can invest in AIFs where anyone can invest in traditional investments.
- (iv) AIFs are regulated by SEBI with fewer restrictions where in traditional investment vehicles such as Mutual funds, stocks, ETFs, etc. are completely regulated by SEBI.
- (v) AIFs generally have higher management fees in compare to Traditional investments vehicles which have lower management fees.
- (vi) AIFs are less liquid where Traditional investments can be redeemed anytime generally.

(c) Broad classification: Category I, II, and III AIFs

- (i) 'Category I Alternative Investment Fund' which invests in start-up or early stage ventures or social ventures or SMEs or infrastructure or other sectors or areas which the government or regulators consider as socially or economically desirable and shall include venture capital funds, SME Funds, social impact funds, infrastructure funds, special situation funds and such other Alternative Investment Funds as may be specified.
- (ii) 'Category II Alternative Investment Fund' which does not fall in Category I and III and which does not undertake leverage or borrowing other than as permitted in the AIF Regulations. Private Equity Funds, Debt Funds and Real Estate Funds falls under this category.
- (iii) 'Category III Alternative Investment Fund' which employs diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives.

(d) Benefits of AIF

AIFs offer several benefits that make them attractive to certain types of investors. They provide access to diverse asset classes and unique investment opportunities that are not typically available through traditional investment vehicles. Key benefits include:

- (i) **Diversification:** Unlike traditional assets, alternative investment funds enable you to diversify across a range of assets, including real estate, private equity, and commodities. This strategy mitigates the risk associated with concentrating your investments in one area.

- (ii) **Potential for Higher Returns:** AIFs are structured to provide better returns compared to traditional investment avenues. With their adaptable strategies and access to alternative markets, AIFs often yield positive results, even when stocks and bonds experience fluctuations.
- (iii) **Access to Expertise:** One of the key benefits of AIFs is the expertise of their fund managers. These alternative investment funds are overseen by professionals who possess specialized knowledge in specific markets or asset classes.
- (iv) **Risk Mitigation:** Although higher returns often come with greater risk, AIF funds actively implement risk mitigation strategies. Fund managers utilize methods such as hedging, diversification within alternative assets, and proprietary strategies to minimize the risk.
- (v) **Liquidity Options:** Various types of AIFs provide different liquidity options to meet the needs of investors. For example, Category I and II AIFs generally have a minimum lock-in period of three years, while Category III schemes may have flexible lock-in terms. This adaptability makes alternative investment funds in India suitable for both long-term and short-term investors.
- (vi) **Portfolio Customization:** Alternative investment funds enable investors to tailor their portfolios according to personal goals, risk tolerance, and investment horizon. With a wide range of AIF offering diverse asset classes and investment strategies, you can create a portfolio that aligns with your financial aspirations.
- (vii) **Tax Efficiency:** Alternative investment funds can provide potential tax benefits, depending on how the fund is structured. Investors have the opportunity to minimize taxes on capital gains until they sell their shares, which allows for better control over their tax obligations.

5.2 Regulatory Framework

(a) SEBI (Alternative Investment Funds) Regulations, 2012

SEBI in exercise of the powers conferred to it under SEBI Act, 1992 enacted the SEBI (Alternative Investment Funds) Regulations, 2012 to regulate pooled investment funds that invest in alternative asset classes such as private equity, venture capital, hedge funds, real estate, and distressed assets. These regulations were enacted to bring transparency, governance, and investor protection to a growing but previously unregulated segment of the investment landscape.

Before these regulations, such investments were either unregulated or governed under vague frameworks, making it difficult to ensure proper risk controls and investor disclosures. The AIF Regulations set clear boundaries by defining what constitutes an AIF, laying down registration norms, eligibility criteria, disclosure requirements, and investment restrictions.

(b) Key compliance requirements

(i) Registration: As per the SEBI (Alternative Investment Funds) Regulations, 2012, no entity or person shall act as an Alternative Investment Fund without obtaining a certificate of registration from the SEBI.

AIFs can obtain registration under any one of the categories viz. Category I, Category II or Category III and specified Alternative Investment Fund under Regulation 19 of AIF regulations such as Angel Funds, Special Situation Funds and Corporate Debt Market Development Funds.

Application of registration shall be made in Form A as specified in the First Schedule to AIF regulations and shall be accompanied by a non-refundable application fee as specified in Part A of the Second Schedule to AIF regulations to be paid in the manner specified in Part B thereof.

Eligibility criteria for registration certificate:

- the memorandum of association in case of a company; or the Trust Deed in case of a Trust; or the Partnership deed in case of a limited liability partnership permits it to carry on the activity of an Alternative Investment Fund;
- the applicant is prohibited by its memorandum and articles of association or trust deed or partnership deed from making an invitation to the public to subscribe to its securities;
- in case the applicant is a Trust, the instrument of trust is in the form of a deed and has been duly registered under the provisions of the Registration Act, 1908;
- in case the applicant is a limited liability partnership, the partnership is duly incorporated and the partnership deed has been duly filed with the Registrar under the provisions of the Limited Liability Partnership Act, 2008;
- in case the applicant is a body corporate, it is set up or established under the laws of the Central or State Legislature and is permitted to carry on the activities of an Alternative Investment Fund.
- Fund, Sponsor, manager are fit and proper persons.
- The key investment team of the Manager of Alternative Investment Fund has -at least one key personnel with relevant certification as may be specified by the SEBI from time to time; and at least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualification as may be specified by the SEBI. These requirements may also be fulfilled by the same key personnel.

- The Manager or Sponsor has the necessary infrastructure and manpower to effectively discharge its activities.
 - The applicant has clearly described at the time of registration the investment objective, the targeted investors, proposed corpus, investment style or strategy and proposed tenure of the fund or scheme.
- (ii) Investment conditions and restrictions
- The Alternative Investment Fund may raise funds from any investor whether Indian, foreign or non-resident Indians by way of issue of units.
 - The Alternative Investment Fund shall not accept from an investor, an investment of value less than 1 crore rupees.
 - The Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund of not less than 2.5% of the corpus or 5 crore rupees, whichever is lower, in the form of investment in the Alternative Investment Fund and such interest shall not be through the waiver of management fees.
 - Each scheme of the Alternative Investment Fund shall have corpus of at least 20 crore rupees and in case of social impact fund shall have a corpus of at least 5 crore rupees.
 - No scheme of the Alternative Investment Fund shall have more than one thousand investors.
 - The fund shall not solicit or collect funds except by way of private placement.

Some of the basic features for investments by AIFs are:

- Co-investment by a manager or sponsor (if any) should not be on terms more favorable than those offered to the AIF;
- Category I AIFs and Category II AIFs cannot to invest more than 25% of the investable funds¹ in one company, and in case of Category III AIFs, the limit is 10%;
- Un-invested portion of the investable funds may be invested in liquid assets till deployment of funds as per the investment objective;
- Investment by Category I AIFs and Category II AIFs in the shares of entities listed on institutional trading platform shall be deemed to be investment in unlisted securities for the purpose of the AIF Regulations.
- Each category of Alternative Investment Fund shall have its own set of investment conditions as well. Category I AIF and Category II AIFs are required to 'primarily invest' in unlisted securities.
- 'Debt funds' defined to be AIFs which primarily invest in debt securities are categorized as Category II AIFs.

(iii) Other Regulatory requirements

- **Valuation and Reporting:** SEBI mandates regular valuations of the fund's investments by independent and transparent quarterly and annual reporting. This helps maintain investor confidence and compliance with regulations.
- **Disclosure Obligations:** Detailed Private Placement Memorandums (PPMs) must outline investment strategies, risks, expected returns, and governance measures.
- **Leverage Restrictions:** Category II AIFs cannot use leverage for investments. They can only use leverage temporarily for operational needs, such as short-term borrowing to manage liquidity.
- **No Speculative Trading:** These funds are prohibited from engaging in speculative trading strategies, aligning them with a focus on sustainable, long-term investments.

(c) Taxation

AIFs that are registered with SEBI as Category II AIFs under the AIF Regulations have been granted tax pass through status. Any income of Category II AIF which is in the nature of 'business income' is taxable at the level of the AIF whereas any dividend, capital gains or interest in hands of the AIF are exempt and shall be taxed in the hands of the investor.

Further, AIFs are required to deduct withholding tax for non-residents at a rate which is in accordance with the provisions of the DTAA if they are eligible to DTAA benefits. However, it keeps the withholding rate unchanged for resident investors.

5.3 Fund Structure & Lifecycle

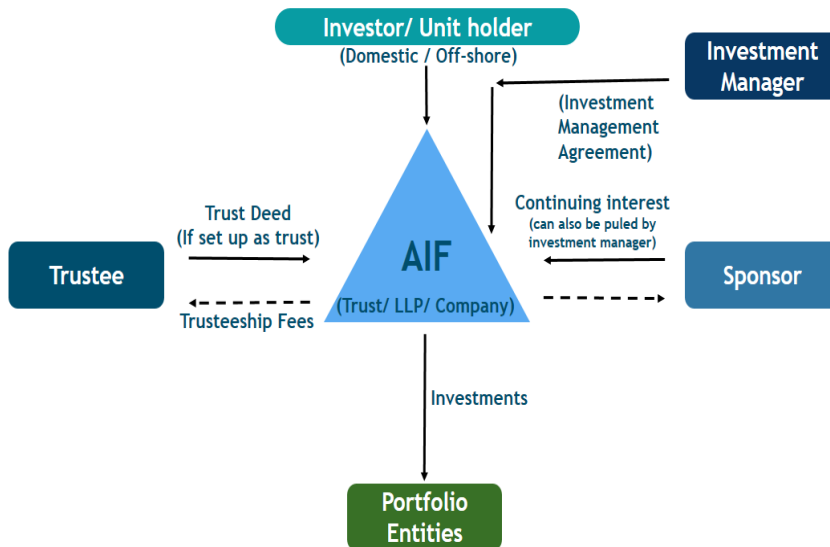
(a) Trust, company, LLP, or body corporate structures

Alternative Investment Fund can be established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate, which, is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and is not regulated by SEBI for other fund management activities such as Mutual Funds, Collective Investment Schemes.

"Sponsor" means any person or persons who set up the Alternative Investment Fund and includes promoter in case of a company and designated partner in case of a limited liability partnership.

"Manager" or Investment Manager means any person or entity who is appointed by the Alternative Investment Fund to manage its investments by whatever name called and may also be same as the sponsor of the Fund.

Structure of Alternative Investment Fund (AIF)



“Investee company/ Portfolio Entities” means any company, special purpose vehicle or limited liability partnership or body corporate or real estate investment trust or infrastructure investment trust in which an Alternative Investment Fund makes an investment.

“Trustee” means any person who holds trust property on behalf of trust

5.4 Real Estate Investment Trust

5.4.1 Introduction to Real Estate Investment Trust (REIT)

(a) Definition of Real Estate Investment Trust (REIT): As per Securities Exchange Board of India (Real Estate Investment Trust) Regulations, 2014, REIT means a person that pools Rs. 50 crores or more for the purpose of issuing units to at least 200 investors so as to acquire and manage real estate asset(s) or property(ies), that would entitle such investors to receive the income generated therefrom without giving them the day-to-day control over the management and operation of such real estate asset(s) or property(ies).

As per SEBI REIT Regulations, any company which acquires and manages real estate asset(s) or property(ies) and offers or issues securities to the investors, shall not be construed as a REIT or Real Estate Investment Trust.

The primary purpose of a REIT is to generate income from rental or lease payments received from the properties it owns. REITs provide an opportunity for investors to invest in real estate without directly owning or managing properties themselves. Instead, they can purchase shares

or units of a REIT, which represents their ownership interest in the underlying real estate portfolio.

REITs are required to distribute a significant portion of their income to shareholders in the form of dividends.

By investing in REITs, individuals can gain exposure to the real estate market and potentially benefit from property value appreciation, rental income, and dividend payments. REITs are typically traded on stock exchanges, providing liquidity to investors who wish to buy or sell their shares.

(b) Evolution of REITs

REITs started in the US in 1960, letting small investors join real estate investments for income. This innovative approach to real estate investment flourished since and has been adopted globally, inspiring similar frameworks in approximately 40 countries worldwide. Over the last three decades, the number of listed REITs grew from 120 across two countries in 1992 to 893 across more than 40 countries and regions in 2022. This growth underscores the increasing recognition and adoption of REITs as a viable investment vehicle on the international stage.

Asia increasingly embraced the REIT model. From having 31 REITs across six countries and regions in 2005, it rose to 223 REITs in 11 countries and regions by 2022. This frantic growth demonstrates the increasing demand for real estate investment structures that combine simplicity and liquidity for investors. India joined the REIT model when the first-ever REIT in the nation, Embassy Office Parks, was launched in March 2019. Since then, the country has had another three live REITs: Embassy Office Parks REIT, Mindspace Business Parks REIT, Brookfield India Real Estate Trust, and Nexus Select Trust. However, the movement in the nation's REIT market is just getting started. Although the REIT market has grown robustly over the past years, the REIT model still represents only 13.7 per cent (Rs29,272 crore) of the total listed real estate in India – in comparison with 98.9 per cent in the US and 94.8 per cent in Australia. The potential of the Indian REIT model market remains vastly untapped.

(c) Benefits of REITs

- (i) **Low-ticket size:** The investor can invest small amounts of money into the REITs.
- (ii) **Liquidity:** As the units of REITs are listed on stock exchanges, there is reasonable liquidity (an exit option) for the existing investors. New investors can also invest at any point in time by buying these units on the secondary market without having to wait for a new launch.
- (iii) **Divisibility:** A benefit related to liquidity and small ticket sizes is divisibility. In the case of physical real estate, when an investor wants liquidity, the entire property must be sold, as it cannot be divided into parts and sold off. REIT units can be sold on the exchange to the extent of the liquidity requirement.

- (iv) Diversification: A typical real estate investment is done in a single property, or a couple of properties at most, in the majority of cases. This exposes the investor to the risk of a concentrated portfolio. REIT is a diversified portfolio across various different properties located across the country.
- (v) Transparency: The investor can easily know where the money is invested as well as what the fair value of the investment would be as the NAV is declared regularly.
- (vi) Regulations: REITs are regulated by SEBI.
- (d) Risk involved in investing in REITs
 - (i) Interest Rate Sensitivity – REITs may underperform during periods of rising interest rates, as higher borrowing costs can impact their returns and make them less attractive relative to other investments.
 - (ii) Market Volatility – Although REIT units are generally less volatile than equities, they can still experience fluctuations, particularly during market downturns.
 - (iii) Sector-Specific Risks – Economic conditions and market fluctuations can impact different property sectors in varying ways, affecting REIT performance accordingly.

5.4.2 Regulatory Framework for REITs in India

Securities Board of India introduced SEBI (Real Estate Investment Trusts) Regulations, 2014 to establish a strong and dynamic investment environment for Real Estate Investment Trusts (REITs). These regulations aim to enhance accountability, reliability, and operational efficiency within the REIT sector. They also aim to facilitate the migration of existing fractional ownership structures into the regulated REIT framework, promoting transparency and aligning tax treatment.

(a) Registration Requirement:

As per SEBI (Real Estate Investment Trusts) Regulations, 2014 no person shall act as a REIT unless it is registered with the SEBI. An application for grant of certificate of registration as REIT shall be made, by the sponsor on behalf of the trust in Form A as specified in the Schedule I to SEBI REIT Regulations and shall be accompanied by a non-refundable application fee of such amount and shall be payable in the manner as specified in Schedule II of SEBI REIT Regulations.

To register with the SEBI the legal form of entity shall be trust and the trust deed shall be duly registered in India under the provisions of the Registration Act, 1908.

The trust deed has its main objective as undertaking activity of REIT in accordance with SEBI REIT Regulations and includes responsibilities of the Trustee as specified in SEBI REIT Regulations.

Persons have been designated as sponsor(s), manager and trustee under SEBI REIT Regulations and all such persons shall be separate entities.

Further, no unit holder of the REIT enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT.

Unitholders holding not less than 10% of the total outstanding units of the REIT, either individually or collectively, shall be entitled to nominate one director on the board of directors of the Manager.

Trust shall clearly described at the time of application for registration, details pertaining to proposed activities of the REIT and the trust and parties of trust shall be fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

(b) Minimum public holding norms

Minimum value of REIT assets shall be INR 5,000 million and Minimum offer size shall be INR 2,500 million. Minimum public float (excluding sponsor, manager and associates) required under SEBI REIT Regulations shall be: if post-issue capital is less than INR 16,000 million then higher of 25% of post-issue capital or INR 2,500 million, if Post-issue capital equal to/more than INR 16,000 million but less than INR 40,000 million then INR 4,000 million and if post-issue capital is equal to or more than INR 40,000 million then 10% of the post-issue capital. Further, public holding to be increased to at least 25% within a period of three years from the date of listing.

Minimum investment per investor in REITs shall be INR 10,000 to INR 15,000. As per REIT Regulations maximum subscription shall be 25% of unit capital (per investor) unless 75% approval in value from other investors has been obtained. If REIT fails to make its initial offer within three years from registration, it shall surrender its certificate of registration and cease to operate as a RIET.

(c) Investment conditions:

- (i) At least 80% of the total value of REIT assets in completed and rent and/or income-generating real estate properties with a lock-in of three years. Only the portion of direct investment in real estate properties by the Hold Co/Special purpose vehicle (SPV) will be considered for this purpose and if project implemented in stages, the part which is on rent and/or income-generating will be considered.
- (ii) Balance 20% of the total value in other assets such as Real estate assets in Under-construction properties, Under-construction properties which are part of existing income-generating properties owned by the REIT or Completed but not revenue-generating properties and other assets being Listed/unlisted debt of companies/body corporates in the real estate sector (excludes investment in the debt of the Hold Co/SPV), Equity shares of listed companies, generating at least 75% of the operating

income from real estate activities, Unlisted equity shares of companies deriving at least 75% of the operating income from real estate activities or Others: (i) Mortgage-backed securities; (ii) Government securities; (iii) Unutilised floor space index and transferable development rights with respect to existing investments; (iv) Money market instruments or cash equivalents.

Conditions for investments through SPVs or Hold Co

- (i) REIT will hold real assets directly or through an SPV or two-level structure through a Hold Co.
- (ii) If the investment is made through Hold Co, the ultimate holding of the REIT in the underlying SPV will be minimum 26%.
- (iii) Not less than 51% of the consolidated revenues of the REIT, Hold Co and SPV (other than gains from the disposal of properties) to be from rental, leasing and letting real estate assets or any other income incidental to the leasing of such assets.
- (iv) Investment through a Hold Co/SPV is subject to below:
 - No other shareholders/ partners in Hold Co/SPV shall exercise any rights that prevents the REIT/Hold Co/SPV from complying with the provisions of REIT regulations – this should be agreed in an agreement with shareholders/ partners before investing in Hold Co/SPV.
 - The manager, in consultation with the trustee, to appoint nominees on the board of Hold Co and/or SPV in proportion to the shareholding/interest of REIT in the Hold Co/SPV.
 - In every meeting of a Hold Co and/or SPV, voting of the REIT should be exercised.

Investment Restrictions

- (i) Investment in vacant land or agricultural land or mortgages (other than mortgage-backed securities) is not permitted
- (ii) Investment in units of other REITs is not permitted
- (iii) Unitholder's approval is required for disposal of assets of REIT/Hold Co/SPV or interest in an SPV if it exceeds 10% of the value of the REIT's assets
- (iv) REIT to not undertake lending to any person other than the Hold Co/SPV. Investment in debt securities is not to be treated as lending.
- (v) Co-investment is permitted, subject to conditions
- (vi) Transactions with related parties to be at arm's length, requires unit holder approval and disclosure

(d) Leverage restrictions and disclosure requirements

REITs, whose units are listed on a recognized stock exchange, may issue debt securities in the manner specified by the SEBI. Further, such debt securities shall be listed on recognized stock exchange(s). The aggregate consolidated borrowings and deferred payments of the REIT, holdco and/or the SPV(s), net of cash and cash equivalents shall never exceed 49% of the value of the REIT assets and such borrowings and deferred payments shall not include any refundable security deposits to tenants.

If the aggregate consolidated borrowings and deferred payments of the REIT, holdco and/or the SPV(s), net of cash and cash equivalents exceed 25% of the value of the REIT assets, for any further borrowing,-

- (i) credit rating shall be obtained from a credit rating agency registered with the Board; and
- (ii) approval of unit holders shall be obtained where the votes cast in favour of the resolution shall be more than 50% of the total votes cast for the resolution.

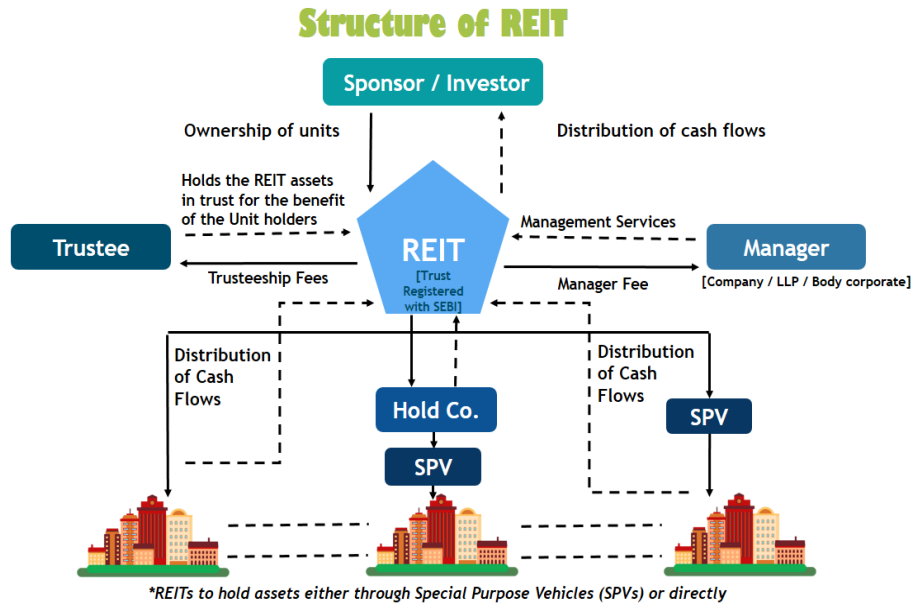
(e) REIT Distributions

A REIT generates rental income from its underlying properties by leasing space and collecting rent from its tenants. Post deducting cash expenses (such as property tax, insurance, interest, income tax etc.) and other relevant adjustments, the remaining cash flows, referred to as 'Net Distributable Cash Flows' (NDCF), are available for distribution to the Unitholders. The NDCF is calculated as per the standardized NDCF framework defined under the SEBI REIT regulations.

Also, Indian REITs are mandated to pay out at least 90% of their NDCF to their Unitholders. Such distributions shall be declared not less than once every six months in every financial year and shall be made within five working days from the record date.

Record date for the payment of distribution shall be 2 working days from the date of the declaration of distribution, excluding the date of declaration and the record date.

5.4.3 Structure of a REIT in India



REITs in India shall form in legal form of Trust under Indian Trusts Act, 1882 and with a deed duly registered in India under the provisions of the Registration Act, 1908.

Parties involved in REITs:

Sponsor: means any individual or body corporate who is responsible for the formation of the REIT and transfer of assets to the REIT. Each sponsor to hold at least 15% of post-issue unitholding. Sponsor(s) should have consolidated networth of INR 100 crore (INR 20 crore each sponsor) and the sponsor/associate(s) should have a minimum of 5 years of experience in the development of real estate or fund management in the real estate industry. Further, if the sponsor is a developer, should have at least two completed projects. Sponsor shall have minimum 15% stake in the REIT locked in for a minimum of 3 years; balance in excess of 15% for 1 year following initial public offering (IPO).

Manager: means a company, limited liability partnership (LLP) or body corporate with an office in India. Manager is responsible for investment-related decisions of the REIT. Manager shall comply with Net worth/net tangible assets criteria as specified in SEBI REIT Regulations i.e, at least INR 10 crore and Minimum 5 years of experience in fund management/ advisory services/ property management services or development in the real estate sector ('real estate (RE) experience'). Further, at least two key personnel with Real Estate experience of five years each and at least 50% of the directors/members of the governing board to be independent and not part of the governing board of another REIT.

Trustee: means a person who holds the REIT assets in trust for the benefit of the unit holders, in accordance with SEBI REIT Regulations. Trustee shall Registered with the Securities and Exchange Board of India (SEBI) under SEBI (Debenture Trustees) Regulations, 1993 and should not be related to the sponsor or manager

Trustee should oversee activities of the manager and cannot invest in the units of the REIT for which it is a trustee.

5.5 Small and Medium Real Estate Investment Trust

5.5.1 Introduction to Real Estate Investment Trust (REIT)

(a) Definition of Small and Medium Real Estate Investment Trust (REIT): As per Securities Exchange Board of India (Real Estate Investment Trust) Regulations, 2014, SM REIT means a REIT that pools money from investors under one or more scheme(s) where-

The size of the asset proposed to be acquired in a scheme of the SM REIT is at least rupees fifty crores and less than rupees five hundred crores; and Minimum number of unit holders of the scheme of the SM REIT other than the Investment Manager, its related parties and associates of the SM REIT are not less than two hundred investors or as may be provided under the Regulations from time to time.

SM REITs operate by pooling money from multiple investors to acquire and manage a portfolio of real estate properties. Depending on the REIT's focus, these properties can be commercial, residential, or industrial.

Investors receive dividends from the rental income, and they can also benefit from the rising value of the properties in the portfolio.

Unlike traditional REITs, which often focus on large commercial properties like shopping malls or office buildings, SM REITs target smaller, niche markets. This allows them to be more agile and adaptable, which can lead to higher growth.

SEBI introduced the SM REIT regulations with the objective of making smaller real estate assets valued between Rs. 50-500 crores more accessible to the retail and institutional investors. Mainboard REITs are only allowed to list assets over Rs. 500 crores but there exists a significant market of rent yielding assets valued less than 500 crores that can also be monetized through a listed and regulated trust vehicle on the same lines as mainboard REITs. The SM REIT regulations also helped bring the existing fractional ownership platforms within the regulatory ambit.

SM REITs are a game-changer for the industry, property owners and investors:

- (i) Industry: Benefits from increased transparency and efficiency.
- (ii) Property owners: Gain access to fresh funding sources for smaller income-producing properties that previously couldn't qualify for traditional REITs.

- (iii) Investors: Access to commercial real estate investments with lower capital and lesser involvement. Investors also benefit from better property management practices and more accurate pricing.

(b) Difference between SM REITs and REITs and Fractional Ownership Platforms

Over the past few years, the Fractional Ownership Platform (FOP) market in India has experienced rapid growth. The size of the fractional ownership market based on Assets Under Management (AUM) is USD 500 million.

While the FOP market grew in size and retail investor interest rose, a critical aspect remained unaddressed – regulatory oversight was mostly ambiguous or absent.

To formalise this growing segment, the Securities and Exchange Board of India (SEBI) notified SM REITs through amendments made to the already existing REIT regulations.

	REITs	SM REITs	FOP
Asset Size	Rs. 500 crore and above	Rs. 50-500 crore	varies
Investment in under construction property	Upto 20% of assets allowed	Not allowed	No restriction
Regulated	SEBI	SEBI	Not regulated
Holding Period	Long Term	4-6 years	varies

(c) Benefits of Investing in SM REITs

- (i) Accessibility for Small Investors

One of the biggest advantages of SM REITs is that they have a much lower entry point compared to traditional REITs. This makes them accessible to retail investors who may not have the capital to invest in larger real estate ventures.

Even small amounts of money can be invested in SM REITs, allowing individuals to participate in the real estate market without needing significant capital.

- (ii) Portfolio Diversification

SM REITs offer an excellent way to diversify an investment portfolio. Investing in real estate can add an asset class that behaves differently from stocks, bonds, or commodities. This diversification helps spread risk, reducing the impact of market volatility on your overall portfolio.

Additionally, SM REITs often invest in sectors or regions that traditional REITs may overlook, providing a unique form of diversification.

(iii) Potential for High Yields

Since SM REITs focus on smaller, high-growth real estate markets, they often offer the potential for higher yields compared to traditional REITs. These REITs may invest in fast-growing sectors like co-working spaces, small shopping complexes, or residential units in emerging urban areas.

As these markets grow, the properties' value rises, allowing investors to earn higher returns through rental income and capital appreciation.

(iv) Liquidity

Unlike physical real estate, which can be difficult and time-consuming to sell, SM REITs are traded on stock exchanges, making them highly liquid. This means you can easily buy and sell shares of an SM REIT whenever the market is open.

For investors who need the flexibility to exit their investment quickly, this liquidity is a significant advantage.

(d) Risks Associated with SM REITs

(i) Market Volatility

While SM REITs offer the potential for high returns, they are also more susceptible to market volatility due to their smaller asset base. A downturn in the real estate market, or even in a specific sector, can have a greater impact on SM REITs compared to larger REITs.

This is because SM REITs are often concentrated in fewer properties, so poor performance in one property can significantly affect the overall returns.

(ii) Real Estate Market Risks

Like all real estate investments, SM REITs are vulnerable to market risks such as declining property values, changes in demand, or economic downturns. If property prices fall or rental yields decrease, the income generated by the SM REIT can be affected, leading to lower dividends for investors.

Additionally, factors like changes in interest rates, inflation, or regional economic conditions can influence the performance of the real estate assets within the REIT.

(iii) Regulatory Risks

Real estate is a heavily regulated sector, and any changes in government policies or regulations can directly impact the performance of SM REITs.

For example, changes in property tax laws, zoning regulations, or environmental policies could affect the value and profitability of the real estate assets held by the REIT. Investors need to stay informed about regulatory changes that could influence their investment.

5.5.2 Regulatory Framework for REITs in India

(a) Registration Requirement: Trust shall be registered under SEBI to operate as SM REIT and an application for grant of certificate of registration as SM REIT shall be made, by the investment manager on behalf of the Trust in Form-A as specified in the Schedule IA to SEBI REIT Regulations and shall be accompanied by a non-refundable application fee of such amount and shall be payable in the manner as specified in Schedule IIA to SEBI REIT Regulations.

Following eligibility criteria shall be fulfilled for registration of trust with SEBI:

- (i) the applicant is the investment manager on behalf of the trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908.
- (ii) the trust deed has its main objective as undertaking activity of SM REIT through one or more schemes in accordance with these regulations and includes responsibilities of the trustee in accordance with REIT Regulations.
- (iii) separate persons have been designated as investment manager of the SM REIT and trustee of the SM REIT under REIT Regulations.
- (iv) Investment Manager shall comply with eligibility and experience requirements as specified in REIT Regulations.
- (v) the trustee is not an associate of the investment manager.
- (vi) no unit holder of the scheme of the SM REIT enjoys superior voting or any other rights over another unit holder in the same scheme and there are no multiple classes of units of scheme of the SM REIT.
- (vii) the rights of each unitholder in the scheme are pro-rata and pari-passu.

(b) Investment Conditions

SM REIT shall invest launching Schemes and SPV

- (i) The SPV shall directly and solely own all assets that are acquired or proposed to be acquired by the scheme of the SM REIT, of which SPV is the wholly owned subsidiary.
- (ii) The scheme of the SM REIT shall invest at least 95% of the value of the schemes' assets for each of its schemes in completed and revenue generating properties and shall not invest in under-construction or non-revenue generating real estate assets. Further, up to 5% of the value of the schemes' assets may be invested in liquid assets, which are unencumbered.
- (iii) The scheme of SM REIT shall not be permitted to lend to any entity other than lending to its own SPV.
- (iv) The SPV shall not be permitted to lend to any entity.

(c) Leverage Requirements

The scheme of a SM REIT and the SPV(s) thereunder may undertake leverage if the option to undertake leverage is disclosed in the scheme offer document filed for initial offer. The scheme may undertake leverage through borrowings or issuance of debt securities under Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021. The SPV may raise funds by way of borrowings from the scheme of SM REIT. Further, the SPV(s) under such scheme may undertake leverage through external borrowings or issuance of debt securities under Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

However, total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, shall not exceed 49% of the value of the scheme assets:

Further, if the total borrowings and deferred payments net of cash and cash equivalents, at the scheme level, exceeds 25% of the value of the scheme assets, then for any further borrowings, -

- (i) credit rating shall be obtained from a credit rating agency registered with the Board; and
- (ii) approval of unit holders shall be obtained, where votes cast in favour of the resolution shall be more than 50% of the total votes cast for the resolution.

(d) Listing Requirements

The units of the scheme of the SM REIT shall be mandatorily listed on the recognized stock exchange(s) having nationwide trading terminals. The listing of the units of the scheme of the SM REIT shall be in accordance with the listing agreement entered into between the SM REIT and the designated stock exchange. No person, other than investment manager, its related parties and its associates, shall not hold units of a scheme of the SM REIT which taken together with units held by him and by persons acting in concert with him in such scheme of the SM REIT exceeding 25% of the total outstanding units of such scheme of the SM REIT.

(e) Distribution

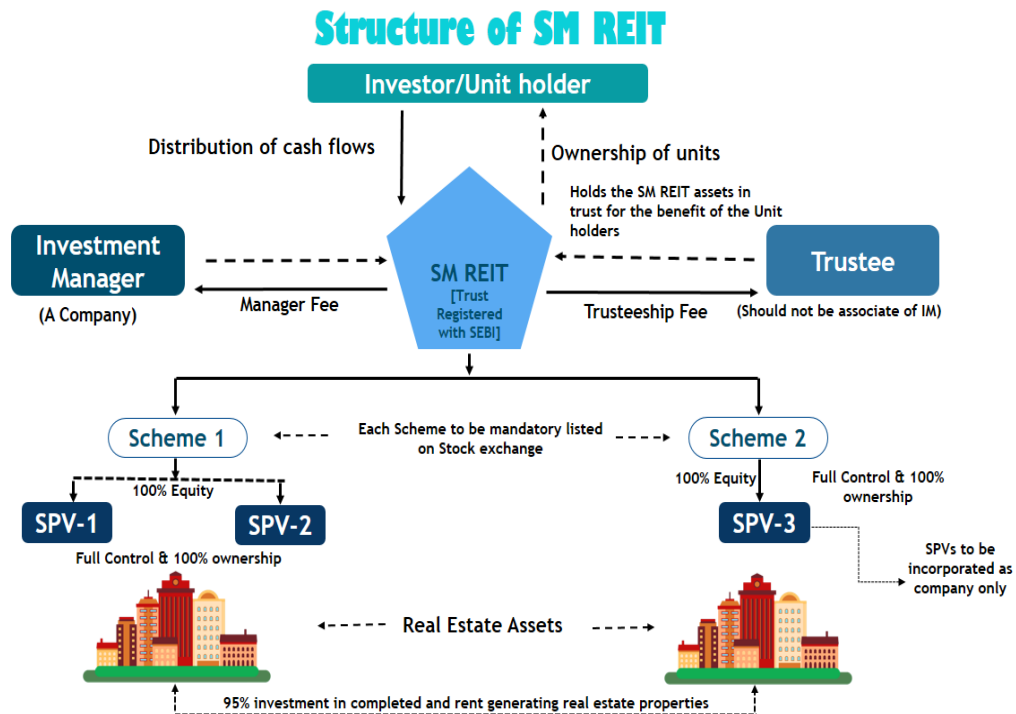
With respect to distributions made by the scheme of SM REIT and SPV, the investment manager shall ensure that:

- (i) not less than 95% of net distributable cash flows of the SPV are distributed to the scheme of SM REIT subject to applicable provisions in the Companies Act, 2013 and the amount retained by the SPV shall be utilized only in such manner as may be specified by SEBI.
- (ii) 100% of the net distributable cash flows of the scheme of SM REIT shall be distributed to the unit holders.

- (iii) the distributions are declared at least once in every quarter of the financial year and not later than 15 working days from the end of the quarter.
- (iv) the distributions are paid to the unitholders within 5 working days from the record date.

Record date for the payment of distribution shall be the date which is two working days from the date of the declaration of distribution (excluding the date of declaration and the record date).

5.5.3 Structure of a REIT in India



The SM REITs are to be set up as a trust and the trust deed shall be required to be registered under the provisions of Registration Act, 1908. The main objective of the trust deed should be to undertake the activity of SM REIT through one or more schemes in accordance with the Amended Regulations.

A Special Purpose Vehicle ("SPV") will be a company which is wholly owned subsidiary of the scheme of the SM REIT. The SM REITs shall be required to exercise absolute control and hold 100% (one hundred percent) stake in the shareholding of the SPV. Further, the ownership and control of the underlying properties to the SM REITs shall be vested in the SPV.

As part of the structure, the applicant shall be required to appoint a trustee (who is registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993) for the SM REITs. The

trustee, in turn, will have the power to appoint such investor / applicant as the investment manager of the SM REIT by entering into an investment management agreement with the trustee of the SM REIT⁵.

The investment manager shall mean a company incorporated in India, which sets up the SM REIT, manages assets and investments of the SM REIT and undertakes operational activities of the SM REIT. The minimum net worth requirement for the investment manager shall be at least INR 20 crores (Indian rupees twenty crores), out of which at least INR 10 crores (Indian Rupees ten crores) should be in the form of liquid assets.

The investment manager for the SM REITs is required to have prior experience of at least 2 (two) years in the real estate industry and/or fund management in real estate. Further, at least half of the directors of the investment manager should be independent and are not directors of the manager or investment manager of another SM REIT. If such an investment manager is not able to meet the requirement of prior 2 (two) years, they are required to appoint 2 (two) key managerial personnel, with not less than 5 (five) years' experience each in the real estate industry and/or real estate fund management

5.6 Self-Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

6.1 Introduction- FEMA

Real Construction sector is one of the major drivers of economic growth of the country. Investment in infrastructure projects improve logistics, generate employment and plays a key role in sustainable overall development. Typically it comprises four sub-sectors - housing, retail, hospitality, and commercial. It is also the 2nd highest employment generator after Agriculture in India. India is the one of the most attractive investment destinations for investors globally due to its fast-growing economy and emerging startup ecosystem. Investors across the globe are looking positively for investment in India and construction & infrastructure sector is one of the sectors which witnessed substantial FDI in recent past.

As per National Investment Promotion and Facilitation Agency of the Government of India, set up under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Real Estate sector is expected to contribute in economic output of India to the tune of \$ 1 Trillion (Tn) by end of 2030 from the existing level of less than half of a Tn in 2024 and will contribute to about 13% of India's GDP. India has witnessed about \$ 81 Bn FDI inflows during the period 24-25 (source : PIB 27-5-25). However, such investments are subject to various legal regulations under the Foreign Exchange Management Act (FEMA), Rules and regulations, Reserve Bank of India (RBI) guidelines, Income Tax, GST and other incidental laws. In fact India's real estate sector is set to cross \$4.8 trillion by 2047, contributing 18% to projected \$26-trillion GDP (Report by EY & CREDAI). The current contribution of Real Estate to India's GP is about 7% to 10% as per varying estimates.

In this chapter, we will be primarily discussing the FEMA related provisions, rules and regulations related to FDI in construction and real estate sector.

6.2 Legal & Regulatory Framework

To understand how foreign investment and property ownership are regulated in India, it is essential to look at the legal framework and key regulatory instruments under the Foreign Exchange Management Act, 1999 (FEMA). These laws, rules, regulations, and directions issued by the Reserve Bank of India (RBI) and the Government of India form the backbone of the compliance structure for real estate investments. For chartered accountants advising on foreign investment in India, a clear understanding of the regulatory framework under FEMA, associated rules, and RBI/Govt. of India directions is critical. These instruments govern permissible transactions, reporting requirements, and the acquisition or transfer of immovable property by non-residents. The table below summarises the primary legal and regulatory provisions relevant to foreign investment in real estate:

Instrument / Regulation	Issued By	Scope / Purpose
Foreign Exchange Management Act, 1999 (FEMA)	Parliament of India	Parent legislation governing cross-border foreign exchange transactions, including capital and current account transactions.
Foreign Exchange Management (Non-Debt Instruments) Rules, 2019	Central Government (DPIIT, Ministry of Finance)	Schedules I, III, IV, VI, VIII; defines permitted/prohibited sectors, entry routes, sectoral caps, and conditions for NRI/OCI investment.
Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (FEMA 395)	Reserve Bank of India (RBI)	Specifies mode of payment for investment (inward remittance, NRE/FCNR/NRO accounts) and reporting requirements (FC-GPR, FC-TRS, LLP(I), LLP(II), FLA).
Foreign Exchange Management (Overseas Investment) Rules, 2022	Central Government	Legal framework for overseas investments by Indian entities and individuals, covering both equity and debt instruments.
Foreign Exchange Management (Overseas Investment) Directions, 2022 (dated August 22, 2022)	Reserve Bank of India (RBI)	Operational guidelines/procedures for Indian resident investors and Authorised Dealer Banks to implement the Overseas Investment Rules
Master Direction – Foreign Investment in India (Updated Jan 20, 2025)	Reserve Bank of India (RBI)	Consolidated directions on foreign investment – FDI, sectoral caps, entry routes (automatic/government), pricing guidelines, and reporting compliance.
Master Direction on Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999 (Updated Sept 01, 2022)- Under FEMA	Reserve Bank of India (RBI)	Provides rules for NRI/OCI/foreign national property acquisition, transfer, inheritance, and repatriation of sale proceeds.

- Acquisition or transfer of immovable property in India by Non-residents is regulated in terms of sub-sections 2(a), 2A(a), (4) and (5) of section 6 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Non-debt Instruments) Rules, 2019,
- The FEMA 1999 empowers the Central Government to prescribe, in consultation with the RBI, rules pertaining to capital account transactions, not involving debt instruments. The Central Government has, accordingly, notified the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, dated October 17, 2019,

Note: These Rules do not apply to the acquisition or transfer of immovable property in India by a person resident outside India on a lease not exceeding five years.

6.3 Foreign Exchange Management Act, 1999 (FEMA)

(a) Enabling Section 6 of FEMA 1999, for foreign investment in India- Capital Account Transaction

1. Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction
2. The Reserve Bank may, in consultation with the Central Government, specify
 - (a) any class or classes of capital account transactions, involving debt instruments, which are permissible
 - (b) the limit up to which foreign exchange shall be admissible for such transactions
 - (c) any conditions which may be placed on such transactions
- 2A. The Central Government may, in consultation with the Reserve Bank, prescribe
 - (a) any class or classes of **capital account transactions**, not involving debt instruments, which are permissible
 - (b) the limit up to which foreign exchange shall be admissible for such transactions; and
 - (c) any conditions which may be placed on such transactions.
3. A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India

Investors/persons are primarily categorized into following three -

1. Person Resident Outside India (Include both foreign nationals and foreign entities)

2. Non-Resident Indian or an Oversea Citizen of India &
3. Person Resident in India

*(Person residing in India is the person who stays in India for more than 182 days during preceding financial year but does not include- who gone out of India for Employment, Business or Vocation or when his intention is to stay abroad for uncertain period)

(b) Annual Return on Foreign Liabilities and Assets (FLA) under FEMA 1999

The FLA return captures all foreign liabilities and assets of India-resident entities, including inward FDI and overseas investments (ODI). The information is crucial for RBI's reporting to the IMF (CDIS and CPIS surveys) and for compiling India's Balance of Payments (BoP) and International Investment Position (IIP). All data submitted is confidential, and only consolidated figures are released publicly.

The following entities with foreign assets or liabilities as on end-March of the reporting year are required to file an annual FLA return. Entities with only share application money or non-repatriable investments are generally exempt.

- (i) **Companies** registered under the Companies Act, 2013
- (ii) **Limited Liability Partnerships (LLPs)** under the LLP Act, 2008
- (iii) **Others**, including SEBI-registered Alternative Investment Funds (AIFs), Partnership Firms, Public-Private Partnerships (PPPs), etc.

The FLA return is due by July 15 every year, based on audited or unaudited accounts. Late submission is allowed with RBI approval, but Non-filing or late filing without approval constitutes a violation of FEMA and may attract penalties.

Return Submission Procedure

- Entities must register on the FLAIR portal (<https://flair.rbi.org.in/fla/faces/pages/login.xhtml>).
- Complete registration by uploading the Verification Letter and Authority Letter.
- After login, submit the FLA return online and receive a system-generated acknowledgement immediately.
- AIFs currently submit via email after registration; FLA Team provides the prescribed Excel format and acknowledgement by email.

6.4 Provisions, Forms, important orders, notifications, circulars, Checklist, SOPs, Case Law

Foreign investment in real estate in India, can primarily divided into two segments for understanding purpose -

- A. Through securities (like Shares etc) of the Indian entities and
- B. Directly in immovable property

(A) Relevant Provisions related to investment through securities -

Investments by person resident outside India

As per NDI Rule - 6 A person resident outside India may make investment as under :

- (a) may subscribe, purchase or sell **equity instruments** of an **Indian company** in the manner and subject to the terms and conditions specified in **Schedule I** (Schedule I of NDI Rules prescribes the sectors, in which investment is subject to certain conditions, sectoral caps and entry route)
- (b) A person resident outside India (excluding citizens of Pakistan, Bangladesh or entities incorporate din these countries) , may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an **LLP**, in the manner and subject to the terms and conditions specified in Schedule VI.
- (c) A person resident outside India (excluding citizens of Pakistan, Bangladesh or entities incorporate din these countries), may invest in units of an investment vehicle, in the manner and subject to the terms and conditions specified in Schedule VIII.

Instruments (non-debt) by which investment can be made in India as prescribed in the para 2 of Schedule I of NDI Rules, 2019, primarily include -

- (a) Investments in equity instruments in incorporated entities: public, private, listed and unlisted
- (b) Capital participation in LLP
- (c) All instruments of investment recognised in the FDI policy
- (d) Investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvITs)
- (e) Investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity
- (f) Acquisition, sale or dealing directly in immovable property

"Equity instruments" means

- (a) equity shares (include partly paid shares),
- (b) convertible debentures (fully and mandatorily convertible debentures which are fully paid),
- (c) preference shares (fully and mandatorily convertible preference shares) which are fully paid) and
- (d) share warrants issued by an Indian company

Sectors **Prohibited** for FDI (para 2 of Schedule I)-

- (a) Lottery business including Government or private lottery, online lotteries, etc
- (b) Gambling and betting including casinos, etc
- (c) Chit funds
- (d) Nidhi company

(e) Trading in Transferable Development Rights (TDR)

(f) Real estate business or construction of farm houses

Explanation.—For the purpose of this rule, 'real estate business' means **dealing** in land and immovable property with a view to earning profit from there but

does not include -

- (i) **development of townships,**
 - (ii) **construction of residential or commercial premises,**
 - (iii) **roads or bridges,**
 - (iv) **educational institutions,**
 - (v) **recreational facilities,**
 - (vi) **city and regional level infrastructure, townships,**
 - (vii) **real estate broking services and**
 - (viii) **Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014 and**
 - (ix) **earning of rent or income on lease of the property, not amounting to transfer.**
- (g) Manufacturing of cigars, cheroots, cigarillos and cigarettes....etc
 - (h) Activities or sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities mentioned in paragraph (3) of Schedule I)
 - (i) Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities

Conditions on Purchase or sale of Equity Instrument by the person outside India of Indian company as per Para 1 of Schedule - I

- (a) An Indian company (investee company) may issue equity instruments to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities prescribed in this Schedule (Table)
- (b) A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no FDI linked performance conditions, may issue equity instruments to the said non-resident entity **against pre-incorporation or pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its authorised capital or USD 500,000 whichever is less**, subject to the condition that within thirty days from the date of issue of equity instruments but not later than one year from the date of incorporation or such time as the Reserve Bank permits, the Indian company shall report the transaction to the Reserve Bank as per the reporting requirements as specified by the Reserve Bank
- (c) An Indian company (investee company) may issue, subject to compliance with the conditions prescribed by the Central Government and/or the Reserve Bank from time to time, equity instruments to a person resident outside India, if the Indian investee company is engaged in an automatic route sector, against -
 - (i) swap of equity instruments, or
 - (ii) import of capital goods or machinery or equipment (excluding second-hand machinery)
 - (iii) pre-operative or pre-incorporation expenses (including payments of rent etc.)
- (d) An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted under the **Act** or the **rules and regulations** framed or **directions issued** thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder or has been permitted by the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder

Provided that in case where permission has been granted by the Reserve Bank for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under the Act or the rules or the regulations framed thereunder have been completed.

Further a Foreign portfolio Investor (FPI) {*“Foreign Portfolio Investor” means a person registered in accordance with the provisions of the SEBI (Foreign Portfolio Investors) Regulations, 2014 and “Foreign portfolio investment” means any investment made by a person resident outside India through equity instruments where such investment is less than 10% of the post issue paid-up share capital on a fully diluted basis of a listed*

Indian company or less than 10% of the paid-up value of each series of equity instrument of a listed Indian company} may purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange in India subject to the following conditions-

- (i) The total holding by each FPI < less than 10 per cent of the total paid-up equity capital on a fully diluted basis issued by an Indian company **and**
- (ii) The total holdings of all FPIs put together < less than 24 per cent
- (iii) The aggregate limit of 24 per cent may be increased by the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively [Schedule II]

Certain relaxations are given to NRI and OCI as compared to Person resident outside India as per rule 12 {Read with Schedule III} of NDI rules-

- 1) A NRI or an OCI may, on **repatriation basis**, purchase or sell equity instruments of a listed Indian company and other securities in the manner and subject to the terms and conditions prescribed in Schedule III as below -
 - Equity instruments of a **listed Indian company** on repatriation basis, on a recognized stock exchange in India, subject to:
 - Total holding of a NRI or OCI < 5% of total paid up equity capital or
 - <5% of paid-up value of each series of debentures or preference shares or share warrants and
 - total holdings of all NRIs and OCIs put together < 10% of total paid up equity capital or
 - <10% of paid-up value of each series of debentures or preference shares or share warrants and
 - Provided** that the aggregate ceiling of 10 % may be raised to 24 % with a special resolution to that effect by the General Body of the Indian company
 - without limit purchase or sell units of domestic mutual funds on repatriation basis (which invest more than 50% in equity)
 - without limit purchase or sell shares in public sector enterprises being disinvested by the Central Government
- 2) A NRI or an OCI may, on non-repatriation basis, purchase or sell equity instruments of an Indian company or other securities or contribute to the capital of a LLP or a firm or proprietary concern, in the manner and subject to the terms and conditions specified in Schedule IV as below -

1. An NRI or OCI (including co, trust or partnership firm incorporated outside India by NRI or OCI) may purchase (on Non-Repatriation basis) - without any limit-
 - equity instruments of an Indian company – either on stock exchange or Outside (listed or unlisted)
 - units of an investment vehicle
 - contribution to the capital of a LLP
 - convertible notes issued by a startup company
2. A NRI or OCI may without limit purchase or sell units of domestic mutual funds on non-repatriation basis (which invest more than 50% in equity).
3. A NRI or OCI may without limit invest in a proprietorship firm
But can not invest in -
 - Nidhi Company
 - Company or firm or proprietorship engaged in-
 - Agriculture
 - Plantation
 - Real estate Business
 - Construction of farm houses
 - Dealing in transfer of development rights

Elaboration On Investment in LLP :

Schedule VI- **Investment in LLP**

- (a) Who can invest in the capital of LLP-
 - (i) Person Resident outside India (except- Pak and Bangladesh)
 - (ii) An entity Incorporated outside India (except- Pak and Bangladesh)
 - (iii) Not an FPI or FVCI
- (b) In which sectors-
 - (i) Where 100% Foreign Investment is allowed,
 - (ii) via Automatic route and
 - (iii) **There are no FDI Linked performance conditions**

- (c) At a price-
 - (i) Not less than fair value (as per internationally accepted valuation norms, as per market practice) and
 - (ii) Valuation certificate by- CA or ICWA or approved valuer by CG

(B). Relevant Provisions related to investment in India in immovable properties-

As per Rule 24 of NDI Rules an NRI or an OCI may –

- (a) acquire** immovable property in India other than an agricultural land or farm house or plantation property

Provided that the consideration, if any, for transfer, shall be made out of-

- I. **funds received in India through banking channels** by way of inward remittance from any place outside India, or
- II. **funds held in any non-resident account** maintained in accordance with the provisions of the Act, rules or regulations framed thereunder

Provided further that that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause

- (b) acquire** any immovable property in India other than agricultural land or farm house or plantation property by way of **gift from**

- I. a person resident in India or
- II. from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;

- (c) acquire** any immovable property in India by way of “inheritance” from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules or from any person resident in India

- (d) transfer** any immovable property in India to a person resident in India

- (e) transfer** any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI but cannot to any other person resident outside India (typically pure foreigners).

Explanation as under-

Acquisition by a Non- Resident Indian (NRI & OCI)-

An NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India

An NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farm house) in India from person resident in India or from an NRI or an OCI who is a relative as defined in section 2(77) of the Companies Act, 2013

An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition

An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident in India

(It may be noted that restriction on acquisition of immovable property in the form of agricultural land / farm house / plantation property is not applicable for acquisition in the form of inheritance)

Transfer by a Non-Resident Indian (NRI & OCI)

An NRI or an OCI may transfer any immovable property in India to a person resident in India

An NRI or an OCI may transfer any immovable property (other than agricultural land or plantation property or farmhouse) to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013

(It implies that an NRI or an OCI can transfer their immovable properties to either a person resident in India or another NRI or OCI but cannot to any other person resident outside India.

It further implies that immovable property being agricultural land/farm house/ plantation property acquired through inheritance by an NRI or an OCI cannot be transferred to another NRI or an OCI but can be transferred only to a person resident in India

Payment Mode-

NRIs or OCIs may make payment, if any, for transfer of immovable property out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to their NRE/ FCNR (B)/ NRO account

Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

Summary of how a NRO/OCI can acquire property in India-

Particulars	NRI/ OCI (NDI Rules, 2019)
Purchase (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(a)]
Acquire as gift (other than agricultural land/ farmhouse/ plantation etc) from	Resident/ NRI/ OCI [24(b)] who is a relative

Acquire (any IP) as inheritance from	a. Any person who has acquired it under laws in force [24(c)]; b. Resident [24(c)]
Sell (other than agricultural land/ farmhouse/ plantation etc) to	Resident/ NRI/ OCI [24(e)]
Sell (agricultural land) to	Resident [24(d)]
Gift (other than agricultural land) to	Resident/ NRI/ OCI [24(e)]
Gift (agricultural land) to	Resident [24(d)]
Gift residential/ commercial property to	Resident/ NRI/ OCI [24(e)]

An immovable property in India may be acquired Jointly by Spouse of NRI/OCI as per the provisions of Para 25 of NDI rules subject to following-

A person resident outside India, not being a NRI or OCI, who is a spouse of a NRI or OCI may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse

Consideration for transfers made under this para should be out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to non-resident account of the person concerned maintained in accordance with the Act or the rules framed thereunder.

The marriage should have been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.

Acquisition of immovable property by person resident outside India for carrying on a permitted activity-

A branch or office or any other place of business in India, *other than a liaison office*, established by a person resident outside India, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office.

Such a person is required to file with the Reserve Bank a declaration in the form IPI (as given in the Master Direction on Reporting), not later than ninety days from the date of such acquisition.

The immovable property so acquired can be mortgaged to an Authorised Dealer as a security for any borrowing

However, acquisition of immovable property in India by a branch, office or other place of business of persons of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or ¹⁹Democratic People's Republic of Korea origin/ nationality/ ownership requires the prior approval of the Reserve Bank.

Acquisition by a Long-Term Visa holder-

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a Long-Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for self-employment.

The person should submit a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he/ she is residing in India on a LTV.

The registration documents of the property should mention the nationality and the fact that such person is on a LTV.

A copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division).

Sale of the immovable property so acquired, is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned.

Repatriation of sale proceeds of immovable property-

1. A person acquiring property in accordance with section 6(5)* of FEMA or his successor who is a person resident outside India, can repatriate the funds in accordance with Foreign Exchange Management (Remittance of Assets) Regulations, 2016,

As per para 3(b) of **Foreign Exchange Management (Remittance of Assets) Regulations, 2016-**

ADs may allow remittance of assets, up to USD one million per financial year, by a foreign national (not being a PIO or a citizen of Nepal or Bhutan), on submission of documentary evidence, in case:

- (a) the person has retired from employment in India;
- (b) the person has inherited the assets from a person referred to in section 6(5) of the Act;
- (c) the person is a non-resident widow/ widower and has inherited assets from the person's deceased spouse who was an Indian citizen resident in India.

As per para 3(d) - ADs may allow NRIs and PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year-

- (a) out of balances held in their Non-Resident (Ordinary) Accounts (NRO accounts)/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;
2. In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by a NRI or an OCI, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:-
- (a) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition
- (b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in FCNR(B) account or NRE account
- (c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties

However if the property is purchased using NRO account or from Indian income, sale proceeds can be repatriated for any number of residential properties but within limit of USD 1 million per financial year.

*As per section 6(5) of FEMA, **a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India** if such currency, security or property **was acquired**, held or owned by him/ her **when he/ she was resident in India or inherited from a person resident in India**.

A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition

Indian resident is liable for the reporting requirement for any Investment in India by a person resident outside India are subject to Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 as follows-

- An Indian company issuing equity instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, defined under the rules, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments
- An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, is liable to file form FLA to the Reserve Bank on or before the 15th day of July of each year.

- For transfer of shares form FC-TRS is required to be filed within sixty days of transfer of equity instruments or receipt / remittance of funds whichever is earlier when transfer is between–
 - a person resident outside India holding equity instruments in an Indian company on a repatriable basis and person resident outside India holding equity instruments on a non-repatriable basis; and
 - a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India
 - Transfer of equity instruments on a recognised stock exchange by a person resident outside India shall be reported by such person in Form FC-TRS
- A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares is required to file Form LLP (I), within 30 days from the date of receipt of the amount of consideration
- The disinvestment / transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) is to be filed in Form LLP(II) within 60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor/transferee
- The Authorised Dealer Category I banks is liable to report to the Reserve Bank in Form LEC (NRI) the purchase / transfer of equity instruments by Non-Resident Indians or Overseas Citizens of India on stock exchanges in India

6.5 FAQ's

Q.1 What are the accepted modes of payment for property acquired in India?

- A. Payment for purchase immovable property in India has to be received in India through banking channels and is subject to payment of all taxes and other duties/ levies in India. The payment can also be made out of funds held in NRE/ FCNR(B)/ NRO accounts of the NRIs/ OCIs. Payments should not be made through travellers' cheque and foreign currency notes

Q.2 Can Foreign Embassies/ Diplomats/ Consulate Generals acquire property in India?

- A. Foreign Embassy/ Diplomat/ Consulate General, can purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –
- (a) Clearance from the Government of India, Ministry of External Affairs is obtained for such purchase/sale, and
 - (b) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through banking channels.

Q.3 Can foreign nationals acquire property in India?

- A.**
- (a) Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea (DPRK), irrespective of their residential status, cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. This prohibition shall not be applicable to an OCI.
 - (b) Foreign nationals of non-Indian origin resident in India (except 11 countries listed at (a) above) cannot acquire immovable property in India without specific RBI permission
 - (c) Foreign nationals of non-Indian origin resident outside India can take on lease immovable property in India, provided the lease is not exceeding five years and can also acquire immovable property in India by way of inheritance from a resident.

Q.4 Can a non-resident repatriate the sale proceeds of immovable property in India?

- A.**
- (a) A person who has acquired the property U/s 6(5)^{iv} of FEMA or his successor cannot repatriate the sale proceeds of such property without RBI approval.
 - (b) Repatriation up to USD 1 million per financial year is allowed, along with other assets under (Foreign Exchange Management (Remittance of Assets) Regulations, 2016) for NRIs/ PIOs and a foreign citizen (except Nepal/ Bhutan/ PIO) who has-
 - (i) inherited from a person referred to in section 6(5) of FEMA, or
 - (ii) retired from employment in India or
 - (iii) is a non-resident widow/ widower and has inherited assets from her/ his deceased spouse who was an Indian national resident in India.
 - (c) NRIs/ PIOs can remit the sale proceeds of immovable property (other than agricultural land/ farm house/ plantation property) in India subject to the following conditions:
 - (i) The immovable property was acquired in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.;
 - (ii) The amount for acquisition of the property was paid in foreign exchange received through banking channels or out of the funds held in foreign currency non-resident account or out of the funds held in non-resident external account;

- (iii) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

6.6 Glossary/Abbreviations

Few definitions as per NDI Rules, which are important in understanding the provisions, rules and regulations-

A 'Non-Resident Indian' (NRI) is a person resident outside India who is a citizen of India.

An 'Overseas Citizen of India (OCI)' is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

'Relative' means relative as defined in section 2(77) of the Companies Act, 2013.

2(k)- "equity instruments" means

- equity shares (include partly paid shares),
- convertible debentures (fully and mandatorily convertible debentures which are fully paid),
- preference shares (*fully and mandatorily convertible preference shares*) which are fully paid) and
- share warrants

issued by an Indian company;

2(m) "FDI linked performance conditions" means the sector specific conditions specified in Schedule I of these rules for companies receiving foreign investment

2(r) "FDI" or "Foreign Direct Investment" means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company

2(s) "foreign investment" means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP

Note:- A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company

2(t) "foreign portfolio investment" means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company

2(aa) "Indian entity" shall mean an Indian company or a LLP

2(ac) "investment" means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India

2(ae) "investment vehicle" means an entity registered and regulated under the regulations framed by the Securities and Exchange Board of India or any other authority designated for that purpose and shall include, namely:

- Real Estate Investment Trusts (REITs) governed by the Securities and Exchange Board of India (REITs) Regulations, 2014
- Infrastructure Investment Trusts (InvIts) governed by the Securities and Exchange Board of India (InvIts) Regulations, 2014
- Alternative Investment Funds (AIFs) governed by the Securities and Exchange Board of India (AIFs) Regulations, 2012 ;

2(am) "startup company" means a private company incorporated under the Companies Act, 2013 and identified as "startup" under the notification of the Government of India number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, as amended from time to time

2(e) 'convertible note' means an instrument issued by a startup company acknowledging receipt of money initially as debt, repayable at the option of the holder, or which is convertible into such number of equity shares of that company, within a period not exceeding *ten years* from the date of issue of the convertible note, upon occurrence of specified events as per other terms and conditions agreed and indicated in the instrument

2(f) of FEMA ACT "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6

6.7 End of this chapter – Outcome

To summarise the learning of this chapter we can conclude that effort has been made to built-up primary understanding with respect to mechanism of inflow of foreign funds in Real estate sector, the under lying conditions for investment, the eligible persons, eligible mode of investment, sectoral caps, entry route of funds and reporting compliances, however with this basic understanding, participants to make further effort to read, refer further materials, available circulars and notification on RBI website and notifications by the government to have an in-depth grasp on subject to start practice, enhance their skills etc.

6.8 Reference Material

FEMA 1999 , FDI Policy, NDI rules 2019, RBI Master Directions, & regulations

6.9 Self Appraisal – Session Learning Outcomes –

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Real Estate (Regulation and Development) Act 2016 - RERA

7.1 Introduction, Background and Overview

Prior to the enactment of RERA in 2016, the real estate sector in India lacked a dedicated regulatory framework, leading to several challenges for all the stake holders in different ways. i.e., to buyers, developers, lenders, investors, government authorities etc.

For Homebuyers absence of safeguards resulted in issues such as project delays, misleading advertisements, changes in project specifications, and lack of accountability from the developers and critically, a shortage of effective legal remedies. On the other hand, developers and promoters too encountered significant difficulties, including delays in project approvals from multiple authorities, absence of standardization across states, lack of trust from buyers, and a generally unorganized system that made long-term planning and financing difficult. The absence of a regulator led to fragmented practices, frequent disputes and reputational risks, ultimately impacting the growth and professionalism of the industry. RERA was introduced to address these issues by bringing transparency, standard processes, and a fair regulatory mechanism for all the stakeholders.

While RERA is often perceived as a law primarily enacted to protect the interests of homebuyers, its scope and impact extend far beyond just the consumer. RERA is, in fact, a comprehensive regulatory framework designed to bring order, transparency, and accountability to the entire real estate ecosystem. It covers all stakeholders involved in a real estate project including promoters be it landowners, investors & developers, allottees (buyers), real estate agents, and government authorities.

For landowners, especially those entering joint development agreements, RERA ensures clarity in roles, obligations, and entitlements, reducing the risk of disputes. For developers, it creates a level playing field, boosts credibility, and provides a structured platform to showcase compliance and commitment, ultimately building buyer confidence. For real estate agents, it mandates registration and ethical conduct, enhancing their professionalism. Government authorities benefit from RERA through streamlined approval mechanisms, better data on project development, and improved policy enforcement.

RERA has made professionals such as Architects, Engineers, Chartered Accountants, and Lawyers directly responsible for certifying project progress, costs, and legal compliance, thereby enhancing accountability and transparency in the real estate sector; further, by clearly defining the mortgageability of under-construction inventory, RERA has brought significant clarity for lenders, facilitating more secure and efficient lending practices.

RERA also plays a critical role in promoting institutional funding and investment by creating a more predictable and transparent environment. In essence, RERA is a reformative tool not just for consumer protection but for holistic development and governance of the real estate industry.

1. Territorial Jurisdiction - RERA extends to the whole of India including the Union Territory of Jammu and Kashmir.

2. Preamble and Objective of the RERA Act 2016 –

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto

By reading the preamble, we can list the objectives as follows –

- (a) To establish the Real Estate Regulatory Authority
- (b) To regulate and promote the real estate sector
- (c) To ensure the sale of plot, apartment, building, or real estate project in an efficient and transparent manner
- (d) To protect the interests of consumers in the real estate sector
- (e) To establish an adjudicating mechanism for speedy dispute redressal
- (f) To establish the Appellate Tribunal to hear appeals from the decisions, directions, or orders of the Regulatory Authority and adjudicating officer
- (g) To deal with matters connected therewith or incidental thereto

3. Journey and Implementation of RERA

Land and its regulation fall under the jurisdiction of state governments as per the Constitution of India (Entry 18, List II, Seventh Schedule). However, the Central Government recognized the need to bring consistency, transparency, and accountability into the real estate sector, which was fragmented and lacked regulatory oversight. To address these challenges and protect the interests of homebuyers across the country, the Central Government enacted the Real Estate (Regulation and Development) Act, 2016, a central legislation aimed at regulating the real estate sector in a uniform manner.

While land is a state subject, RERA adopts a cooperative federal approach by requiring each state to frame its own rules and establish a State Real Estate Regulatory Authority (RERA) for implementation and regulation / enforcement. It is important to note that the rules framed by

state governments must be in conformity with the Central Act. State rules are subordinate legislation, and therefore, they cannot override or dilute the provisions of the Central Act. Any provision in the state rules that contradicts or weakens the intent and scope of the Central Act is legally void. This ensures that while the states retain administrative control, the core objectives and protections under the Act remain consistent and effective nationwide. To ensure the uniformity to the extent feasible, the central government released model rules to guide states, aiding the creation of harmonized and robust regulatory mechanisms at state level. – **the journey of RERA and milestones are as enumerated in the Table**

Date	Milestone
January 2009	The Ministry of Housing and Urban Poverty Alleviation initiated stakeholder consultations to identify regulatory gaps and potential solutions.
July 2011	The First Draft of the Real Estate (Regulation and Development) Bill was prepared in 2011.
2011-2012	Extensive consultations were held with developers, consumer groups, legal experts, and state governments.
June 2013	The Union Cabinet approves the Real Estate Bill 2013.
August 2013	Real Estate Bill 2013 Introduced in the Rajya Sabha.
February 2014	The Parliamentary Standing Committee on Urban Development reviewed the bill and submitted its recommendations
February 2015	Attorney General upheld the validity of central legislation for Real Estate sector and the competence of the Parliament.
March 2015	Real Estate Bill, 2013 and official amendments referred to the Select Committee of Rajya Sabha.
July 2015	Select Committee of Rajya Sabha tabled its Report along with Real Estate Bill, 2015
December 2015	Union Cabinet approved the Real Estate Bill, 2015 as reported by the Select Committee of Rajya Sabha for further consideration of the Parliament.
10 th March 2016	Real Estate Bill 2015 passed by the Rajya Sabha
15 th March 2016	Real Estate Bill 2015 passed by the Lok Sabha.
25 th March 2016	The President of India accorded his assent to the Real Estate Bill, 2015

26 th March 2016	Real Estate (Regulation and Development) Act, 2016 published in the Gazette for public information.
27 th April 2016	59 Sections (Sections 2, 20-39, 41-58, 71-78, 81-92) of the Act notified by the Ministry of Housing & Urban Poverty Alleviation bringing the Act into force with effect from May 1, 2016.
31 st October 2016	Ministry of Housing & Urban Poverty Alleviation notified Real Estate (Regulation and Development) (General) Rules, 2016 applicable to 5 union territories and also form the basis of Model Rule for states, which authorities can modify based on their requirements
2016 to 2017	Many states notified RERA rules and regulations
8 th April 2017	The Real Estate (Regulation and Development) (General) Regulations, 2017, were issued by the Ministry of Housing and Urban Affairs (MOHUA), which can be adopted by Union Territories and States.
19 th April 2017	Balance sections (Section 3 – 19, 40, 59 – 70, 79 – 80) of the Act notified by the Ministry of Housing & Urban Poverty Alleviation bringing the complete Act into force with effect from May 1, 2017.
1 st May 2017	Functioning of RERA and Authorities
2017 - 2025	Further notification for RERA rules and regulations and formation of various state authorities

4. Chapters, Provisions of the RERA Act 2016 - The Real Estate (Regulation and Development) Act, 2016 is comprising 10 chapters and 92 sections, carefully structured to cover every critical aspect of the real estate sector. Each chapter of the Act addresses specific components of regulation and governance in a systematic manner, ranging from definitions and scope to penalties, dispute resolution mechanism, powers of government etc.

Chapters	Chapter Name	Sections	Section Name
I	Preliminary	1 – 2	Short Title, extent and commencement and Definitions
II	Registration Of Real Estate Project and Registration of Real Estate Agents	3 -10	Prior registration of real estate project with Real Estate Regulatory Authority, Extension, Revocation, Agents Registrations and functions
III	Functions And Duties of Promoter	11 – 16	Functions and duties of promoter, Advertisement, Agreement of Sale, Adherence to Sanctioned plan, Transfer

			of rights to third parties, insurance on project
		17	Transfer of title to the allottees and association
		18	Return of amount and compensation to the allottees
IV	Rights And Duties of Allottees	19	Rights and duties of allottees
V	The Real Estate Regulatory Authority	20 - 30	Establishment and incorporation of Real Estate Regulatory Authority, Composition, functioning
		31	Filing of complaints with the Authority or the adjudicating officer
		32 - 39	Functions of Authority for promotion of real estate sector, Powers etc
		40	Recovery of interest or penalty or compensation and enforcement of order etc.
VI	Central Advisory Council	41 – 42	Establishment of Central Advisory Council, functioning
VII	The Real Estate Appellate Tribunal	43 - 57	Establishment of Real Estate Appellate Tribunal, composition, functioning, powers etc
		56	Right to legal representation
		57	Orders passed by Appellate Tribunal to be executable as a decree
		58	Appeal to High Court
VIII	Offences, Penalties and Adjudication	59 - 71	Penalty and Punishment for non-compliance of the provisions of the Act and non-complying with the orders of the Authority or Appellate, Compounding etc

		72	Factors to be taken into account by the adjudicating officer
VIII	Finance, Accounts, Audits and Reports	73 - 78	Grants, funds, budget, accounts, audit and annual report
IX	Miscellaneous	79 - 81	Bar of jurisdiction, Cognizance of offences, Delegation
		82	Power of appropriate Government to supersede Authority
		83 - 87	Powers of appropriate Government to issue directions to Authority and obtain reports and returns, make rules, to make regulations, laying of rules
		88	Application of other laws not barred
		89	Act to have overriding effect
		90 - 92	Protection of action taken in good faith, Power to remove difficulties, Repeal

5. How To Read and Understand

To start with, it is essential to read and understand the RERA Act thoroughly. While the Act is a central legislation, each state frames its own rules for implementation. Additionally, State Real Estate Regulatory Authorities issue rules, regulations, directions, notifications, circulars, orders, and publications in forms of FAQ's, clarifications, etc from time to time. Apart from these, judicial pronouncements also play a key role in interpreting the provisions and understanding the true intent and regulatory framework of the Act. Though the Act consists of only 92 sections, it comprehensively covers the entire gamut of the real estate sector, making it important to study and understand it in depth.

The RERA Act should be read in a structured and logical sequence, to understand its importance, relevance, and underlying intent. Further it should be supplemented with state rules, authority-issued guidelines, and landmark judicial interpretations. This approach allows for a deeper and practical understanding of how the Act transforms and governs the real estate sector in India -

Flow of Reading and Understanding

- (a) The Real Estate (Regulation and Development) Act, 2016
- (b) State-specific RERA rules

- (c) State-specific RERA regulations
- (d) State – specific RERA directions for various operations
- (e) Notifications, Circulars, Orders
- (f) Checklist, SOP's, FAQ's and other relevant publication by RERA Authorities / RERA Professional Advisories
- (g) Case Laws and other Articles published by RERA Professionals

6. Importance of definitions and RERA Act 2016 - The definitions under the RERA Act intended to bring clarity and uniformity across the real estate sector. These definitions are not just for interpreting the RERA Act itself but are meant to serve as standard references for all stakeholders i.e., promoters, buyers, agents, landowners, lenders, planning authorities, government, professionals and regulatory bodies. Since RERA is regulator for real estate sector, other statutes such as GST, Income Tax, FEMA, and others dealing with real estate transactions should align with the definitions provided under this Act. These laws are not expected to define real estate-related terms differently, as RERA provides the most appropriate and sector-specific context. Consistent use of RERA's definitions helps avoid confusion, ensures legal clarity, and promotes uniform interpretation across various regulatory frameworks. List of Definitions defined under the Act -

Sec	Definition	Sec	Definition	Sec	Definition
2(a)	Adjudicating officer	2(p)	Competent authority	2(ze)	Notification
2(b)	Advertisement	2(q)	Completion certificate	2(zf)	Occupancy certificate
2(c)	Agreement for sale	2(r)	Day	2(zg)	Person
2(d)	Allottee	2(s)	Development	2(zh)	Planning area
2(e)	Apartment	2(t)	Development works	2(zi)	Prescribed
2(f)	Appellate tribunal	2(u)	Engineer	2(zj)	Project
2(g)	Appropriate Government	2(v)	Estimated cost of real estate project	2(zk)	Promoter" means
2(h)	Architect	2(w)	External development works	2(zl)	Prospectus
2(i)	Authority	2(x)	Family	2(zm)	Real estate agent
2(j)	Building	2(y)	Garage	2(zn)	Real estate project
2(k)	Carpet area	2(z)	Immovable property	2(zo)	Regulations

2(l)	Chairperson	2(za)	Interest	2(zp)	Rule
2(m)	Commencement certificate	2(zb)	Internal development works	2(zq)	Sanctioned plan
2(n)	Common areas	2(zc)	Local authority	2(zr)	Words and expressions
2(o)	Company	2(zd)	Member		

7.2 Registration, Extension, Revocation of A Real Estate Project-

At its core, RERA mandates the registration of real estate projects and agents, while also establishing regulatory authorities to oversee the sector's operations. This introduction sets the stage for a deeper dive into the nuances of RERA, its implications on various stakeholders, and its transformative impact on the real estate landscape.

(a) The Act mandates the registration of all real estate projects **except** -

- (i) 3(2)(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

Note: The interpretation of exemption criteria under Section 3(2)(a) of the RERA Act varies among states. Jurisdictions such as Maharashtra, Karnataka, Goa, and Odisha have adopted a disjunctive reading of the thresholds, meaning that for a project to qualify for exemption from RERA registration, both conditions—the proposed land area not exceeding 500 square meters and the number of apartments not exceeding eight (inclusive of all phases)—must be satisfied simultaneously. If either criterion is not met, registration under RERA is required. Conversely, states like Tamil Nadu, Bihar, Delhi, and Rajasthan have taken a conjoint approach, requiring registration if any one of the criteria—either the land area or the number of apartments—exceeds the prescribed limits. This variation in interpretation across regulatory jurisdictions results in differing compliance requirements for project registration under RERA.

- (ii) 3(2)(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act (i.e., before 1.5.2017)
- (iii) 3(2)(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project

- (b) Section 3 of the RERA Act 2016 mandates the **prior registration of the Real Estate Project**. i.e., the promoters shall obtain the RERA registration prior to marketing, sales, collection of advances and inviting the public to purchase units in the project.
- (c) while preparing the application for the grant of RERA registration for a real estate project. The process of obtaining RERA registration is a first step for promoters (landowners & developers), as it not only ensures compliance with regulatory requirements but also brings transparency and trust among all stake holders. From documentation to project specifications, several key aspects need meticulous attention to ensure a smooth and successful registration process. By examining these important facets in detail, promoters (landowners & developers) and stakeholders can gain a understanding of the requirements and best practices involved in securing RERA registration for their projects.
- (d) Section 4 of the Real Estate (Regulation and Development) Act, 2016 read with State Rules, outlines the list of documents, details, and information required from promoters when filing an application for the grant of RERA registration for a real estate project. These requirements are essential to ensure transparency, accountability, and compliance with regulatory standards.
- (e) The implementation of an online module for the registration process by the State Real Estate Regulatory Authority (RERA) is a step towards enhancing efficiency, transparency, and accessibility of the information for the various stakeholders in the real estate sector. Since the inception of RERA, most of the states, the adoption of online platform has streamlined the registration process, making it more convenient and user-friendly for promoters and other stakeholders involved in real estate projects.
- (f) **The documents required for the project registration is classified under different categories** – It is important that these documents are accurate, consistent, and aligned with one another. Any contradiction, discrepancy, or mismatch between the documents can lead to legal and regulatory issues apart from delay in registration of the project.
 - (i) Legal Title flow documents for Land including Joint Development Agreement, Concessionaire Agreements, any other arrangement wherein the right for use of development of land is allotted to one or multiple developers, if any
 - (ii) Revenue and Municipal records with respect to the project land
 - (iii) Development Plans, Sanction plans, Statutory Approvals, NOC's from various appropriate authorities.
 - (iv) Specifications, schedule of timelines for completion
 - (v) Estimated Cost of the project, source of funds for development etc
 - (vi) List and details of the promoters, KYC's and its representatives

- (vii) List of professionals and KYC's / their details,
 - (viii) Separate Bank Account Details for the Project
 - (ix) Affidavits, Legal Drafts of allotment, agreement for sale
 - (x) Details of Legal and Financial Encumbrances
 - (xi) Other details as may be required
- (g) **Important aspects to be considered while filing the Application, failing to understand these points will have large impact on the promoters and project –**
- (i) Start Date and End Date of the Project
 - (ii) Potential built up area for the project land.
 - (iii) Details of Internal and External Development details
 - (iv) Estimated Cost of the Land and Development Costs
 - (v) Number of Apartments / Plot disclosing RERA Carpet Area, Common Area and Undivided interest in the Land
 - (vi) List of Litigation on the Project Land
 - (vii) Borrowings and Mortgage of Project Land
 - (viii) Specification of the project and Scheme of the project.
- (h) One **common question** by most of the stake holder – is - Can Promoter sell after obtaining completion certificate without RERA registration?

The Act mandates the projects to be registered before advertising, market, book or sell. So irrespective of the stage of development, every project mandate registration. Hence promoter required to register before selling the apartments or plots even after completion of the project (even though the promoter has invested his own funds to complete the project.). However, Authorities can issue a specific notification, circular to simplify the registration of completed project.

In current scenario, none of the state authorities have prescribed any format for making RERA application post receipt of completion certificate.

- (i) Is it possible to file separate application for registration by the landowner and the developer for their respective share of units?

The Act mandates that every real estate project must be registered, and such registration shall be obtained by the promoter. A strict reading of the Act indicates that there cannot be separate registrations by the landowner and the developer for the same project. However, in practice, some authorities have permitted separate registrations in

specific cases. Unless such permission is explicitly granted by the Authority, the project must be registered as a single project.

- (j) In case the promoter is unable to complete the development of the project within the time specified in the registration certificate, the promoter is required to apply for an extension under Section 6 of the RERA Act. Should further time be necessary beyond the initial extension, the promoter may seek an additional extension under Section 7(3), which is granted at the discretion of the Real Estate Regulatory Authority based on a demonstration of bona fide reasons and subject to conditions like the consent of two-thirds of allottees in many jurisdictions.. The concerned Real Estate Regulatory Authority will prescribe the format of the application, the procedure to be followed, the applicable fees, and the list of documents required for considering the extension request. It is important that the promoter submit an application, demonstrating genuine reasons for the delay, such as force majeure, legal hurdles, or delay in approvals, financial crisis etc as the Authority evaluates the request strictly in accordance with the Act, Rules, and prevailing regulations. The Authorities have allowed such extension of time in the interest of the project and directed the promoters to complete within extended period.
- (k) In case the Authority does not permit the extension of the time for the project, and the registration is deemed to have lapsed, the project is treated as lapsed under the provisions of the Act. Upon such lapse or revocation of the registration, the Authority may, in consultation with the association of allottees and appropriate Government (state), take any action it deems fit. This may include completing the remaining development works through a competent authority, the association of allottees, or in any other manner as decided by the Authority.

However, no such direction, decision, or order will take effect until the expiry of the appeal period provided under the Act. Furthermore, in case of revocation, the association of allottees shall have the first right of refusal to carry out the remaining development works.

7.3 Professionals Certificates under RERA

Under the RERA Act, 2016, the role of professionals such as Architects, Engineers, and Chartered Accountants in practice is crucial to ensure transparency, accountability, and financial discipline in real estate projects. Promoters are mandated to obtain certifications from these professionals at various stages of the project, particularly for the withdrawal of funds from the separate project bank account.

- (i) **Architect:** Architect means a person registered as an architect under the provisions of Architect Act, 1972. They are governed by the Council of Architecture. The architect's responsibility starts at the initial stages of drafting the plans till obtaining of completion certificate from the competent authority. Architect under RERA certify the % (percentage) of completion of the project from time to time. In case of states, where the appropriate authority

has approved various licenced consultants, the same shall step in shoes of Architect and shall be notified by state RERA authorities accordingly.

(ii) Engineer: Engineer is the professional who oversees the construction of the project. They prepare the total estimate of construction cost to complete the project. They review the various activities like construction, scheduling of construction activities, quality assurance etc. Engineer under RERA Certify the quantum of the work done at the project site and value of the work done.

(iii) Chartered Accountant: The word-chartered accountant is not defined under section 2. But it is defined in clause (a) of the explanation to section 56 of the Act. Chartered Accountant shall certify the amount eligible to withdraw from the Project Separate bank account based on books of accounts.

The certificates issued by the respective professionals at various stages of the project is used by various stakeholders for assessing the progress of the project, withdrawal of funds from the RERA separate bank account and up to obtaining of completion certificate from the competent authority.

7.4 Chartered Accountant's Certificates under RERA

Chartered Accountant is not defined in the Act unlike the definition of other professionals. However, as per explanation to section 56 of the Act – Right to legal representation, “Chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of Section 2 of the Chartered Accountants Act, 1949 (38 of 1949) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of Section 6 of the Act.

Section 4(2)(I)(D) of the Act reads as below:

(I) *a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —*

(A)

(B)

(C)

(D) *that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:*

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

As per section 4(2)(I)(D) of the Act, the promoter shall deposit seventy percent of the amount realized for the project from the allottees in a separate account, to cover the cost of construction and land cost. The amount so deposited shall be used for that purpose only.

In order to keep a check on the financial statements of the promoter, the third proviso to Section 4(2)(I)(D) of the Act, requires promoter to get annual report on statement of accounts in Form (As may be prescribed by RERA Authorities), audited by a chartered accountant in practice within 6 months from end of every financial year (i.e., 30th Sep 20XX). During the audit, a Chartered Accountant should sign and verify that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

7.5 Financial Management under RERA -

One of the concerns of the Real Estate Industry is the collection of money from allottees, utilisation of such collected money for the purpose which was collected and utilise the collected money and enable the promoters to complete the development of the project and deliver the units to the buyers. This discipline is in built in The *Real Estate (Regulation and Development) Act 2016* which provides for:



1. **When to** Collect money - Only After Registration of Project - Sec 3(1)
2. **How** to Collect the money from the allottees – an amount equivalent to less than 10% of Agreement Value on issue of Allotment letter and balance on registration of Agreement for Sale
3. Having collected the money, **where to** deposit - project separate bank account - Sec 4(2)(I)(D)

4. **How much** money to be deposited into the project separate bank account - Sec 4(2)(I)(D) - 70 % of amount realized (excluding money received on account of pass through charges and taxes, duties, cess ,etc.). In some cases, state RERA authorities require to deposit more than 70% (i.e. 100%) of money realized for projects where the balance cost to complete exceeds the balance receivables from sold and unsold inventories.
5. **When to** withdraw money from the project separate bank account - Sec 4(2)(I)(D)- gradually based on the progress of the project.
6. **How to** withdraw money - Sec 4(2)(I)(D) - based on percentage of completion of work and after being certified through Project Professionals viz. Architect, Engineer and Chartered Accountants. Every state RERA authorities have specific form for withdrawal purposes.
7. **How much** money to be withdrawn from the project separate bank account - Based on percentage of Completion of the project. Every state RERA Authorities have prescribed methodology for the ascertainment of percentage of completion of project and amount which can be withdrawn based on such completion.
8. Utilization of withdrawn money for the specific project – to be utilized as per Sec 4(2)(I)(D) for Land Cost and Cost of Construction of the Project.
9. Submission of Architect Certificate, Engineer Certificate and Chartered Accountant Certificate in the prescribed Form as prescribed by respective state RERA authorities together with the request letter of withdrawal to the separate bank for withdraw of the money from the Separate Bank Account

The financial discipline under RERA helps all the stakeholders in the projects viz., Landowners, vendors, suppliers, allottees, government agencies, lenders, investors etc in many ways -

1. Promoters plan their project cost and cash flows in accordance with development of the project.
2. Separate Bank Account are generally no lien bank account. Only lien available on the said project is based on the project requirements for development purposes and further approved by the specific state RERA authorities.
3. Allottees money shall be utilised for the specific project development. Unspent money if any, is available in the separate project bank account (either in form of current account or no lien Fixed deposit).
4. Due to the statutory restriction under RERA requiring that allottees' funds be used exclusively for the development of the respective project, promoters have adapted their financial management practices, ensuring that these funds remain dedicated for Land

Cost and Cost of Construction of the Project. This mandated discipline enables promoters to maintain sufficient liquidity within each project, thereby enhancing their ability to complete development works in a timely and transparent manner.

5. Investors / lenders / financial institutions interest is protected due to transparency of reliable information on sale, amount realised from the project, expenses incurred, physical progress or projects, etc.
6. RERA Authorities are empowered to freeze the dedicated project bank account upon revocation or lapse of registration, and the funds in this account may then be utilized exclusively for completing the balance development works as directed by the Authority after consultation with Association of Allottees or appropriate government (as the case may be).
7. Revenue / Government Agencies viz., Income Tax, GST departments will have access to reliable information

Analysis and practical approach -

1. The Act mandates the promoter to open the Separate bank account for the specific project in a scheduled bank. Promoter shall provide such Separate bank details at the time of project registration. Further, each state has a regulation or direction from the authority in relation to mode of opening of Separate bank account, maintenance of project bank account and procedure for change of such bank account etc.
2. The Act mandates 70 % / 100 % (as the case may be) of amount so realised from the allottees to be deposited into the Separate project bank account.
3. Balance money not exceeding 30 % can be deposited either into the project Separate bank account or to any other bank account of the promoter.
4. The Act has made it mandatory to open the project Separate bank account in Scheduled Bank only, this requirement is made to protect the stakeholders and interest of allottees. (The Schedule bank Scheduled banks are banks that are listed in the second schedule of the Reserve Bank of India Act, 1934)
5. The money so deposited in Separate project bank accounts as mentioned in point 2 above, shall be withdrawn based on the percentage of completion of the project to cover the cost of land and construction cost.
6. The balance money as referred in point 3 above, can be utilised for any other purpose including repayment of loans and interest, advertisement sales and marketing, etc.
7. The project Separate bank account shall be free from lien or encumbrances (other than lien or encumbrances specified by the state RERA authorities). In other words, Other than promoters, no one shall have any control or right on the project Separate bank account.

8. Money contributed by the promoters (either in form of capital or loan) or borrowings need not be deposited into a project Separate bank account, unless specified otherwise by respective state RERA authorities.
9. The Act allows the promoter to withdraw the money based on percentage completion of the project. Such percentage of completion shall be duly certified by the professionals like Architect, Engineer and a Chartered Accountant in practice.
10. Once the amount is withdrawn from the project Separate bank account, the same shall generally be utilised only for the same purpose (same project) to settle the project liabilities or for project advances. Several state RERA authorities have issued specific clarifications, circulars, directions or guidelines further detailing the permitted end-use of monies withdrawn from these accounts to ensure strict compliance and proper utilization.
11. RERA Authorities have notified the professional certificate formats. Accordingly Chartered Accountant formats are notified. With these certificates the amount eligible to be withdrawn can be calculated.
12. As a Chartered Accountant, while issuing the Certificate under RERA, should be ensured, whether money realised from the allottees is deposited as per requirement of RERA, amount incurred / spent for the project is based on the books of accounts maintained by the promoter together with appropriate evidence of costs.
13. Act mandates the Certificate shall be issued by Chartered Accountant holding Certificate of Practice (employees of promoter are not eligible to issue these certificates).
14. Any money lying in the project separate bank account and could not be withdrawn by the promoter during the continuance of the project, shall be available to be withdrawn only at the end of the project after receipt completion certificate of the Project. State RERA authorities have prescribed Form to be issued by respective professional depicting the completion of the project.
15. The project Separate bank account is “self regulated” and “self maintained” and it is “not an escrow account” requiring approval of the banker / Authority etc for withdrawal of money. However, these certificates shall be submitted to the authorities during the periodical / quarterly updates, as the case may be, based on the rules and regulations framed by the respective state RERA authorities. These certificates shall be retained by the promoter for annual audit purposes.
16. In cases of multiple promoters for one project, based on the rules and regulations of respective state, separate bank account may be opened either in name of developer promoter or multiple separate bank account in the name of each of such multiple promoters.

17. Such Separate project bank accounts shall contain the name of the promoter and project name. Eg., If ABC Private Limited is the promoter and Lake View is the Project name, then the bank account shall be as **ABC Private Limited (Lake View) RERA Account. Few of the state RERA authorities, either through directions or order, have defined the nomenclature of separate bank account to be followed while opening separate bank account.**
18. Post RERA various banks have come out with banking products for RERA. This will have 3 different Accounts
 - (a) Master Collection Account - to deposit the 100 % Collections (excluding pass through charges and collection for taxes, levies, cess, duties, etc)
 - (b) RERA 70 % Account - banker transfers 70 % of money deposited automatically from Master Collection Account
 - (c) 30 % Account - banker transfers 30 % of money deposited automatically from Master Collection Account
 - (i) End of the day there will be NIL balance in the master collection account
 - (ii) The 30 % Account may be used as an operating account by the promoter to make any payments to vendors etc.,
 - (iii) RERA 70 % account shall nor have a Cheque facility nor any internet based operations. Based on the eligible amount determined by the professionals, based on the withdrawal request of the promoter, said amount shall be either transferred to either 30 % Account or any other operative account of the promoter, as the case may be.
 - (iv) In case the promoter borrows money from the banks / financial institutions, then the principal repayment of such borrowing happens out of 30 % account / amount. Few state RERA authorities have mandated not to use RERA 70% account for repayment of Interest on borrowings, whereas most of the state RERA authorities have permitted utilization of payment of interest to bank, Financial Institutions, NBFC or state regulated money lenders from RERA 70% account
19. Unless specified otherwise by the state RERA authorities, it is prudent to have only one project Separate bank account for each RERA project. Section 4(2)(I)(D) of the Act mandates 70 % of the money realised from the allottees of the project shall be deposited in such project separate bank account, irrespective of whether the units sold belongs to the land owner or developers or any other promoters, as the case may be. Hence it is important for all the promoters to understand the requirements under the Act and necessary clauses to be included in the joint development agreement or any other arrangements executed between the promoters.

20. The question may arise, how can the allottees buying units from the landowner's share of area, deposit the amount in the Separate project bank account of the developer. There is no exception except to deposit into the Separate project bank account (unless authorities issue a circular in this regard), hence, there shall be a mechanism and understanding between the landowners and the developers to deposit the money realised / collected from the sale of landowner units and allow the landowner to withdraw the amount.
- (a) Under the Revenue sharing scheme in a case of joint development, there may not be any challenge / difficulties between the landowner and the developer as they would have agreed upon how to share the revenue from time to time.
- (b) In the case of Area Sharing scheme of joint development, both landowners and the developer agree to comply with section 4(2)(I)(D) of the Act and also protect their interests while depositing the money into the Separate bank account.
21. Few states provide for a Separate project bank account for landowner and developer separately to deposit their share of money. However, compliance and reporting under Sec 4(2)(I)(D) is mandatory including both the account details
22. The Chartered Accountant holding certificate of practice shall issue the certificate for withdrawal of funds in accordance with sec 4(2)(I)(D). Such certificates shall be issued only after obtaining the certificates of Engineer and Architect and assess the content of those certificates and consider the information, correlate the same while issuing the financial certificate.

7.6 RERA – Annual Audit of Accounts - 3rd proviso to Sec 4(2)(I)(D) RERA Act 2016

Sl No	Question	Answers
1	What is the objective of conducting an audit of accounts of the project under the RERA Act 2016?	The primary objective of conducting an audit of accounts of the promoter under the RERA Act 2016 is to ensure transparency, accountability, and proper utilisation of funds by the promoter realised from the allottees in a real estate project.
2	Reference of legal provision under the Act, rules or Regulations	(a) 3 rd proviso to sec 4(2)(I)(D) RERA Act 2016 (b) Regulation as may be prescribed the State Authorities (c) directions, circulars and guidelines issued by state RERA authorities
3	Details of the provision	During the audit, a Chartered Accountant should sign

	with respect to the Annual Audit under RERA Act 2016	and verify that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
4	Due Date for submission of RERA Audit Report for the financial year ended 31 st March 20XX	30 th September 20XX (Within six months from the end of the financial year (i.e., 30 th Sep, 20XX for the year ending 31 st March 20XX)
5	Format of Audit Report	Audit Report format is notified by the State RERA Authorities E.g., Form 5 in Maharashtra, Form 7 in Karnataka
6	Any exemption for non-filing is applicable to any project?	No Exemption as per the Act, unless the state RERA Authorities has issued a notification or circular to Exempt. E.g., in the state of Karnataka - in case of Affordable Housing in Partnership (AHP) under Pradhan Mantri Awas Yojana (Urban), the implementing agency is exempted from submitting of annual audit report on statement of accounts in Form 7.
7	Who should certify and issue the audit report	Shall be certified by a Chartered Accountant holding Certificate of Practice. In few states statutory auditor is mandated to issue this certificate, in other states, Chartered Accountant, other than the Chartered Accountant who has certified the quarterly withdrawal certificate during the financial year for which annual certification needs to be done.
8	Promoter maintains the books of accounts of the entity; further promoter is having multiple business and multiple projects. How to carry out the audit and issue the audit report?	The RERA Act, 2016 mandates that promoters to obtain the audit report of their accounts project-wise . The audit report must be verified and submitted to the Real Estate Regulatory Authority accordingly. Specifically, the promoter is required to ensure the following: a) The audit must be conducted and reported on a project-by-project basis, and the report must be submitted to the Authority as per the regulations. b) Promoters must maintain separate records of the funds collected from allottees for each project. Additionally, expenses related to land acquisition and construction must be categorized project-wise. In case of multiple project within the larger land,

		cost allocation matrix should be properly verified. c) For promoters engaged in multiple businesses or projects, there must be a clear accounting system to bifurcate project wise collections, borrowings, expenses, etc.. This can be achieved through methods like Cost Centre or Profit Centre accounting. d) In practice, many promoters adopt Cost Centre or Profit Centre accounting systems to comply with these requirements, enabling them to efficiently segregate and report financials for each individual project.
9	Promoter has not received any funds from the allottees and invested own funds, is Audit required under RERA	Yes, Audit is required for all RERA registered project irrespective of size, location, progress, sales, collections (unless specifically exempted by the RERA Authorities – refer clause 6 above)
10	Please clarify whether Audit is required for the project completed in between of the year?	Yes, if the project progresses or work is carried out during the financial year 2024-25 and is completed before 31.03.2025, an audit is still required. For example, if the project development work is completed on 30.06.2024, the audit report for the financial year 2024-25 should be prepared for the project and must be submitted accordingly
11	Penal consequences for non-adhering to the provisions of the Act? – Non filing or Delay in Filing	Failure to comply with the RERA audit requirements can lead to penalties under Section 60 of the RERA Act. The penalty can be up to 5% of the estimated cost of the project, and continued non-compliance can result in further actions such as cancellation of the project registration or legal proceedings. Few state RERA authorities have issued circular for levy of penalty for delay in submission of periodical, quarterly or annual reports.

Respective State RERA Authorities have notified the professional certificate formats. Promoters of the project shall obtain these certificates from the professionals from time to time, prior to withdrawal of money from the RERA Project Separate bank account.

7.7 Quarterly updates under RERA – mandatory compliance under RERA

The authority monitors the project based on the information submitted by the promoter on progress of the project through Quarterly updates / Quarterly Progress reports. Quarterly Progress Report under RERA is designed to ensure transparency and provide updates on the status of the real estate project to all the stake holders including regulatory authorities, allottees, lenders, government authorities and other relevant stake holders. The details of such a report, as indicated in the documents, are typically included in the various forms appended to rules and regulations under State RERA. Each of these forms is part of the compliance documents necessary for submission to the RERA authority to demonstrate the physical and financial progress of the project, approval status of the projects, legal and financial encumbrances, saleability of the project, etc.

Section 11(1) of the RERA Act mandates the promoter to submit the information on quarterly basis once receives the real estate registration. the details are presented in a Tabular manner for the reader to understand better -

SI No	Details	Details
1	Legal Reference under the RERA Act 2016 for Quarterly updates	Section 11(1) of RERA Act 2016
2	How to submit the Quarterly updates	Generally, online on the Web portal of the Authority
3	Any exemptions / relaxation for small or rural projects	No, Applicable to all the registered real estate projects.
4	When should promoter start filing the Quarterly updates	Applicable from the quarter, project receives the registration. Eg., Project registration number received on 11.7.2024, promoter liable to file quarterly update from Sep 2024 Quarter and onwards
5	Due Dates for filing the quarterly updates	Quarters are generally understood as Quarter 1 – Period from 1 st April till 30 th June, Quarter 2 – Period from 1 st July till 30 th September, Quarter 3 – Period from 1 st October till 31 st December, Quarter 4 – Period from 1 st January till 31 st March, Due date ranges from 7 th of immediately succeeding month of respective quarter till end date of the

		succeeding month based on the state in which project is registered.
6	Upto what period, the promoter needs to file the Quarterly updates	All quarter from the registration date till the progress of project reaches 100% and project has been declared as completed project by the state RERA authorities.
7	Project received the Occupancy Certificate, should the promoter continue to file the Quarterly updates	In few states Occupancy Certificate is considered as a legal document to define the project is completed, where as in rest of the state completion certificate (irrespective of the fact occupancy certificate is received) is considered as legal document by authorities for project completion Generally, the planning authority issues the occupancy certificate to declare the unit is habitable and fit for occupancy. However, many works may be pending even after receipt of Occupancy Certificate viz., common amenities, facilities, garden etc. Hence the promoter continues to file the quarterly updates till reaches 100% of the promises as mentioned in Agreement for sale or marketing collaterals. In other words, unless the state RERA authorities has confirmed the project is completed, it is advisable to adhere all the compliances of RERA including filing of Quarterly Progress Reports.
8	Certificates to be uploaded during the quarterly updates	Architect Certificate Engineer Certificate Chartered Accountant Certificate
9	Can promoter himself submit the Quarterly updates or does he need support of professionals.	If the promoter is knowledgeable about RERA, they can submit the necessary information, documents, and certificates related to the project online. It is recommendary to seek the support of professionals for verification and submission of documents required to be submitted on periodical basis. Professional support shall also ensure that compliance are in consonance with the latest circulars, notifications, and guidelines issued by respective state RERA authorities.

10	Non filing of the Quarterly updates with in due date	Section 61 of the RERA Act, 2016 empowers the RERA Authority to levy penalties for non-compliance with its provisions. The penalties for such non-compliance can be substantial and may extend up to 5% of the estimated cost of the real estate project. Many of the states have issued circular for levy of penalty in case of delay / non submission of such updates Further most of the states do not entertain any project correction application unless all the requisite updates as per RERA has been done prior to submission of such correction application.
11	As a professional, what are the precautions to be taken while issuing the Certificates	When issuing certificates under RERA, professionals—including Architects, Engineers, and Chartered Accountants—should observe a high standard of diligence and integrity. Key precautions include: • Maintain objectivity and refrain from bias or undue influence from promoters. • Rely only on verified documents, site inspections, and robust backup evidence to substantiate the certification. • Closely follow the relevant formats, state-specific requirements, and checklists provided by the respective RERA Authorities. • Ensure that the percentage of completion, cost calculations, and withdrawals are accurate, proportionate, and in strict compliance with statutory provisions. • Disclose any doubt, limitation, or qualification clearly in the certificate. • Avoid casual or perfunctory certification; in case of ambiguity, seek guidance or legal opinion rather than making assumptions. • Recognize that false or negligent certification may attract regulatory or disciplinary action by both RERA and the relevant professional body.

		By adhering to these best practices, professionals play a vital role in ensuring regulatory compliance, transparency, and the protection of public interest in the real estate sector

1. Financial Progress:

- a) Total Amount Collected from Allottees during the Quarter
- b) Total Amount deposited to RERA Separate account of the project
- c) Total Amount Incurred by Promoter during the Quarter
- d) Total Borrowings and Mortgage of project land

2. Inventory movement:

- a) Total number of units booked
- b) Total number of garage / Car parking booked / allotted
- c) Balance available

3. Physical Progress of construction:

- a) Percentage Completion of Construction Work – building wise, floor wise
- b) Details of Completed activity – start date and end date
- c) Status of Infrastructure Development (Roads, Water Supply, Electricity, etc.,)
- d) Status of Amenities in the project (Clubhouse, Swimming pool, banquet hall)
- e) Photos of work Progress – building wise / tower wise

4. Professional Certifications: Verification and Certification

- a) **Architect's Certificate:** Certifying the physical progress of percentage of completion of the project as per the approved plan.
- b) **Engineer's Certificate:** Valuation of the completed of the work at site
- c) **Chartered Accountant's Certificate:** Verification of total amount incurred, amount realised from the allottees, deposited into the bank account and eligible to withdraw, balance available

5. Legal Compliance: modification to plan Approvals, NOC's

- a) Status of various approvals for development of the project
- b) Adherence to sanctioned plans and project specifications
- c) Details of any modifications or amendments to the original plan

- d) Compliance with any legal and environmental requirements – various NOC's obtained during the Quarter

6. Other compliances under the Act etc:

- a) Report on formation of association of allottees if any
- b) Report on labour welfare cess collected and deposited
- c) Litigation / Legal cases or orders (interim / final) on the project land if any

As a professional issuing certificates under RERA, it is crucial to exercise due diligence and adhere to a range of precautions to ensure accuracy, compliance, and integrity. Here are key precautions to consider:

1. Understanding the scheme of the project and Thorough Verification

- a) **Understanding the scheme of the Project:** Professional shall understand the type, size of the project, scheme of development, deliverables as per agreement for sale and the details as provided during the registration. This should form the basis for the professionals to issue the certificates.
- b) **Check Documentation:** Verify all project-related documents, including land titles report, approvals, sanctioned plans (exercise to be undertaken on initial and subsequent approvals and make a note of the details), expense related documentation, bifurcation of costs in case of multiple projects in larger land, MIS and Management reports, etc.
- c) **Cross-Check Data:** Ensure the data provided by the promoter matches the physical progress and financial records.

2. Adherence to RERA Guidelines

- a) **Stay Updated:** Regularly review the latest RERA circulars, notifications, and guidelines.
- b) **Compliance:** Ensure all certificates comply with the specific requirements outlined by RERA in your state.

3. Detailed Inspection

- a) **Site Visits:** Conduct regular site visits to assess the physical progress of the project (by the Architect before issuance of Architect Certificates)
- b) **Quality Checks:** Evaluate the quality of construction and adherence to approved plans and specifications (Engineer before issuance of the Certificates)

4. Accurate Financial Reporting

- a) **Understand the components** – one time exercise of understanding the components of cost, accounting heads considered under various components for the purposes of

estimates to align actual cost with the same component. This is very important concept, against each cost, the chartered accountant certifies the cost incurred.

- b) **Cost incurred during the quarter and from the inception of project till end of the reporting of quarter:** Verify the costs incurred vis-à-vis cost estimated based on the books of accounts maintained by the promoter.
- c) **Amount Realised from the Allottees and deposit into RERA Separate bank account:** verify the amount realised from the allottees and whether minimum of 70 % amount realized is deposited into the RERA Separate bank account
- d) **Borrowings if any:** any borrowings during the quarter, ensure 100% borrowings shall be deposited into the RERA Separate bank account

5. Professional Integrity

- a) **Objectivity:** Maintain objectivity and independence while issuing certificates.
- b) **Ethical Standards:** Adhere to ethical standards and avoid conflicts of interest.

6. Documentation and Record Keeping

- a) **Maintain Records:** Keep detailed records of all inspections, verifications, and communications with the promoter.
- b) **Backup Documents:** Maintain copies of all supporting documents and certificates issued.

7. Legal Compliance

- a) **Legal Awareness:** Be aware of all legal requirements and implications related to issuing RERA certificates.
- b) **Insurance:** Ensure the project is adequately insured as per RERA guidelines.

8. Clear Communication

- a) **Transparent Reporting:** Clearly report any discrepancies or issues found during verification.
- b) **Detailed Certificates:** Provide detailed and comprehensive certificates, outlining the basis of your verification and findings.

9. Continuous Learning

- a) **Training:** Participate in ongoing training and development programs related to RERA compliance and real estate regulations.
- b) **Networking:** Engage with other professionals and regulatory bodies to stay informed about best practices and updates.

10. Example Clauses for Certificates:

- a) **Architect's Certificate:** "I have inspected the site and verified the construction progress as per the approved plans. The quality of construction is satisfactory, and the project is proceeding as scheduled."
- b) **Engineer's Certificate:** "Based on my inspection, the project has achieved the specified milestones in terms of structural completion. The quality of materials used is as per the standards prescribed."
- c) **Chartered Accountant's Certificate:** "I have verified the financial records and bank statements. The funds collected from allottees have been appropriately utilized, and the remaining amount is duly deposited in the escrow account."

7.8 The functions and duties of the promoter under the Act

Promoter refers to any person, who develops or constructs real estate projects for the purpose of sale to the public. The promoter is responsible for obtaining all necessary approvals and permissions for the project, and for ensuring that the project is completed in accordance with the approved plans and specifications issued by the planning authority. The Act places specific responsibilities and duties on the promoter to ensure transparency, accountability, and timely completion of the project. Some of the key functions and obligations of the promoter under the Act are as follows:

Section	Provision	Analysis
11(1)	To disclose correct information on the web portal of authority	The Section cast responsibility on the promoter that he will disclose correct information on the web portal of the RERA. Various State Authorities provides Login ID and Password to the Promoter upon registration of the project, so that promoter can upload the information of the project on the web portal of the RERA
11(2)	Disclosure in advertisement or prospectus by the promoter	The promoter is obligated to prominently mention the website address of the Authority, wherein all details of the registered project have been entered, in the advertisement or prospectus issued or published by the promoter and shall also include the registration number obtained from the Authority. <i>RERA Authorities have notified the detailed guidelines with respect to Advertisement.</i>
11(3)	To make available to the allottee at the time of booking and	The promoter shall specifically make available the following information at the time of booking and issue of allotment letter to the allottee: -

	issue of allotment letter all important information about the project	(i) Sanctioned plans, layout plans, along with specifications, approved by the competent authority (ii) The stage-wise time schedule of completion of the project (i.e the development work plan for the project), including the provisions for civic infrastructure like water, sanitation and electricity.
11(4)(a)	Promoter is responsible for all obligations and responsibilities as per agreement for sale	By virtue of this section of RERA, the promoter remains responsible for all obligations, responsibilities and functions under the Act and more specifically all the terms and conditions mentioned in the Agreement to Sale till the conveyance of the project including the handing over of the common areas to the allottees or their association as the case may be.
11(4)(b)	Promoter is responsible to obtain the completion certificate or the occupancy certificate	Based on the relevant provisions contained in the Development Control Regulations, the Competent Authority issues the Occupation certificate or the completion certificate or both. Under the Act, now it is mandatory for the promoter to obtain and handover to the allottees, association and a copy of the same to RERA Authorities.
11(4)(c)	To obtain the lease certificate	This section becomes important in cases of project development on leasehold land of the Promoter. The Promoter developing on leasehold land are now under obligations to obtain lease certificate from the land title holder favoring the allottees/ association of allottees and also making such lease certificate available to the allottees/association of allottees.
11(4)(d)	To provide and maintain essential maintenance services till handover to the association	RERA has brought in this provision to make it mandatory for the promoter to maintain such essential services till the handing over to the Association of the allottees in accordance with the local laws. Eg., security, safety, water, electricity to common area etc.
11(4)(e)	To enable formation of association of allottees	The promoter is made responsible to enable the formation of an Association of the Allottees in accordance with the local laws. In the absence of

		any local laws, the promoter shall form the Association within three months from the date on which majority of the flats in the project are booked by allottees.
11(4)(f)	To execute conveyance in favour of allottees/ association of allottees	This section makes it obligatory on the part of the promoter to transfer legal title and interest of the unit to the allottee and also simultaneously transfer the proportionate legal title and interest in the undivided common areas to the Association or Allottees or Competent Authority as the case may be. Further, Responsibilities of conveyance are specified in section 17 of RERA.
11(4)(g)	To pay all outgoings of the project till handing over	This section makes it obligatory on the part of the promoter to pay all outgoings in relation to the Project (including land cost, ground rent, Municipal or other local taxes, electricity and water charges, maintenance charges and all incidental) and clear the lien or mortgage created by settlement of borrowings etc. the promoter is obligated to clear these liabilities even after handing over to the allottees of association.
11(4)(h)	To abstain from creating any lien or mortgage on property sold to an allottee and also to protect the right and interest to the allottee	The promoter after executing an Agreement for Sale of a unit shall not mortgage or create a charge on such unit as all the rights, interest and title are proposed to be transferred in favour of the allottee. Further, in any case such mortgage or charge is created by the promoter intentionally or unintentionally still then the liability of getting such mortgage or charge vacated shall be totally to the promoter and the right, interest and the title of the Allottee shall not be affected in any manner by any such wrongdoing by the promoter.
11(5)	The promoter's right of cancellation of allotment is subject to terms of the agreement for sale only	The promoter's right to cancel allotment of an Apartment previously allotted to Allottee shall be only subject to the Agreement to Sale by following due process of issuing the prior notices, giving sufficient opportunities to the allottees and following principles of law of natural justice to remedy any breaches committed by the allottees.

		The Allottee has a right in case of any wrongful or unilateral cancellation is done by the promoter. Cancellation of allotment is to be done by following procedure prescribed in the agreement to sell. Proper notices and opportunities are to be given to the allottees. Allottees can take legal recourse in case of wrongful cancellation by the promoters.
11(6)	The promoter shall prepare and maintain all project details	This section is an inclusive section, and Authority imposes an obligation on the Promoter to ensure all timely compliance and offer complete transparency towards all the contributions and beneficiaries connected with the Real Estate Project.
Section 12	The promoter shall remain committed to the veracity of advertisement or prospectus	This section is a wide-ranging provision that applies to any incorrect, false or misleading statement made by the promoter in the notice, advertisement, prospectus or model apartment and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act.
Section 13	No deposit or advance to be taken by promoter without first entering into agreement for sale	The Agreement for sale should be in a prescribed format. Such format is notified by the RERA authorities. Under the Act, the promoter is not allowed to collect more than 10 % of the cost of the apartment or plot etc., unless he enters into Agreement for sale and register the same in accordance with any law for the time being in force.
Section 14	Adherence to sanctioned plans and project specifications by promoters	The promoter to complete the project in accordance with the sanctioned plan, layout plan and specifications approved by the competent authority. Also, the promoter shall deliver the specified fixtures, fittings and amenities already agreed between the home buyers and promoter of a real estate project. The promoter shall obtain 2/3rd allottees consent in case of major modification. The promoter is liable to rectify structural defects or any other defects in workmanship, quality, or provision of services within five years from the date

		of handover of possession to the allottee. This liability is absolute and cannot be waived by the allottee.
Section 15	Obligations of promoter in case of transfer of a real estate project to a third party.	The promoter shall obtain 2/3 rd consent of the allottees in case of transfer of rights and liabilities in the project to the 3 rd parties and authority approval thereafter.
Section 16	Obligations of promoter regarding insurance of real estate project.	The promoter shall obtain all such insurance as may be notified by the appropriate Government, including but not limited to insurance in respect land and building and construction insurance. The promoter shall continue to pay the premium on such insurance till the handover of the project to the promoter. On formation of the association of the allottees, all documents relating to the insurance shall be handed over to the association of the allottees.
Section 17	Transfer of title	The promoter must execute a registered conveyance deed and hand over physical possession of the unit to the allottee, along with the undivided share in common areas to the association of allottees or competent authority, within the specified period as per the sanctioned plans and local laws.
Section 18	Return of amount and compensation.	If the promoter fails to complete or hand over possession of the property as per the terms of the agreement or due to suspension/revocation of registration or any other reason, the allottee has the right to withdraw and receive a full refund with interest and compensation. If the allottee chooses not to withdraw, the promoter must pay interest for every month of delay. Additionally, the promoter is liable to compensate for any loss arising from defective title of the land, with no limitation period for such claims. The promoter is also liable to compensate for failure to fulfill any other obligations under the Act, rules, regulations, or agreement for sale

7.9 Allottees under RERA - Rights and duties of allottees -

Real Estate (Regulation and Development) Act 2016 (RERA Act) is a transformational statute with an objective to REGULATE and DEVELOP the real estate industry.

Under RERA, customer/buyer/purchaser is collectively called as Allottee. Sec 2(d) of the RERA Act defines "Allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfers or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on ren

CHAPTER IV of the RERA Act provides for RIGHTS AND DUTIES OF ALLOTTEES in the project. The details of the same is summarised in the tabular manner -

Details	Rights of the Allottees
The allottee shall be entitled to obtain	The information relating 1. to sanctioned plans, layout plans along with the specifications, approved by the competent authority and 2. such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter
The allottee shall be entitled to know	The stage-wise time schedule 1. of completion of the project, 2. including the provisions for water, sanitation, electricity and 3. other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale
The allottee shall be entitled to claim	The allottee shall be entitled to 1. claim the possession of the apartment, plot or building, as the case may be, and 2. the association of allottees shall be entitled to claim the possession of the common areas
The allottee shall be entitled to claim the refund of the amount paid along with interest	1. if the promoter fails to comply or 2. is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or

	3. due to discontinuance of his business as a developer on account of suspension or revocation of his RERA registration
The allottee shall be entitled to have	1. the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building
Every allottee who has entered into an agreement for sale shall be responsible to	1. make necessary payments 2. in the manner and 3. within the time as specified in the agreement for sale and 4. shall pay at the proper time and place - a. the share of the registration charges, b. municipal taxes, c. water charges, d. electricity charges, e. maintenance charges, f. ground rent, and g. other charges, if any
The allottee shall be liable to pay interest	1. at such rate as may be prescribed (maximum of SBI MCLR +2%) 2. for any delay in payment towards any amount or charges to be paid as per agreement for sale
Every allottee shall participate	1. towards the formation of an association or society or cooperative society of the allottees, or a federation of the same
Every allottee shall take physical possession	1. within a period of two months of the occupancy certificate issued for the said apartment, plot or building
Every allottee shall participate	1. towards the registration of the conveyance deed of the apartment, plot or building

In case of a complaint filed by the promoter on the allottee for failure to perform their duties or as per terms of the agreement, the Authority or Appellate Tribunal may pass necessary orders based on the facts and merits of the case directing the Allottee to comply. If the Allottees fail to comply with such orders, then the punitive provisions under the Act is attracted.

RERA Act has a provision to penalise the Allottees if they fail to comply with the orders of the Authority or Appellate Tribunal. The details of contravention and the quantum of penalty or imprisonment is summarised in the table below -

Reference in the Act	Provision	Contravention and Quantum of Penalty
Section 67	Penalty for failure to comply with orders of Authority by the allottee	1. If any allottee fails to comply with or contravenes any of the orders, decisions or directions of the Authority 2. shall be liable to a penalty 3. for the period during which such default continues, 4. may cumulatively extend up to five percent of the plot, apartment or building cost, 5. as the case may be, as determined by the Authority.
Section 68	Penalty for failure to comply with orders of Appellate Tribunal by the allottee	1. If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, 2. he shall be punishable with imprisonment for a term which may extend up to one year or 3. with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the plot, apartment or building cost, as the case may be, or 4. with both

7.10 The Real Estate Regulatory Authority under the Act – Powers, Functions

The Real Estate Regulatory Authority (in short RERA) performs administrative, quasi-judicial, penal, regulatory, compliance, advocacy, awareness programs, make necessary recommendation to government. These efforts and functions results in overall development of real estate industry. The Authority vested with bundle of powers to perform the functions under the Act.

The Real Estate Regulation Authority establishes, and its functions are as per section 20 to section 40 under chapter V of the RERA Act.

Appointment, Composition, Qualification, Tenure of RERA –

Section	Details	Provisions of the Act
Section 21	Composition of RERA Authority - In order to	Authority shall consist of a

	perform the functions and exercise powers	(a) Chairperson and (b) minimum 2 wholetime members to be appointed by the state Government. Note: In few states, minimum requirement of 2 wholetime members have been withheld.
Section 22	Selection, composition of the Chairperson and Members of Authority	(a) Such chairperson and other members of the Authority shall be appointed by the state government on the recommendations of a selection committee consisting of – (i) the chief justice of High court or his nominee, (ii) the secretary of the Housing Department and (iii) the Law Secretary.
	Qualification of the Chairperson and Members of Authority	(a) Shall have knowledge of and professional experience of - (i) Minimum 20 years for Chairperson (ii) Minimum 15 years for members (b) In the field of Urban development, Housing, real estate development, infrastructure, economics, technical experts from the relevant fields of planning, law, commerce, accountancy, industry, management, social service, public affairs or administration.
	Past Positions held / Experience	(a) For Chairperson - (i) Shall not be appointed unless, has held the post of Additional Secretary to the Central Government or any equivalent post in the central or State Government (b) For members - (ii) Shall not be appointed unless, has held the post of Secretary to the state Government or any equivalent post in the central or State Government
Section 23	Term or Tenure of office Chairperson and Members	(a) Not more than 5 years Or (b) Until they attain the age of 65 years

		Whichever is earlier And Not be eligible for re-appointment
Section 28	Officers and other employees of Authority	(a) State Government may, in consultation with the Authority appoint such officers and employees for the efficient discharge their functions under this Act (b) Such functions shall be discharged under the general superintendence of the Chairperson

Functions and Powers of RERA Authority under the Act -

Sl No	Section	Details	Details
1	Sec 32	Functions of Authority for promotion of real estate sector	To Promote and development overall of real estate industry
2	Sec 33	Advocacy and awareness measures	Creating awareness and imparting training about laws relating to real estate sector and policies
3	Sec 34	Functions of Authority	In relation to RERA viz., registration of projects, agents, complaints – a. Maintain Website and data base b. Regulations and fixation of fees c. Ensure Compliances under the Act to be complied by the promoter, agent and the allottees
4	Sec 35	Powers of Authority to call for information, conduct investigations	Investigating – the proceedings are as vested in a civil court under the Code of Civil Procedure, 1908, which includes – a. Production of books of accounts and other documents b. Summoning and enforcing attendance of person c. Issuing commissions for examination
5	Sec 36	Power to issue interim orders	Issue interim order to promoters, allottees and agents during an inquiry/proceedings - restrain any promoter, allottee or real estate agent from

			carrying on such act until the conclusion of such inquiry of until further orders
6	Sec 37	Powers of Authority to issue directions	Issue directions to promoters, allottees and agents during an inquiry/proceedings
7	Sec 38	Powers of Authority regarding Penalty and Interest	Power to impose penalty on promoter, allottees or agent for contraventions under the Act – Refer Section 59 to section 64. The Penalties under the Act is upto 10 % of the Estimated cost of the real estate project.
8	Sec 39	Rectification of orders	For the Mistakes apparent on orders with in 2 years from the date of the orders made under the Act. Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of Act.
9	Sec 40	Recovery of interest or penalty or compensation and enforcement of order, etc	Such recovery is on account of non-payment of interest, penalty or compensation as may be prescribed as an arrears of land revenue – If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority

Functions of Authority for promotion of real estate sector - Section 32

The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on —

- (i) Protection of interest of the allottees, promoter and real estate agent;
- (ii) Creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
- (iii) Creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- (iv) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;

- (v) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of appropriate construction materials, fixtures, fittings and construction techniques;
- (vi) measures to encourage grading of projects on various parameters of development including grading of promoters;
- (vii) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- (viii) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
- (ix) to render advice to the appropriate Government in matters relating to the development of real estate sector;
- (x) Any other issue that the Authority may think necessary for the promotion of the real estate sector.

7.11 Advertisement Compliance under RERA-

Advertisement plays a critical role in the real estate industry, as it directly impacts the visibility, credibility, and overall success of real estate projects. Given the high-value nature of real estate transactions, effective advertising can significantly influence potential buyers' decisions. Real estate advertising is a powerful tool for generating interest, building trust, and driving sales. With the high stakes involved in real estate purchases, advertisements not only showcase a property but also build credibility and trust in the minds of potential buyers. Moreover, in an industry that is increasingly regulated (such as under RERA), transparent and honest advertising is essential for engaging with consumers and promoting successful real estate projects.

Real Estate (Regulation and Development) Act 2016 defines **"advertisement"** (section 2(b)) means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

1. Let us analyse and deliberate the definition of advertisement and its relevance –

SI No	Details	Analysis
1	Medium of Advertisement -The term "advertisement" includes any document or communication issued as an advertisement, regardless of the	(a) Print Media: Newspaper ads, brochures, leaflets, or magazines. (b) Electronic Media: TV commercials, radio spots, digital

	medium used. This could be:	billboards, or podcasts. (c) Online and Social media: Websites, social media platforms, email campaigns, and online property listings. (d) Outdoor and Public Spaces: Hoardings, banners, posters, and physical signage. This inclusion of various media ensures that promoters are held accountable for the information they disseminate, no matter how it is shared with the public. In other words, any methodology employed by the promoter, which results in the promotion of project intended for information purposes or otherwise shall fall within the ambit of advertisement irrespective of intention to sale or otherwise.
2	Document Formats - The term also covers any notice, circular, or other documents. This means that any official or unofficial written communication or printed material that informs the public about a real estate project is considered an advertisement. These may include:	(a) Notices: Public or private announcements about the launch or status of a project. (b) Circulars: Informative documents distributed to potential buyers, partners, or agents to share details about the project. (c) Other Documents: These could be flyers, sales pamphlets, or even documents shared at real estate exhibitions or events.
3	Purpose of Advertisement - The definition highlights that an advertisement serves to inform people about a real estate project. This could involve:	(a) General Project Information: Sharing basic details like the project's name, location, developer, or features. (b) Promotional Offers: Presenting special offers, discounts, or deals related to the purchase of property units. (c) Project Timelines: Mentioning

		project completion or possession timelines, which are critical for buyers to make informed decisions.
4	Offering for Sale - Advertisements can also explicitly or implicitly offer the sale of plots, buildings, or apartments. This means any message that promotes the availability of real estate for sale, whether by mentioning prices, discounts, or unit availability, qualifies as an advertisement under RERA.	Invitations to Purchase: An advertisement could be an invitation to potential buyers to express interest or book a property. This includes offers to visit a sales office, register for project updates, or even attend promotional events.
5	Soliciting Advances or Deposits - The term "advertisement" also encompasses any material that encourages individuals to make advances or deposits for purchasing real estate. This could involve:	(a) Booking Amounts: Promoters might invite potential buyers to pay a booking or reservation amount to secure their interest in a property. (b) Pre-launch Offers: In some cases, advertisements invite buyers to invest in pre-launch projects where buyers are encouraged to make payments before formal approvals or launches. (c) Advance Payments: Any promotional material asking potential buyers to put down an advance or make deposits for future purchase falls under this definition.
6	Publicity in Any Form - The phrase "publicity in any form" ensures that the Act captures even non-traditional or indirect methods of promotion. This can include:	(a) Word-of-Mouth Campaigns: Though not a traditional form of advertisement, if organized by the developer, word-of-mouth efforts through agents or brokers to spread the word about a project could be considered an advertisement. (b) Influencer Marketing: On social

		media, if an influencer or celebrity endorses or promotes a real estate project, it can be treated as an advertisement under RERA.

2. Other important aspects of Advertisements under RERA –

SI No	Details	Analysis
1	Disclaimer in the advertisement is not allowed	a. The Authority has issued a circular stating disclaimer in the advertisement materials stating subject to change, etc. b. These disclaimers are not permitted, promoters cannot shy away by mentioning the disclaimer and not delivering as promised in the advertising collaterals. In other words, any disclaimer will not safeguard promoters to abstain from their responsibilities of disclosure of the things which has influenced the decision of prospective buyers before becoming allottees of the project.
2	Legal Accountability	This wide-ranging definition ensures that promoters and developers cannot escape legal liability by claiming that their material was not a formal advertisement. If they make any claims or statements that influence a buyer's decision, these fall within the scope of "advertisement" under RERA
3	Truth and Accuracy	As per RERA Act, Rules, regulations, any advertisement must reflect the true status of the project, be compliant with legal approvals, and avoid any misleading or false information. False advertising can lead to significant penalties.
4	Collection Expression of Interest by agent or promoter before obtaining the RERA Registration	Collecting Expressions of Interest before obtaining RERA registration violates the section 3(1) of the RERA Act. Expression of interest not only risks legal repercussions but also invites regulatory scrutiny. It is important for promoters, agents, channel partners to adhere strictly to RERA provisions to protect their business interests and avoid penal provisions.

3. Standard Operating Procedures under RERA for Advertisements -

Every promoter entity should develop a Standard Operating Procedure (SOP) for preparing and publishing advertisements in any media, ensuring full compliance with the requirements set by the Real Estate (Regulation and Development) Act, 2016 (RERA). This SOP is essential for maintaining transparency, avoiding misleading information, and ensuring the protection of potential buyers. Below is a suggested structure for creating such an SOP –

SI No	Details	Analysis
1	Purpose	The purpose of this SOP is to establish a standardized approach for creating and publishing advertisements for real estate projects. This ensures that all advertisements comply with RERA guidelines and protect the interests of both the promoter and the consumers by providing accurate and transparent information
2	Scope	This SOP applies to all advertisements, regardless of the medium (print, electronic, outdoor, digital, etc.), issued by the promoter or on behalf of the promoter by third parties (agents, brokers, etc.)
3	Responsibilities	(a) Marketing Team: Responsible for preparing and designing the advertisement. (b) Legal/Compliance Team: Ensures that the advertisement complies with all RERA guidelines. (c) Approving Authority: A designated individual or committee within the promoter entity responsible for final approval before the advertisement is released. (d) RERA Professionals / Consultants / Advisors: If external advertising agencies are involved, they must also adhere to the RERA-compliant SOP.
4	Advertisement Content Preparation - The content of the advertisement should pass the RERA compliance test, which includes the following:	(a) Mandatory Information: Every advertisement must include the following: (i) RERA Registration Number: The registration number issued by the respective state RERA authority for the project. (ii) Project Name and Location: Accurate details about the name and exact location of the project. (iii) Promoter's Name and Contact Details: The name, address, and contact details of the promoter.

		(iv) Approval Status: Whether the project has received necessary approvals (Completion Certificate or Occupancy Certificate) or if they are pending. (v) Details of Amenities/Facilities: All amenities and features must be clearly mentioned and should match what will be delivered. (b) Accuracy of Information: The advertisement must reflect the true status of the project without exaggeration or false claims. For instance: (i) No inflated promises about the number of amenities, completion time, or returns on investment. (ii) No use of speculative language that could mislead potential buyers (e.g., "hurry before prices rise!" unless there is factual evidence).
5	Design and Format	(a) Font Size and Placement: The RERA registration number must be placed in the top-right corner of the advertisement and should be no less than half the font size used for the project name. (b) Clear Mention of RERA Website: The advertisement must include a link to the respective state RERA website (e.g., www.rera.karnataka.gov.in) where buyers can verify the project details. (c) Use of Visuals: Any images or visual representations used should be true to the actual project. If artistic impressions or renderings are used, they should be clearly labeled as such. (d) "RERA Registered" Information: The length and size of the "RERA Registered" information must cover at least 10% of the length or breadth (whichever is greater) of the advertisement in print or digital format.
6	Digital and Electronic Media Guidelines	(a) Radio/TV Ads: The RERA registration number should be clearly mentioned in all radio and television ads. (b) SMS/Email/Online Ads: Digital advertisements via SMS, emails, or social media must also include the RERA registration number and a link to the state RERA website. (c) Website and Portals: Ensure that property listing portals include a link to the state RERA site for verification of project registration.

7	Grievance Redressal	Buyer Complaints: A system must be in place for handling grievances or complaints from buyers regarding advertisements. Any buyer concerns about misleading information or non-compliance should be addressed promptly.
8	Documentation and Record-Keeping	(a) The promoter should maintain records of all advertisements released (including digital formats) for a minimum period, in case of audits or legal disputes. (b) Copies of advertisements should be stored along with a compliance checklist, showing that each aspect has been reviewed and approved.
9	Monitoring and Auditing	(a) The compliance team should regularly monitor the release of advertisements to ensure adherence to the SOP and RERA guidelines. (b) Internal Audits: should be included in periodic audits to ensure that the SOP is being followed and updated according to any changes in the law.

4. Model Flat / Show Flat in project area

Indeed, the model flat serves as a pivotal tool for builders to showcase their projects. Constructed with premium products and features, it acts as a tangible advertisement, offering potential buyers a glimpse into the quality and lifestyle their investment could afford. However, it's imperative that the model flat remains as factual as possible. While it's common to highlight the best features of the project, it's equally essential to ensure that the model flat accurately represents what buyers can expect upon completion. From the layout and dimensions to the quality of materials used, transparency is paramount. By maintaining honesty and integrity in the construction of the model flat, builders not only build trust with potential buyers but also uphold the standards of compliance, particularly in accordance with regulations like RERA. This approach not only benefits the builder but also ensures that buyers can make well-informed decisions based on realistic expectations. Some of the factors requires the attention of the promoters with respect to show flats -

- (a) Generally, the height of the model flat is more than actual offering
- (b) The room size or living or kitchen size are large compare to actual offerings
- (c) The wall thickness is less as usage of glass partitions/ gypsum boards instead of concrete walls, increased ceiling height and lighting.
- (d) Sample Flats generally created to look more better
- (e) Sample Flats gives the feeling of Premium and luxury

- (f) Standard and nonstandard fittings, changed dimensions etc must be made known to the customer and written confirmation taken
- (g) Floor tiles, fixtures, wall texture etc in model apartment could significantly vary from one actually used in
- (h) Show the unfurnished sample flat as well, if possible (and feasible)

7.12 FAQs

General Questions

1. What is RERA and what are its objectives?

- A.** The Real Estate (Regulation and Development) Act, 2016 is a central legislation that aims to:
 - (a) Ensure accountability towards allottees and protect their interests
 - (b) Infuse transparency, ensure fair-play and reduce frauds & delays
 - (c) Introduce professionalism and pan-India standardization
 - (d) Establish symmetry of information between the promoter and allottee
 - (e) Impose certain responsibilities on both promoter and allottees
 - (f) Establish regulatory oversight mechanism to enforce contracts
 - (g) Establish fast-track dispute resolution mechanism
 - (h) Promote good governance in the sector to create investor confidence

2. When did the RERA Act come into force?

- A.** The Real Estate Bill was passed by Parliament in March 2016 and received the President's assent on March 25, 2016. Certain sections of the Act (including sections related to establishment of regulatory authorities) came into effect from May 1, 2016, while the rest of the provisions came into effect from May 1, 2017.

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

- A.** Yes, the Act covers both residential and commercial real estate. Section 2(e) defines 'apartment' and section 2(j) defines 'building' which include both residential and commercial real estate.

4. Who is the 'appropriate Government' as per the Act?

- A.** As per Section 2(g), 'appropriate Government' means:
 - (a) For Union territory without Legislature: The Central Government
 - (b) For Union territory of Puducherry: The Union territory Government

- (c) For Union territory of Delhi: The Central Ministry of Urban Development
- (d) For States: The State Government

Registration of Projects

5. Which projects need registration under RERA?

- A.** All real estate projects (both new and ongoing) where:
 - (a) The area of land proposed to be developed exceeds 500 square meters, OR
 - (b) The number of apartments proposed to be developed exceeds 8 must be registered with the respective State/UT's Real Estate Regulatory Authority.
 - (c) Registration should in line with disjunctive or conjoint method adopted by the respective states

6. Which projects are exempt from registration under RERA?

- A.** As per section 3(2), the following projects do not require registration:
 - (a) Projects where the area of land proposed to be developed is less than or equal to 500 square meters or the number of apartments is less than or equal to 8 (inclusive of all phases) based on disjunctive or conjoint method adopted by the respective states.
 - (b) Projects where the promoter has received completion certificate prior to the commencement of the Act
 - (c) Projects for renovation/repair/redevelopment which doesn't involve marketing, advertising, selling or new allotment of any apartment, plot or building

7. Does RERA cover ongoing/incomplete projects?

- A.** Yes. There is no distinction between an ongoing project and a future project. Both ongoing/incomplete projects and future projects are covered under the Act, provided they haven't received a completion certificate by May 1, 2017. Promoters of ongoing projects were required to register their projects within 3 months of the commencement of the Act.

8. At what stage can a promoter start advertising the project for sale?

- A.** The promoter can advertise the project for sale only after the project has been registered with the Regulatory Authority.

9. What is the validity period of registration granted to a project?

- A.** The validity period is the estimated time declared by the promoter for completion of the project at the time of registration.

Separate Account Provisions

10. Is the promoter required to maintain a separate account for the project?

- A.** Yes. Section 4(2)(I)(D) requires the promoter to maintain a separate account in a scheduled bank for each project for deposit of minimum 70% of the amounts realized from allottees. This amount can only be used for the construction of that project and land cost.

11. Can the promoter withdraw money from this separate account?

- A.** Yes, but only for covering the cost of construction and land cost, and in proportion to the percentage of completion of the project. The withdrawal must be certified by an engineer, architect, and chartered accountant in practice.

12. Is this separate account an escrow account requiring approval of the Authority for withdrawal?

- A.** No, this is a self-maintained account and is not an escrow account requiring approval of the Authority for withdrawal. However, the withdrawals must follow the conditions specified in the Act.

Responsibilities of Promoters

13. What are the key responsibilities of a promoter under RERA?

- A.** The key responsibilities of a promoter include:
- (a) Register the project with the Regulatory Authority before advertising, marketing or selling
 - (b) Update all project information on the Authority's website
 - (c) Maintain proper books of accounts and get them audited
 - (d) Follow the prescribed withdrawal norms from the separate account
 - (e) Adhere to approved plans and project specifications
 - (f) Transfer common areas to the association of allottees
 - (g) Execute a registered conveyance deed in favor of the allottee
 - (h) Pay all outgoings until transfer of physical possession
 - (i) Obtain the completion certificate and share it with allottees
 - (j) Provide essential services until the association of allottees takes over

14. What is the promoter's liability period for structural defects?

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

15. Can a promoter modify the sanctioned plans or project specifications after approval?

- A. Minor alterations are permitted. However, for major modifications/alterations, the promoter needs approval from two-thirds of the allottees. For calculating two-thirds majority, the promoter's apartments are excluded, and each allottee gets one vote regardless of the number of apartments owned.

16. When should the promoter execute a conveyance deed in favour of the allottees?

- A. The promoter shall execute a registered conveyance deed in favour of the allottee or the association of allottees, as the case may be, within three months from the date of issue of occupancy certificate.

Rights and Duties of Allottees

17. What are the rights of allottees under RERA?

- A. Rights of allottees include:
- (a) Right to information about the project
 - (b) Right to know stage-wise time schedule of completion
 - (c) Right to claim possession as per the agreement
 - (d) Right to refund with interest for delayed possession or withdrawal from project
 - (e) Right to access project details and plans
 - (f) Right to form an association of allottees
 - (g) Right to participate in formation of association of allottees

18. What are the duties of allottees under RERA?

- A. Duties of allottees include:
- (a) Making payments as per the agreement for sale
 - (b) Paying interest for delayed payments
 - (c) Taking physical possession within 2 months of occupancy certificate
 - (d) Participating in formation of association of allottees
 - (e) Contributing towards registration of the conveyance deed

19. What is the penalty for default in payment by the allottee?

- A. The rate of interest payable by the allottee to the promoter on delayed payment is the same as the rate payable by the promoter to the allottee for delayed possession or refund, as prescribed by the respective State Rules.

Registration of Real Estate Agents

20. Is registration mandatory for real estate agents?

- A. Yes, no real estate agent can facilitate the sale or purchase of any plot, apartment or building in a registered real estate project without obtaining registration with the Regulatory Authority.

21. What is the validity period of registration for real estate agents?

- A. Generally, the registration is valid for 5 years, after which it needs to be renewed.

22. What are the responsibilities of real estate agents?

- A. Real estate agents must:
- (a) Register with the Regulatory Authority
 - (b) Maintain books of accounts, records and documents
 - (c) Not involve in any unfair trade practices
 - (d) Facilitate the possession of all information and documents to the allottee
 - (e) Provide assistance to allottee in all respects
 - (f) Discharge such other functions as prescribed by the regulations

Complaints and Disputes

23. Who can file a complaint with the Regulatory Authority?

- A. **Any aggrieved person** can file a complaint with the Regulatory Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of the Act or rules and regulations made thereunder.

24. What is the time period for disposal of complaints by the Authority?

- A. The Authority should endeavor to dispose of the complaint as expeditiously as possible but not later than 60 days from the date of filing. If it cannot be disposed of during this period, the Authority must record reasons for the delay.

25. Can a complaint be filed with both RERA authority and consumer forum?

- A. No, a complainant cannot approach both forums simultaneously for the same dispute. However, a complainant can withdraw a complaint from consumer forum and file it with RERA authority.

24. Is there a provision for appeal against the order of the Regulatory Authority?

- A. Yes, any person aggrieved by any direction, decision or order of the Authority can file an appeal with the Appellate Tribunal within 60 days.

25. Can an appeal be filed against the order of the Appellate Tribunal?

- A. Yes, any person aggrieved by the decision or order of the Appellate Tribunal can file an appeal with the High Court within 60 days.

Penalties and Enforcement

26. What is the penalty for non-registration of a project?

- A. For non-registration of a project, the penalty may extend up to 10% of the estimated cost of the project. In case of continued violation, the promoter may face imprisonment up to 3 years or additional fine up to 10% of the estimated cost, or both.

27. What is the penalty for non-registration of a real estate agent?

- A. For non-registration, a real estate agent is generally liable to a penalty of Rs. 10,000 per day of default, which may cumulatively extend up to 5% of the cost of the plot/apartment/building for which the sale was facilitated. It is advisable to check every state circular to determine the penalty amount.

28. What is the penalty for providing false information in registration application?

- A. The penalty may extend up to 5% of the estimated cost of the real estate project.

29. What is the penalty for non-compliance with orders of the Authority/Appellate Tribunal?

- A. For non-compliance with Authority's orders, the penalty may be up to 5% of the project cost. For non-compliance with Appellate Tribunal's orders, it may extend to 10% of the project cost or imprisonment up to 3 years, or both.

Miscellaneous

30. Are parking areas part of common areas?

- A. Yes, open parking areas are included in the definition of 'common areas' and cannot be sold to allottees. They must be transferred to the association of allottees.

31. Can the promoter sell covered parking?

- A. Covered parking (as defined by respective State rules) and garages (as defined in the Act) can be sold by the promoter.

32. Does RERA recognize other real estate laws like State Apartment Ownership Acts?

- A.** Yes, these laws continue to exist. However, in case of any inconsistency with RERA, the provisions of RERA shall prevail.

33. Can the Civil Courts hear matters under RERA?

- A.** No, Section 79 bars jurisdiction of Civil Courts on matters which the Authority or the Appellate Tribunal is empowered to determine. However, consumer forums have not been explicitly barred.

34. Is title insurance mandatory for projects?

- A.** Title insurance will be mandatory once the appropriate State Government issues notification in this regard as per Section 16 of the Act.

35. Does the definition of 'promoter' include public bodies like Development Authorities and Housing Boards?

- A.** Yes, the definition of 'promoter' under Section 2(zk) includes both private and public real estate promoters. Development Authorities and Housing Boards, when involved in selling plots, apartments or buildings, are covered under the Act.

7.13 Glossary

- (i) RERA – The Real Estate (Regulation and Development) Act, 2016
- (ii) REAT – The Real Estate Appellate Tribunal
- (iii) SC – Supreme Court
- (iv) HC – High Court

7.14 Outcome of This Chapter

By the end of this chapter, the professionals will:

- (i) Understand the basic provisions of the Act, the rules and regulations
- (ii) Know the local laws to be referred or looked into to get the holistic view
- (iii) Understand the approach to the assignments related to compliance and certification under RERA
- (iv) Be familiar with the forms and formats of the certificates

7.15 Reference Material

- (i) The Real Estate (Regulation and Development) Act, 2016
- (ii) The State-specific Real Estate (Regulation and Development) Rules
- (iii) The State-specific Real Estate Regulatory Authority Regulations

7.16 Self Appraisal

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Redressal of Complaints in RERA

8.1 Introduction to RERA

The Real Estate (Regulation and Development) Act, 2016 (RERA), effective from 1st May, 2017 is a monumental shift in real estate regulation, creating a structured framework for both buyers and developers. With ten chapters and 92 sections, the Act established a legal foundation to ensure transparency, accountability, and timely delivery in real estate projects across India. RERA focuses on creating a fair environment for real estate transactions and promoting trust and confidence among stakeholders. The act establishes dedicated regulatory authorities, mandates project registration, and enforces strict compliance measures, including certification and audit protocols essential for all registered real estate projects. The most important aspects in RERA are easy and quick dispute redressal system of filing complaints, rectification, Review, Appeals and then execution of the orders. In this article, redressal system in operation in Maharashtra has been discussed which is also applicable in other states with few modifications as per the respective states Rules and regulations.

8.2 Legal Provisions

Sections 31 – Filing of Complaint with Authority. 35 – Powers of Authority to call for information, conduct investigations 36 – Power to issue interim orders. 37 – Powers of Authority to issue directions. 38 – Powers of Authority. 56 – Right to legal representation 71 – Power to adjudicate 72 – Factors to be taken into account by the adjudicating officer. 79 – Bar of jurisdiction	

8.3 Complaint by Aggrieved Party

(1) Section 31: Filing of Complaints with The Authority or The Adjudicating officer

Essential ingredients of section 31 are as follows:

- (a) Complaint can be lodged against promoter, allottee and real estate agent u/s 31(1) for any violation or contravention of the provision of this act or the rules and regulation made thereunder, by any aggrieved person before the authority or the adjudicating officer.

- (b) Person shall include association of allottees or any voluntary consumer association registered under any law for the time being in force.
- (c) The complaint is to be made in the form and manner and fees paid, as prescribed under the Rules published by the Appropriate Government. State Government for respective states and central government for Union Territories. The respective state authorities have made provisions for filing the complaint in online method. Many states have hybrid mode of hearing.

(2) Thus, the following person can file a complaint:

- (a) Allottee: An aggrieved allottee who has interest in the project via booking of apartment having paid money and having booking form or allotment letter or registered agreement for sale.
- (b) Association of Allottees: In case of Neptune buyers welfare association v. Neptune ventures and developers pvt. Ltd., collective action by 55 buyers was made against the promoter which by accepted by the authority.
- (c) Promoters of real estate project.
- (d) Real Estate Agents.
- (e) *Suo Motu* actions by the authorities

(3) The following person may not be eligible to file a complaint with RERA:

- (a) Third parties: Parties who have no privity of contract in a real estate project as a promoter or allottee or association of allottee due to lack of *locus standi*.
- (b) Matters pertaining to civil disputes amongst the following parties:
 - (i) *Co-promoters v. Promoters and vice versa.*
 - (ii) *Developers v. Promoters and vice versa.*
 - (iii) *Land owners v. Promoters and vice versa.*
 - (iv) *Contractors v. Promoters and vice versa.*
 - (v) *Lenders v. Promoters and vice versa.*

8.4 Authorities to Hear the Complaints

Complaints under the Act is classified into two types-

- (a) Complaints related to claim of compensation for any violation which has to be decided by the Adjudication officer (Not below the rank of District judge) and
- (b) All complaints other than compensation to be decided by the Real Estate Regulatory Authority (in short Authority).

However, practically in many states RERA, the complaints are invariably heard by the Authority and if the authority comes to the conclusion that complaint is entitled to receive the compensation for the violations committed by the respondents, then the complaint will be transferred to the Adjudication officer to determine the amount of compensation payable.

8.5 Powers and Functions of the Authority

(1) Section 35(1): Power of The Authority to call for information, conduct investigation

The Authority is empowered to require a promoter, allottee or real estate agent to furnish information or explanation relating to his affairs.

For this purpose, the Authority may appoint one or more persons to make inquiry into the affairs of the promoter, allottee or real estate agent.

The power to call for information is exercised by the Authority either on a complaint or *suo motu*.

(2) Section 35(2): Authority's powers similar to Civil Court's powers

While exercising the powers under section 35(1), the Authority has the same powers as are vested in a civil court while trying a suit in respect of the following matters:

- (a) Discovery and production of account books and documents at the place and time specified by the Authority.
- (b) Summon and enforce attendance of persons to examine them on oath.
- (c) Issue commission to examine witness or documents.
- (d) Other *prescribed* matters.

It is important to note the *non obstante* expression in section 35(2), viz., "*Notwithstanding anything contained in any other law for the time being in force*", making the powers of a civil court conferred on the authority overriding in nature.

(3) Section 36: Interim order until conclusion of inquiry

The Authority has power to pass interim order restraining a promoter, allottee or real estate agent from carrying on certain acts until the conclusion of inquiry or until further orders.

The Authority's power to pass restraint order is exercised where during an inquiry the Authority is satisfied that:

- (a) an act has been committed in contravention of this Act, rules and regulations made thereunder.
- (b) such act continues to be committed.
- (c) such act is about to be committed.

The Authority can pass order under section 36 without giving notice to the promoter, allottee or real estate agent where the Authority deems it necessary.

(4) Section 37: Powers of Authority to issue directions

The Authority is empowered by section 37 to issue such direction from time to time to the promoters, allottees or real estate agents as it may consider necessary.

Scope of directions

The directions given by the Authority under this section must be for the purpose of discharging the functions of the Authority under the provisions of the Act or rules and regulations made thereunder.

Binding nature

The directions given by the Authority in exercise of its powers under section 37 are binding on all concerned.

(5) Section 38(1): Authority's power to impose penalty or interest

It is possible in some cases that the promoters, the allottees or the real estate agents do not comply with the obligations cast upon them under this Act or rules and regulations made thereunder.

In such cases, the Authority is empowered to impose penalty or interest in respect of such non-compliance.

(6) Section 38(2): Scope of powers of Authority

Principles of natural justice

The most important aspect of the powers exercised by the Authority under section 38 is that, while exercising such powers, the Authority is required to be guided by the principles of natural justice.

To regulate its own procedure

The authority is empowered to regulate its own procedure subject, however, to the other provisions of this Act and the rules made thereunder.

(7) Section 38(3): Authority's power to make reference to the Competition Commission

The Authority may, on its own, make reference in respect of the following issues to the Competition Commission of India:

- (a) the issues relating to agreement, action, omission, practice or procedure.
- (b) The issue having an appreciable prevention, restriction or distortion of competition effect in connection with the development of a real estate project.

- (c) the issues which have the effect of abuse of market power of monopoly situation that would adversely affect the allottees' interest.

(8) Rectification of orders.

The Authority is authorised by section 39 of the Act to rectify any mistakes within a period of two years from the date of the order. The mistakes must be apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Exception is that no such rectification shall be made in respect of any order against which an appeal has been preferred under this Act. Further, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

(9) Recovery of interest or penalty or compensation and enforcement of order, etc.

- (a) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.
- (b) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

8.6 Powers of the Adjudication officer

(a) Section 71: Power to Adjudicate:

Appointment of adjudicating officer u/s 71(1):

In case compensation claims accrue to the allottees on promoter's contravention of the following sections:

Section 12: Loss or damage due to promoter's false statement in advertisement or prospectus.

Section 14: Promoter's failure to develop and complete the project as per sanctioned plans.

Section 18: Promoter's failure to complete or deliver the apartment, building, etc.

Section 19: Allottee's failure to discharge his duties.

Then for purposes of deciding compensation under the abovementioned provisions of the Act, the Authority shall appoint an adjudicating officer:

The compensation payable under the abovementioned provisions of the Act shall be adjudged by the adjudicating officers', so appointed.

(b) Withdrawal of pending complaints under Consumer Protection Act: Proviso to sec. 71(1)

In case any complaints pertaining to matters covered u/ss 12, 14, 18 and 19 under any forum or commission constituted under consumer protection Act, 1986, the complainant may with the permission of such forum or commission withdraw the complaint pending before it and file an application before the adjudicating officer under this act.

(c) Time limit for Disposal of application for adjudging compensation: section 71(2)

The adjudicating officer is expected to dispose off the application under section 71(1) for adjudicating compensation as quickly as possible especially within period of **sixty days** from the date of receipt of application.

In case the adjudicating officer is unable to dispose of an application within the said period of sixty days he shall record his reasons in writing for not disposing of application within that period.

(d) Power to summon and enforce attendance during inquiry: Section 71(3)

The adjudicating officer has the following powers:

- (a) Power to hold an inquiry.
- (b) Power to summon the enforced the attendance of any person acquainted with the facts and circumstances of the case.
- (c) Power to make the above person give evidence and or to produce any document which may be useful to the inquiry.
- (d) Upon completion of such inquiry if satisfied that the respondent has contravened any of section 12, 14, 18 or 19, award such compensation or interest, as he thinks fit as per provisions of the aforesaid sections.

(e) Section 72: Factors to be Taken into Account by the Adjudicating Officer:

The adjudicating officer shall take into account the following four factors for determining the quantum of compensation or interest u/s 71:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;

- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

1. Section 56: Right to Legal Representation:

- 1. The following persons are allowed to represent on the complaint:
 - (a) The complainants themselves in person or
 - (b) By mode of proper authorisation the following professionals
 - (i) Chartered accountants in practice
 - (ii) Company secretaries in practice
 - (iii) Cost accountants in practice
 - (iv) Advocates/Lawyers in practice

The above mention professionals should be duly qualified with certificate of practice being obtained from the respective institutes/governing bodies.

The officers of persons like companies, LLPs, etc.

- 2. Proper authorisation can be given by the complainant or the respondent in form of letter of authorisation, authority letter, Vakalatnama, etc.

2. Section 79: Bar of jurisdiction.

In order to avoid delays and speed up disposal of the matters to the decided by the Authority, Adjudicating officer and the applied tribunal, section 79 expressly:

- (a) bars jurisdiction of any civil court to entertain any suit or proceedings which the authority, adjudicating officer and applied tribunal are empowered to determine under this act.
- (b) No injunction shall be granted by any court or any authority in respect of any action taken or any action to be taken under the act.

8.7 Procedure for Filing Complaint

- (1) Complaint is filed u/s. 31 of The Act. Reference may be made to Rules of the Appropriate government.
- (2) **Usually Complaints are filed for:**
 - (a) Refund of money taken from Allottees along with interest as prescribed in the Rules, in case the project cannot be completed as per terms and conditions of Agreement for Sale or within the date specified therein, u/s. 18(1).
 - (b) Compensation and or interest to the Allottees for the delay in giving possession u/s 18(1).

- (c) Compensation for defective title of land, without any limitation of time u/s. 18(2).
 - (d) Irregular, unilateral and high handed cancellation of Allotment u/s. 11(5).
 - (e) Non-Execution of Registered Agreement of Sale u/s. 13.
 - (f) Compensation for Loss or damage due to Incorrect/False Statement by Promoter u/s. 12,
 - (g) Exercise of Option to withdraw along with Refund of amount with Interest from the project by Allottee due to incorrect/false statement by promoter u/s. 12.
 - (h) Claim of compensation for contraventions of any provisions of Act including sections 7, 11, 12, 13, 14, 15, 16, 17, 19 of the Act, u/s. 18(3).
 - (i) Levy of penalty on Promoter for contraventions of sections 3 & 4 and for any other provisions of Act.
 - (j) Revocation of Registration u/s. 7 for serious and persistent violations/contraventions by Promoter of provisions of Act, adoption of unfair trade practices, cheating of public at large, etc.
 - (k) Enforcement of Rights of Allottees u/s. 19 and or to enforce any obligations of Promoter towards Allottees u/ss. 11-18.
- (3) **Checklist of Documents to be verified before preparing Complaint u/s. 31 of the Act by Allottee or by professional representatives for and on behalf of Allottee:**
- (a) Advertisement Brochure of the project.
 - (b) Booking Form.
 - (c) Allotment letter.
 - (d) Registered agreement for sale.
 - (e) Receipts of payments.
 - (f) Statement of Account of payments/ledger of allottee in books of builder.
 - (g) Home loan sanction letters and statements if any.
 - (h) Rental/leave and licensed agreements of existing accommodation of allottee.
 - (i) Correspondence exchanged between promoter and allottee including letters, demand letters, email, notices, etc.
 - (j) Study of any previous orders/rulings by authority on the project.

(4) Checklist of Items needed for filing online Complaint is given below:

For User/Complainant Registration

1. Full Name including full names of Joint-Allottees/Co-owners.

(It is mandatory to include all the Joint-Allottees as Co-Applicants/Co-Complainants in the Complaint).

2. Email Id.

3. Mobile Number.

4. Address.

For Lodging Complaint

1. Project Registration Number

2. Name of Promoter.

3. Address of Promoter.

4. Details of Interest of Complainant in Project.

5. Complaint in Form A containing:

i. **Facts of Case**

ii. **Relief(s)/Compensation Sought**

iii. **Grounds for Complaint and legal provisions relied on, if any**

iv. **Interim Order, sought, if any.**

v. **Enclosures of Documents**

6. Statement of Payments.

7. Scan of relevant documents like relevant pages of registered agreement of sale, allotment letter, payment receipts, rental agreement, home loan letters, etc.

(5) FORMAT OF COMPLAINT

Mostly, the specified form for Complaint is prescribed under the respective government Rules.

Complaints for Compensation claims are to be made in a separate form as may be prescribed by the respective state government and is available in Appendix to the Relevant Rules. The complaint should have all the details of the complaint, respondents, facts of the case, grounds of relief, legal provisions, jurisdiction of the Authority, interim relief sought and final reliefs.

(6) EXAMPLE OR SAMPLE OF FACTS OF THE CASE

Here it is important to note that Facts of Case is drafted in a simple, lucid and clear manner. A simple draft of the Facts of the case is hereby given for claim of Interest u/s. 18. The below is a simple draft and can be modified, reduced or expanded as per facts of each case.

1. Facts of the case:

(Give a concise statement of facts and grounds of claim against the respondent)

- a. **Mr. ABC**, an **Orthopedic Surgeon**, alongwith his wife Dr. XYZ, booked *vide* Agreement for Sale dated on 23-07-2019, **Flat No. 1101, A-Wing** in **Complete Address** admeasuring **Carpet Area 986.00 sq. ft.** with **(1) One dedicated Car Parking Space** along with all amenities listed in Third Schedule for **Rs. xxxxxxx/-** from ZZZ Real Estates Developers LLP/Pvt. Ltd. Co., holding MahaRERA Project registration no. **P51XXXXXXXXX**.
- b. The Complainant has already the paid 95% of the consideration amounting to **Rs. XXXXXXX/-** by 30th November, 2019 itself.
- c. As per para xx, page xx of registered agreement (registered on 23/07/2018 with Sub-Registrar, Kurla), date of possession guaranteed by the Developer was **31st December, 2018**.
- d. The Allottees have paid all the money demanded by the Builder promptly including GST as per terms and conditions of the Registered Agreement for Sale, but the possession of the Flat is delayed for reasons best known to the Builder.
- e. The Allottee is put to enormous difficulty due to the delay in handing over of possession by the Builder.
- f. The Allottee has taking Housing Loan from State Bank of India of Rs. XXXXXXX/- and is paying Interest @ 8.70% p.a. on the loan amount taken for purchasing the House property.
- g. The Allottee is staying in rented accommodation and is paying a monthly rent of Rs. 35,500/- p.m.
- h. As per Para xx, Page xx to the registered agreement and u/s. 18 of MAHARERA Act, 2016, the Developers are liable to pay interest compensation at the rate of SBI highest MCLR plus 2% from 1st January, 2019 till date of handing over possession.

(7) EXAMPLE OR SAMPLE OF RELIEFS SOUGHT

The Relief sought should be specific. A simple draft of the Relief Sought is hereby given for claim of Interest u/s. 18. The below is a simple draft and can be modified, reduced or expanded as per facts of each case.

1. Relief(s) sought:

In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s)

Because of the failure to give possession by the said date, the complainants were put to enormous difficulty. There is already a delay of more than x year(s); hence the allottee is constrained to claim the following amount as interest and compensation for delay from the Developer, through this forum:

- (a) Interest from 1st January, 2019 till date of handing over possession on the amount paid of Rs. xxxxxx/- u/s. 18 of the MAHARERA Act, 2016.
- (b) Rental Compensation from developer for rent paid for alternate accommodation from 1st January, 2019 till date of handing over of possession.
- (c) Compensation and other costs including legal costs incurred for filing of complaint and suffering mental agony due to delay in handing over of possession.
- (d) Order the Developer to handover the possession of the flat alongwith 1 (One) Dedicated Car Park and Full Occupation Certificate with all amenities as specified in the "Third Schedule" of the Agreement on or before 30-06-2021, in order to avoid further inconvenience to the Allottees.

8.8 Process of Resolution

Considering the section 31 of RERA and respective RERA Rules, the procedure for filing the complaints and resolution plan may be concluded as under:

1. Assigning the complaint Number and initiating hearings.

- (a) The complaints to be filed before Authority or the Adjudicating officer has be filed online by creating the login and password and the steps followed as per the complaint filing manual upload on the portal.
- (b) Once your complaint is registered under RERA, a 'complaint number' will be issued by the authority which will be used for further reference till your complaint is disposed.
- (c) RERA issues notice to other parties by email and the complaint also may forward the hearing notice by email or by registered or speed post to the respondents immediately on receipt of hearing notice.
- (d) This notice carries the complaint number, through which the complaint file can be previewed by the promoter on the RERA website. Even cause list is published on daily basis.
- (e) Complainants are also informed that a notice has been issued to the developer regarding their complaint.

- (f) Both the promoter and the allottees and other concerned parties are then assigned a date within 30-45 days from the date of complaint registered to initiate the case under RERA.

2. Filing of Documents

The entire complaint, Documents required to prove your claim include complaint copy, agreement for sale, receipts of amount paid, tripartite agreement copy, if any and other documents relied upon are to be uploaded on the complaint login of RERA portal. The entire set of documents including complaints required to be served by the complainants, if there are parties other than the promoters of registered project. One set should be kept with the complainant to refer the same during the oral hearings.

3. Reply from the Respondent:

Respondent is given an opportunity to file his reply against the complaint. This reply should be presented before the Authority or Adjudicating officer by online complaint login and then the same need to be informed during the hearing in the presence of complainant. "Majority of respondents file a reply, but there are a few notorious people who change their Authorised representatives or do something else and then it goes on to the next date. The authority then gives them a last opportunity to file their reply.

4. Preliminary objections or file Interim Applications by Respondents:

Even before filing the reply, the respondents many times challenge the jurisdiction or file preliminary objections like the complaint is not belonging to the project or the complainant is not interested in the project or not joining of the proper parties etc. and pray for dismissal of the complaints. Reply and written submission on such interim applications, if required are filed by the parties. The Authority or the Adjudication officer, do pass the order for such interim application by hearing the parties and record the order in the roznama or they pass a detailed interim order and then proceed with the matter.

5. The respondent may file an appeal on interim order and get a stay:

If the respondent wants to buy time and frustrate the complaints with multiple litigations, they may file an appeal u/s 43 before the Real Estate Appellate Tribunal on the Interim order passed by the Authority or the Adjudicating officer. Thereafter, they also get a stay on the interim orders from the appellate Tribunal. If the order of appellate tribunal is not in their favour, they may proceed to file the second appeal u/s 58 read with civil procedure code 100, before the Hon'ble High Court and if required they may file special leave petition before the Supreme Court also. Thus very few unscrupulous promoters will thus indulge in litigation and frustrate the allottees to settle the matter and withdraw the complaint.

6. Filing the Rejoinder by the Complainants and *Sur* rejoinder by respondents

If the reply filed by the respondent is extensive for arguments and complainants need time to read it, so another date may be requested before the Authority or the adjudicating officer which is normally granted to follow the principle of natural justice. This gives an opportunity to the complainant to go through it or file a rejoinder”.

Thus, if the respondents have brought out certain issues which need to be contested, then the complainants may file rejoinder on their login of the complaint. That will reach both to the Authority or adjudicating officer and the respondents. The respondent also may file sur rejoinder, if they think so.

7. Written submission or Written arguments by the parties:

The parties, if so desire, may also prepare a detailed written submission or written arguments before the date fixed for oral arguments before the Authority or the Adjudicating officer.

8. Argument on the Reply Filed

Reply, rejoinder, sur rejoinder, if any, written submissions or written arguments from the parties are scrutinized by the Authority or the adjudicating officer and by the parties and the parties argue orally before the Authority or the adjudicating officer on the date fixed for the arguments and the file will be closed for order.

In case, the any of the parties, still want to file affidavit or written submission to support their arguments at the request of the parties, the authority or the adjudicating offer may give liberty to file their submissions within the specified time which may range between 2 days to 15 days and then close the complaint and reserve the same for passing the appropriate order. .

9. Final Order

Further arguments are heard for final orders. It may take anywhere between 15-30 days for the order to be release. This order is also posted online on the RERA portal.

8.9 Application for Rectification of the Order u/s 39

1. It is always advisable to find out the submission and the prayers which have not been considered by the Authority or the Adjudicating officer and then file an application for rectification of the order before the aggrieved parties decide to file the appeal u/s 43 of RERA.

2. Time available to the authority to dispose of the rectification application:

To hear the rectification application, the authority or the adjudicating officer is given time of two years.

8.10 Execution of the Orders u/s 40:

- (a) According to the RERA, once an order is passed, it needs to be executed within a fixed time period. If the respondent fails to honour the order then there are provisions for monetary penalties and imprisonment as well.
- (b) After RERA issues an order for compensation or refund, the execution of the order can also be addressed by the complainant, if the respondent fails to abide by the order. An execution complaint can be filed online after 60 days of the order passed by RERA and the necessary action can then be taken. The execution of the orders can be done by simply pressing the icon of non-execution of the orders by login of the complaint. After hearing the parties necessary execution orders are also passed by the Authority or the adjudication officer as the case may be.

Step-by-step guide to file a complaint before the RERA Authority in India:

SI No	Activity	Details
1	Identify the Cause of Complaint – Cause of Action	a) Check if the grievance relates to delayed possession, quality issues, non-compliance with RERA rules, misrepresentation in advertisements, or refund-related issues. b) Ensure the complaint falls under RERA jurisdiction (project registered under RERA in that state).
2	Gather / collect the necessary Supporting Documents	a) Prepare all relevant documents to support your complaint: b) Allotment letter / Agreement for Sale. c) Payment receipts and bank statements showing payments made to the promoter. d) RERA registration certificate and project details from the state RERA website. e) Correspondence with the promoter (emails, letters, WhatsApp messages). f) Photographs, inspection reports, or expert certificates (if applicable). g) Any other document proving breach of contract or RERA non-compliance.
3	Check Limitation Period	a) As per RERA, complaints must be filed with in reasonable time from the date of cause of action b) Ensure the complaint is not barred by limitation.

4	Draft the Complaint	a) Clearly state: (i) Your details (name, contact, address, mail id etc). (ii) Project details (name, RERA registration number, location). (iii) Details of the promoter/developer. (iv) Nature of complaint and reference to RERA provisions violated. (v) Relief sought (refund, compensation, penalty, specific performance). b) Keep the language concise, factual, and professional.
5	Submit Complaint Online / Offline	a) Most states have RERA portals for online filing. b) Attach scanned copies of all supporting documents. c) Offline filing is also possible at the state RERA office.
6	Pay Complaint Fee	a) Pay the prescribed fee (varies by state, usually nominal). b) Keep receipt or online payment confirmation for records.
7	RERA Authority Scrutiny	a) The authority scrutinizes the complaint for: (i) Jurisdiction (ii) Completeness of documents (iii) Validity of claims b) If incomplete, the authority may request additional information.
8	Personal Hearing / Response	a) The authority may call you or your authorized representative for a hearing. b) The promoter will be notified and asked to respond within a given time. c) Both parties may be asked to submit additional documents or clarifications.
9	Authority's Decision	a) RERA Authority may: (i) Order refund, compensation, or penalty. (ii) Direct completion of the project or rectification of defects.

		(iii) Reject the complaint if not substantiated. b) Decision is binding but appealable in the Appellate Tribunal.
10	Compliance of RERA Order	a) Ensure the promoter complies with the order. b) If non-compliance occurs, approach the Appellate Tribunal or request enforcement through the courts.
11	Note on Filing a RERA Complaint	a) Always maintain copies of all communications and documents. b) Use registered post / email for official correspondence. c) Avoid emotional statements; stick to facts and legal references. d) Seek professional advice if the claim involves complex calculations or multiple parties.
12	Prepare Vakalatnama / Authorization	a) If represented by a lawyer, submit a Vakalatnama authorizing them to act on your behalf. b) In case of self-representation, authorizations from all concerned parties may be required.

DRESS CODE

- (a) In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determine whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as a professional. Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities. Your clothes and body language always speak first. So, it is important that your image gives people the right impression.
- (b) Some of the perceptions people can form solely from your appearance are: your professionalism; your level of sophistication; your intelligence and your credibility. Whether these perceptions are real or imagined, they underscore how your appearance instantly influences the opinions of strangers, peers, and superiors. Being well dressed in a corporate setting can influence not just perceptions, but also promotions.
- (c) A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades. Dress codes vary greatly from Entity to Entity, as different working environments demand different styles of attire. Even within companies, dress codes can vary among positions.

- (d) Getting dressed for work is to project a professional and competent image. It has been observed that the professionals who do not take the time to maintain a professional appearance or those who have never learned how to dress properly for their chosen field of work, are not being taken seriously by coworkers and present the image of not being able to perform satisfactorily on the job.
- (e) If you are concerned about your career, you will be more concerned with looking professional than looking cute or trendy. If you look and behave like a highly-trained and well-groomed professional, you will win the respect and honour of your valued clients.
- (f) It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman.

PROFESSIONAL ETIQUETTES

- (a) Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Many people consider it to be a branch of decorum, or general social behavior. Each society has its own distinct etiquette, and various cultures within a society also have their own rules and social norms.
- (b) In today's world of business, professionals need to know how to conduct themselves within the business world. One of the best ways to do so is to practice good professional etiquette. Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable. Corporates look for those candidates who possess manners, a professional look and demeanor, and the ability to converse appropriately with business colleagues and clients. Though your academic knowledge and skills may be spectacular, but not knowing proper etiquette required to be successful in the professional career could be a roadblock preventing you to achieve success in the professional life and business relationships. Good professional etiquette indicates to potential employers that you are a mature, responsible adult who can aptly represent their Entity.
- (c) Dealing a client with confidence, acting appropriately at business interactions and knowing the proper table manners at a business dinner are just some of the necessary skills today's professionals must have in an increasingly competitive environment, and that will leave a lasting impression – good or bad. Some manners and behaviour remain constant. Nonetheless, other etiquette moments require you to conduct yourself differently than you do when you are with professional colleagues or clients at any

business meeting/get-together. It is in these moments that you need to understand the particulars of etiquette. Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace. These include Dressing Etiquette; Introduction and Greeting Etiquettes; Conversation Etiquette; Communication Etiquettes; Invitation Etiquette and Dining Etiquettes etc.

DRESSING ETIQUETTE

With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- (a) Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- (b) Ties for men should compliment.
- (c) Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- (d) Men need to keep their hair (including facial hair) neatly trimmed and set.
- (e) Always polish your shoes.
- (f) Keep your nails clean.
- (g) Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.

COMMUNICATION ETIQUETTES

- (a) Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- (b) While speaking over telephones, always greet the other person while starting and ending the call.
- (c) Speak only when the other person has finished talking instead of interrupting in between.
- (d) Show interest in what other people are doing and make others feel good.
- (e) Stand about an arm's length away while talking to others.
- (f) Question another person in a friendly, not prying, manner.
- (g) Make eye contact when talking to others.
- (h) Be polite. Avoid foul language, unkind statements, and gossip.
- (i) Keep your conversations short and to the point.

- (j) Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

That apart, you must pay special attention to the following general etiquettes: Always be punctual at your workplace; During a meeting, turn off your mobile phone or put it on silent mode. It is considered extremely impolite to allow a mobile phone to ring during a meeting and take a call while sitting in a meeting. In case it is a must to receive a phone call, it is best to discreetly excuse yourself from the meeting and take it out into the hall or private area; When in a meeting room, always stand up to greet the seniors if they arrive after you; Try to ignore and overlook funny or embarrassing sounds when in a meeting or official conversation; If you have forgotten somebody's name ask him/her politely saying that you are sorry that you cannot remember the name; Always keep a comfortable distance while conversing with others; Avoid standing or sitting too close to the other person. An arm's length would be ideal to maintain the comfort zone.

Practicing these etiquettes in your professional life, will make a great impact on everyone you are associated with. You must always be conscious that your mannerisms reflect on your professionalism and your Entity.

COURT CRAFT

- (a) CAs act as an authorized representative before various Tribunals/quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi judicial body.
- (b) For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Advocacy/court craft is learned when we enter the practising side of the profession. The aim of advocacy is to make judge prefer your version of the truth.
- (c) Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.
- (d) Technical and legal knowledge about the area in which Entity Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

PREPARATORY POINTS

There are certain basic preparatory points which a CA should bear in mind when contacted by client.

- (a) Take minute facts from the client;

- (b) Lend your complete ears to all that client has to say;
- (c) Put questions to the client while taking facts so that correct/relevant facts can be known;
- (d) Convey to the client about exact legal position in context of relief sought by the client;
- (e) Give correct picture of judicial view to the problem posed by the client.

8.11 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 9

Appeals under RERA

9.1 Introduction

An appeal is a process by which a judgment/order of a subordinate Court is challenged before its superior court. In Real Estate (Regulation & Development) Act 2016, two appeals have been provided. 1st Appeal before the Real Estate Appellate Tribunal (“REAT”) which is last fact-finding authority and second Appeal before the Hon’ble High Court to decide about the question of law.

9.2 Provisions of Appeal in RERA

Section 43 :	Establishment of Real Estate Appellate Tribunal.
Section 44 :	Application for settlement of disputes and appeals to Appellate Tribunal
Section 45 :	Composition of Appellate Tribunal
Section 46 :	Qualifications for appointment of Chairperson and Members
Section 47 :	Term of office of Chairperson and Members
Section 48 :	Salary and allowances payable to Chairperson and Members
Section 49 :	Removal of Chairperson and Member from office in certain circumstances.
Section 50 :	Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office.
Section 51 :	Officers and other employees of Appellate Tribunal.
Section 52 :	Vacancies
Section 53 :	Powers of Tribunal
Section 54 :	Administrative powers of Chairperson of Appellate Tribunal.
Section 55 :	Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.
Section 56 :	Right to legal representation
Section 57 :	Orders passed by Appellate Tribunal to be executable as a decree.
Section 58 :	Appeal to High Court.

“Real Estate Appellate Tribunal (REAT)” is a quasi-judicial body set up by the State Government by a Notification in the Official Gazette. which is empowered to hear Appeals from the orders/decisions/directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

9.3 Main Points for Consideration

- (a) No civil court must have jurisdiction to entertain any suit or proceedings in respect of any matter over which the Adjudicating officer, RERA Authority, or RERA Appellate Tribunal is empowered by or under RERA to decide the matter (section 79).
- (b) No injunction or stay must be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under RERA

9.4 Persons Who Can File an Appeal

Section 43(5) – Aggrieved person

Section 44(1) – Appropriate government of competent authority

A. Section 43(5) of RERA provides as under :—

“(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

Explanation.— For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.”

B. Further Section 44(1) of RERA provides as under :

“44(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal”.

Thus, a person unhappy with the decision or directions or the order of the concerned Authority or the adjudicating officer can initiate the procedure of applying an appeal to the Appellate Tribunal.

That person can be

- (a) the Allottee,
- (b) the promoter, or
- (c) the real estate agent, or

- (d) any other aggrieved person,
- (e) the *Explanation* further clarifies that any person including the association of Allottees or any voluntary consumer association, aggrieved by the decision of the Authority or Adjudicating officer can file an appeal to the concerned jurisdictional tribunal.
- (f) it may also be noted that section 44(1) further makes a provision for appeals to be preferred by the appropriate Government, *i.e.* the State Government of the State.
- (g) any competent authority having Jurisdiction over development of the concerned immovable property as defined in section 2(p) of RERA, and
- (h) also by any other 'person' as defined in section 2(zg) of RERA, to initiate an appeal against the impugned direction/decision/ order of the Regulatory Authority or the Adjudicating Officer.

9.5 Pre-Deposit by Promoter to Admit the Appeal (Proviso to Section 43(5))

As per proviso to section 43(5), if a ***promoter files an appeal before an Appellate Tribunal. It must not be entertained without the promoter first deposited with the Appellate Tribunal:***

- (i) At least **30%** of the penalty imposed or such higher percentage may be determined by an Appellate Tribunal, or
- (ii) The total amount to be paid to an allottee including interest and compensation imposed on him, or
- (iii) With both, before the said appeal is heard.

9.6 Constitutional Validity of Section 43(5) of RERA

- (a) Many promoters, file an application to the Appellate Tribunal to *waive* the deposit of the pre-deposit as provided under proviso to section 43(5) of RERA. The appellate Tribunals have been dismissing such applications for waiver of deposits.
- (b) Further on account of non-deposit of determined pre-deposit by the promoter, the Appellate Tribunals have dismissed the appeals.
- (c) In the case of ***M/s. Lotus Realtech Pvt. Ltd. v. State of Haryana, CWP No. 15205 of 2020***, it has been observed by the Punjab & Haryana High Court that “*Evidently, the condition of pre-deposit imposed upon the promoters is inconsonance with and in furtherance of the object and purpose of the Act which seeks to eradicate fraud and delays and ensure prompt delivery of the real estate to the allottees within the time frame prescribed*”. It has been further observed that “*the promoters form a distinct and separate class and as the prescription of the condition of pre-deposit upon the promoters is in furtherance of the object of the legislation, therefore, the imposition of*

the condition of pre-deposit upon the promoters satisfies the test of Article 14 of the Constitution of India.”

- (d) The Division Bench of the Punjab & Haryana High Court has also in a judgment dated 6th October, 2020 in CWP Nos. 14623 and 14689 of 2020 passed in the matter of **M/s. Landmark Apartments Pvt. Ltd. v. Union of India** also rejected the contention that where the ground of appeal was that the order of the Authority was itself without jurisdiction since the complaint would lie only before the AO, the condition of pre-deposit would not apply.
- (e) Further, In **Janta Land Promoters Pvt. Ltd. v. Abhimanyu Singh Vinayak** in CWP No. **8548 of 2020**, the Punjab & Haryana High Court held “that even in a case where *the Appellate Authority proceeds to decide the appeal on the ground of maintainability of the proceeding before the RERA Authority, that will also amount to hearing and taking a decision in the appeal*” and that “*the promoter would be liable to deposit the pre-requisite amount as per proviso to the section 43 (5) of the Act.*”
- (f) Further, in the case of **Experion Developers Pvt. Ltd. & Others v. State of Haryana** (W. P. No. 38144 of 2018), the Punjab & Haryana High Court has further observed that “*Sections 43 and 44 of the Act are to be read harmoniously. On such reading, the Court finds there to be no inconsistency in the wording of Section 43(5) and section 44 of the Act. Both envisage the filing of appeals by any person and this would include the promoter. However, when it comes to an appeal filed by the promoter, the requirement under the proviso to section 43(5) of the Act, will have to be mandatorily fulfilled, even for the purposes of the Appellate Tribunal having to pass orders in terms of section 44 of the Act. The proviso to section 43(5) of the Act clearly states that the pre-deposit is required to be made “before the said appeal is heard.” In other words, the Appellate Tribunal is not obliged to proceed to ‘entertain’ or hear an appeal that has been filed before it, if the promoter, who has filed such appeal, fails to comply with the direction for making the pre-deposit in terms of the proviso to section 43(5) of the Act*”.
- (g) In this context it may also be noted that in the matter of **Nagpur Integrated Township Pvt. Ltd; Chourangi Builders & Developers Pvt. Ltd. v. Maharashtra Real Estate Regulatory Authority, Mumbai And Ors.**, bearing **Second Appeal (St) No. 92158 of 2020**, it has been observed by the Bombay High Court that “*In other words, for the purpose of acting under the proviso to section 43(5) of the Act, whether or not the Appellant is a promoter within the meaning of that expression used in the proviso, is a jurisdictional question to be decided by the Appellate Tribunal before any order of pre-deposit could be passed. This is not to say that the controversy, namely, whether the particular appellant before the Tribunal is such a promoter is to be finally decided by the Appellate Tribunal when it makes an order of pre-deposit. What is imperative is that whenever such question is legitimately raised*

and falls for consideration of the Tribunal, it must take at least a prima facie view of the matter and only thereupon pass an order of pre-deposit”.

- (h) Further in the case of **Radicon Infrastructure And Housing Private Limited v. Karan Dhyani (Second Appeal No. 364 of 2018)**, the Allahabad High Court has observed that *“as per the said proviso the Appellate Tribunal can require either the penalty or portion thereof or the total amount to be paid to the allottee including interest and compensation imposed on him to be deposited before the appeal is heard for being entertained, i.e., for being admitted for consideration or it can require the promoter appellant to deposit both, meaning thereby, the penalty as well as the total amount referred hereinabove. With regard to the penalty the Appellate Tribunal has to ‘determine’ whether 30% of the penalty imposed or such a higher percentage as it may determine is to be deposited, but when it comes to the deposit of the total amount to be paid to the allottee including interest and compensation under the orders of the regulatory authority or adjudicating officer, no such discretion based on a ‘determination’ appears to have been vested in the Appellate Tribunal by the legislature. The word ‘as the case may be’ following the words ‘or with both’ are a reference to the deposit either of penalty or the total amount or both as the facts of the case may require. These words have no independent application to the second part of the proviso requiring the deposit of the total amount. The object appears to be to protect the interest of the consumer once an adjudication had been made by the Regulatory Authority. In this view of the matter the order of the Tribunal passed in the present case, where no penalty has been imposed upon the appellant under Chapter-VIII of the Act, 2016, to deposit the total amount imposed by the Regulatory Authority, does not suffer from any error”.*
- (i) Hon’ble Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others (Civil Appeal No(s). 6745-6749 of 2021, 2021 (11) ADJ 280)**, held that pre-condition for deposit of the amount as determined by the Appellate Tribunal before admitting the appeal is constitutionally valid. The court observed that the obligation casted upon the promoter of predeposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of predeposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

9.7 Procedure to be followed

Section 44 of RERA provides as under :

44(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

(a) Appeals can be filed against:

Thus section 44 of RERA, provides for a statutory remedy of appeal to be filed before to the Appellate Tribunal against

- (i) any direction, or
- (ii) order, or
- (iii) decision of the Authority, which may be preferred by the person aggrieved.

(b) Period of Limitation:

Sub-section (2) prescribes that such appeal may be preferred within a period of 60 days from the date on which a copy of direction or order or decision made by the Authority is received by the aggrieved person.

(c) Condonation of Delay:

- (i) In case, the aggrieved person is not able to file the appeal within 60 days of receipt of the copy of the order, an application for condonation of delay citing the sufficient cause need to be filed. Only after the condonation of delay is allowed, the appeal will be taken up for hearing.
- (ii) The proviso appended to sub-section of section 44 further provides that if the Appellate Tribunal is satisfied that there was sufficient cause for not filing the appeal within the period prescribed, it may entertain any appeal after expiry of 60 days.
- (iii) So far as the authority or power or jurisdiction of the Appellate Tribunal for condoning the delay in preferring appeal under section 44 is concerned, RERA, 2016 itself permits the Appellate Tribunal to condone the delay on its satisfaction regarding sufficient cause for not preferring the appeal within limitation.
- (iv) In this connection, in the case of *Dhires Pandey v. Real Estate Appellate Tribunal U P Lucknow* bearing Second Appeal Defective No. 268 of 2018, the Hon'ble Allahabad High Court has held that *"This period of limitation is to be calculated from the date on which a copy of the direction or order or decision of the concerned authority/officer is received"*. It has been further held that *"In this view of the matter, for the Appellate Tribunal to have observed in the initial part of its discussion on the application for condonation of delay that there is no such requirement of filing an attested or certified copy of the order under challenge in appeal, is based on an absolute misreading and misunderstanding of the provisions of the Act 2016 and the Rules made thereunder. The copy of the order uploaded by the Regulatory Authority bearing his digital signatures cannot be said to be an attested copy of that order, as, the attestation is a subsequent act which is normally made by another officer or by some officer, by which he verifies that the copy being provided to the applicant is a true copy of the order originally passed on the file"*.

9.8 Sufficient Cause

- (1) Though there are many favourable decisions in favour of the appellants, it is always advisable to provide proper evidences or supporting the sufficient cause of delay.
- (2) The Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others**, reported in **1987 2 SCC 107** has held *"that the power to condone the delay is conferred in order to enable the courts to do substantial justice to the parties by disposing of the matters on merits and further that the expression "sufficient cause"*

is elastic enough to enable the courts to apply the law in a meaningful manner to subserve the ends of justice". The Hon'ble Supreme Court has further formulated the following principles:

- (a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- (b) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- (c) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay The doctrine must be applied in a rational common sense pragmatic manner.
- (d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- (e) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
- (f) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

(3) Further after a detailed review of the precedents on the law relating to limitation and condonation of delay, the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others***, reported in **2013 (12) SCC 649** has enunciated broad principles in paras 21 and 22 which are as follows:

"From the aforesaid authorities the principles that can broadly be culled out are:

- (a) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (b) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (c) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (d) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

- (e) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (f) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- (g) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (h) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- (i) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- (j) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- (k) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- (l) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- (m) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

9.9 Appealable Orders

RERA does clearly state that an appeal against any decision, order or direction of the RERA or Adjudicating Officer can be appealed against, before the Appellate Tribunal.

(1) Appeals by Allottees:

Some such examples wherein Allottees can file an Appeal are:

- (a) An order refusing to register an unregistered Project (Source Complaints), which is otherwise required to be Registered under the provisions of the Act [Section 3] (Mohd Zain Case – After directions from BHC appeal against rejection of source Complaint

was allowed to be filed offline since the provision of online Appeal without Project Registration Number was not possible;

- (b) Any directions issued by the Authority to the Allottees for the purpose of discharging its functions under the provisions of RERA or rules or regulations made thereunder [Section 37]; (The interest for delayed possession not granted or any other prayers not considered by the authority or the adjudicating officer)
- (c) An order for Imposition of penalty or interest, in regard to any contravention of obligations cast upon the Allottees [Section 38(1)];
- (d) An Order imposing penalty on allottees for failure to comply with or contravening the orders of RERA [Section 67];
- (e) An Order refusing to grant compensation by the Authority or the Adjudicating officer to the Allottee [Section 71];

(2) Appeals by Promoters :

Some such examples, wherein Promoters can file an Appeal are:

- (a) A direction by the Authority for registration of a Project which is exempted from such registration as a Real Estate Project [Section 3(2)];
- (b) An Order denying registration of the project of the Promoters [Section 5(1)(b)];
- (c) An order denying extension of registration to the promoter [Section 6];
- (d) An Order Revoking registration of the project and debarring the promoter from accessing to website [Section 7];
- (e) An Order Passed under Section 8 ordering completion of the construction of remaining uncompleted work in cases where the registration is revoked [Section 8];
- (f) Any directions issued by the Authority to the Promoters, for the purpose of discharging its functions under the provisions of RERA or rules or regulations made thereunder [Section 37];
- (g) An order for Imposition of penalty or interest, in regard to any contravention of obligations cast upon the Promoters [Section 38(1)];
- (h) An Order imposing penalty on the Promoters for contravention of Section 3 [Section 59];
- (i) An Order imposing penalty for failure to make application for registration or providing information [Section 60];
- (j) An Order imposing penalty for contravention of any other provision including to complete the project in time, accepting more than 10% amount before executing the agreement for sale, not depositing 70% of the receipt in separate bank account and other defaults [Section 61];

- (k) An Order imposing penalty on the promoters for non-compliance with the orders of RERA [Section 63];
- (l) Any Order by the Adjudicating Authority determining the amount of interest and compensation u/ss 12, 14, 18 and 19 [Section 71].

(3) Appeals by Agents:

Some such examples, wherein Promoters can file an Appeal are :-

- (a) An Order Imposing penalty on real estate agent for failure to comply with the provisions of RERA [Section 62];
- (b) An Order imposing penalty on real estate agent for contravening the orders or direction of RERA [Section 65];

9.10 Manner of Filing Appeal

Every State government has made the Rules and also prescribed the forms for filing the appeal and also prescribed the fees payable. Under section 43 of the RERA any person aggrieved by an order passed by the Real Estate Regulatory Authority can file an appeal. Such an appeal must state the grounds of fact and law on the basis of which the RERA order is challenged. The general format of the appeal can be as under:

- (a) Details of the Order Challenged
- (b) Reasons/Grounds why the RERA order is wrong any must be reversed;
- (c) How the adverse RERA order will affect you;
- (d) Reliefs sought from the Appellate Tribunal;

Once the appeal is prepared, it must be filed online or physical format as per the Regulations made by the respective Appellate Tribunals. It is the duty of the Appellant to serve copies of the appeal upon all the parties to the case.

9.11 Documents to Accompany Memorandum of Appeal

The respective state Appellant Tribunals have prescribed in their regulations the documents to be attached with the appeal. As an illustration, Regulation 10 of the Maharashtra Real Estate Appellate Tribunal Regulations, 2019, provides that:

- (i) *Memorandum of Appeal with attachments with adequate number of copies to be served on respondents;*
- (ii) *If appeal is presented through an Advocate, necessary Vakalatnama duly attested with necessary court fee stamp and Advocate Welfare Fund Stamp if applicable. Vakalatnama shall contain the address of the advocate with Enrollment Number, email ID, Mobile Number etc. for proper communication;*

- (iii) *In the event a proceeding is filed by an authorised representative, Chartered Accountant, Cost Accountant or Company Secretary as provided in section 56 of the Act, Power of Attorney or authority letter in original;*
- (iv) *Certified copy of impugned order;*
- (v) *All the documents shall be produced along with the list of documents (Form B);*
- (vi) *An application for condonation of delay when appeal is presented after expiry of period of limitation;*
- (vii) *Other documents, if any in accordance with the law and rules framed thereunder.*

9.12 Powers of Appellate Tribunal

All proceedings before the Appellate Tribunal are judicial proceedings under the Indian Penal Code and shall be deemed civil court for **section 195** of Cr. PC, 1973. The Appellate Tribunal must not be bound by the technicalities of the **Code of Civil Procedure, 1908**, and the Evidence Act. The principles of natural justice must bound the Appellate Tribunal.

Section 53 of the Act provides as under :

- “(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*
- (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.*
- (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.*
- (4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—*
 - (a) summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) requiring the discovery and production of documents;*
 - (c) receiving evidence on affidavits;*
 - (d) issuing commissions for the examinations of witnesses or documents;*
 - (e) reviewing its decisions;*
 - (f) dismissing an application for default or directing it ex parte; and*
 - (g) any other matter which may be prescribed.*
- (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.”*

As stated hereinabove, the Appellate Tribunal has been vested with the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath (Order XVI of the Code of Civil Procedure, 1908);
- (b) requiring the discovery and production of documents (Order XI of the Code of Civil Procedure, 1908);
- (c) receiving evidence on affidavits (Order XIX of the Code of Civil Procedure, 1908);
- (d) issuing commissions for the examinations of witnesses or documents (Order XXVI of the Code of Civil Procedure, 1908);
- (e) reviewing its decisions (Order XLVII of the Code of Civil Procedure, 1908);
- (f) dismissing an application for default or directing it *ex parte* (Order IX read with section 151 of the Code of Civil Procedure, 1908); and
- (g) any other matter which may be prescribed.

It may further be noted that as aforesaid, under section 53(5) of the Act, is that in the event any party to the proceedings knowingly produces any false evidence before the Real Estate Appellate Tribunal, then the Tribunal can :

- (a) punish such a person for intentionally giving false evidence in any stage of a judicial proceeding (Section 193 of IPC);
- (b) punish such a person for intentionally offering insult, or causing interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding (Section 228 of IPC);
- (c) If he is a public servant, then the Tribunal can punish him as such a public servant for corruptly or maliciously making or pronouncing in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law (Section 219 of IPC);
- (d) punish a person for its contempt for providing false documents in false evidence and for other offences affecting administration of justice (Section 195 and Chapter XXVI i.e. sections 340 to 352 of IPC).

9.13 Additional Powers of the Appellate Tribunal

The Appellate Tribunal must exercise the following additional powers:

- (a) Require a promoter or allottee or real estate agent to furnish in writing such information or *Explanation* or produce such documents reasonable time, as it may deem necessary.
- (b) It was requisitioning any public record or document or copy of such record or document from any office.

- (c) The Appellate Tribunal can call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture, law or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any inquiry or proceedings before it
- (d) Every order of an Appellate Tribunal under this Act must be executable by the Appellate Tribunal as a decree of the Civil Court.
- (e) The Appellate Tribunal can send any of its orders to a Civil Court having local jurisdiction, and such Civil Court must execute the order as if it were a decree made by the court.

9.14 Hearing of Appeal

(1) Time-bound Hearing of the Appeal

Once the appeal is filed and copies given to all the parties, the Real Estate Appellate Tribunal (REAT) will fix a date for hearing the matter. Under section 53 of the RERA, the REAT has the powers to regulate its own procedure. It is not bound to adhere to the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. This means that any proofs or documents which accompanying the appeal memo can be directly filed on the basis of self-attestation or notarization. If the opposite party challenges the authenticity of the document, the onus is upon him to provide proof to substantiate those claims.

As stated in section 44 of RERA, the Appeal must be heard and disposed off within sixty days of filing. If this time limit is exceeded, the REAT will have to give reasons to justify the delay. Thus, the Real Estate Appellate Tribunal is under a statutory duty to dispose off cases in a time-bound manner and not keep them pending.

(2) Hearing Procedure

During the hearing, the Adjudicating Officer of the Real Estate Appellate Tribunal will have to follow the Rules of Natural Justice. This means that he will have to hear both sides and give them to chance to rebut each other. The Opposite Party will be given a chance to file his reply to the complaint. After reply is filed, the Appellant can file a short counter to the reply, known as a rejoinder. Once these documents are filed, the pleadings are considered complete and matter is kept for final hearing.

Due to Online process of hearing its now advised to filed written arguments/submissions before final hearing takes place.

During the hearing, the Adjudicating Officer of RERA will give both sides ample time to present their arguments. The parties must follow proper discipline and not try to unnecessarily interrupt one another. If the judge has any questions, he will raise them and parties must answer to the best of their abilities. Once this stage of arguments and questions is complete, the matter will be kept for passing orders.

(3). Adjournments an Exception, Not a Rule

Civil courts in India have been plagued with the ‘tareekh pe tareekh’ syndrome, resulting in massive pendency and denial of justice. This is not the case with the Real Estate Appellate Tribunal. Since section 43 prescribes a time limit of sixty days, the lawyers appearing for the parties must not seek unnecessary adjournments. If a party seeks to adjourn the proceedings, it must provide valid reasons for doing so failing which the request will be rejected.

(4). Right to Legal Representation

Any person who files an Appeal in the Real Estate Appellate Tribunal can either argue the case himself or appoint a lawyer, chartered accountant or company secretary or Cost accountant to argue his case. Whoever appears and argues must be thorough and well-versed with facts and law. This is because the chairperson of the REAT is a retired judge and he will expect the parties to be able to answer his questions on fact and law.

9.15 Orders of the Appellate Tribunal

Every Orders passed by Appellate Tribunal shall be executable as a decree of civil court. Section 57 of RERA provides as under :—

- (a) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
- (b) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.

Thus every order passed by the Real Estate Appellate Tribunal under RERA shall be deemed to be a decree of the Civil Court and shall be executable in the same manner as a decree of the civil court. In this connection, in the matter of *Supertech Ltd v. Subrat Sen*, AIR 2019 All. 19, it has been observed by the Allahabad High Court that “A reading of the aforesaid provision itself makes it clear that by creating a legal fiction, the order of the Appellate Tribunal has been recognised to be a decree only for limited purpose of execution but not for the purposes of filing an appeal against it. It is settled law that in applying legal fiction one should not travel beyond the limits for which it has been created”. It has been further observed that “In view of the aforesaid discussion, I am of the opinion that the order passed by the Appellate Tribunal is not a decree for the purposes of filing an appeal under section 58 of the RERA before the High Court. Therefore, any appeal so preferred before the High Court under Section 58 of the RERA stand on a similar footing as are the Income-Tax Appeals filed under section 260 of the Income-tax Act, 1961 and such appeals are not to be categorised as Second Appeal even if they are arising out of an appellate order but under a distinct category as RERA appeal.”

9.16 Execution of Appellate Tribunal Orders

The appellate Tribunal may exercise its powers to execute its order :

- (a) as provided under section 40(1) for monetary claims
- (b) As per section 40(2) for other than monetary claims and
- (c) It can exercise all the powers of civil court as per section 57
- (d) It may transfer the execution petition to principle civil court of the jurisdiction where the project is situated.

17 APPEALS TO THE HIGH COURT

Any person aggrieved by any decision or order of the Real Estate Appellate Tribunal may file an Appeal to the High Court, within sixty days from the date of communication of the decision or order of the Real Estate Tribunal where the Real Estate project is situated. In this connection section 58 of RERA provides as under:

- (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. *Explanation.*— The expression “High Court” means the High Court of a State or Union territory where the real estate project is situated.

- (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

In this connection, in the matter of **Sea Princess Realty v. Rajesh Mehta AIR 2018 Bom 817**, it has been observed that :

“The ratio that can be called out from these judgments of the Hon’ble Supreme Court is that the High Court must “satisfy” itself that the case involves substantial question of law, then only it can entertain the Second Appeal and for that it is obligatory on the part of appellant to precisely state in the Memo of Appeal the “substantial question of law” involved in the appeal and thereafter, it is for the High Court to formulate such substantial question of law. If no such substantial question of law is precisely stated in appeal memo and the High Court also is not satisfied about it, then the Second Appeal has to be dismissed in limine at the threshold itself.”

Appeal to High Court

- (a) Any person aggrieved by any decision or order of an Appellate Tribunal can file an appeal to the High Court within 60 days from the date of receipt of the Appellate Tribunal’s decision or order.

- (b) No appeal must be made against any decision or order made by the Appellate Tribunal with the party's consent.
- (c) The expression "High Court" means the High Court of a State or UT where the real estate project is situated.
- (d) The Real Estate Appellate Tribunal (REAT) has been set up to hear appeals against orders passed by the Real Estate Regulatory Authority. It was established under **Section 43** of the Real Estate Regulation Act, 2016, that the REAT can examine the legality of orders passed by the RERA and decide whether to uphold or overturn them. Orders passed by REAT can further be appealed by filing an appeal in the High Court.

9.17 Self Appraisal

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

(e)

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Professional Opportunities for CAs in Redevelopment Projects (Maharashtra and India)

10.1 Introduction

Urban India is experiencing a surge in redevelopment projects, especially in cities like Mumbai where land is scarce and many buildings are decades old. Redevelopment involves demolishing aging structures and constructing new ones to use land resource efficiently and optimally, revitalize housing to improve liveability and safety, provide better infrastructure facilities, and to create additional housing stock.

While redevelopment promises modern housing and economic growth, it also poses challenges. The influx of new construction is increasing population density and straining infrastructure like roads, water, and transport in redeveloped localities. Financial viability is another concern – rising construction costs, complex approvals, and reliance on pre-sales mean many projects need careful financial planning. These complexities underscore the vital role of professionals, including Chartered Accountants (CAs), in the redevelopment process.

10.2 Objective and Importance of This Chapter

Why should Chartered Accountants focus on Redevelopment Projects?

This chapter aims to highlight the significant professional opportunities for CAs in the real estate redevelopment sector. With thousands of projects in Maharashtra and across India, there is growing demand for experts who can navigate complex regulations and ensure financial propriety. Redevelopment projects operate under a web of laws – cooperative society rules, real estate regulations (RERA), development control norms, Tax laws – making compliance a challenge for laypersons. CAs, with their training in law and finance, are uniquely positioned to guide housing societies and developers through these requirements.

This chapter is important for both newly qualified and experienced CAs looking to practice in real estate. It will illuminate how CAs can add value at each stage: from initial project feasibility and funding, through tax-efficient structuring, to ongoing audit and regulatory certification. For instance, a CA might certify project cost utilization under RERA, advise a society on selecting a financially sound developer, or ensure that members' rightful entitlement compensation (extra area, rental transit payments, corpus fund) is handled correctly and lawfully. By understanding redevelopment dynamics, CAs can seize opportunities as consultants, auditors, project finance specialists, tax advisors, and compliance officers in this

booming field. In sum, the objective is to equip the reader with knowledge of redevelopment trends, legal frameworks, practical processes, and professional roles – laying a strong foundation to confidently engage in redevelopment assignments.

10.3 How to Read and Understand This Material

This chapter is organized to serve as a step-by-step guide and reference manual. Readers are advised to approach it as follows:-

(i) Start with the big picture: The Introduction and Objective sections set the context, explaining redevelopment trends and why they matter to CAs. Make sure you grasp these drivers and the potential roles for CAs before diving into technical details.

(ii) Understand the Legal Framework: Para 4 breaks down the Acts, Rules, and Regulations governing redevelopment. It is crucial to familiarize yourself with these laws and regulations (Maharashtra Co-operative Societies Act, RERA, Development Control & Promotion Regulations (DCPR of Mumbai), etc.) as they form the backbone of redevelopment compliance. While reading, don't hesitate to refer to the Glossary (Para) for definitions of any unfamiliar terms (e.g. FSI, TDR, OC). The glossary provides concise explanations of real estate jargon that will improve your comprehension of the legal provisions.

(iii) Use the Provisions and Templates Section practically: Para 5 is a toolkit of key provisions, forms, checklists, and case laws. It contains bullet-pointed highlights of important rules, sample templates (like a member's consent letter, and procedural checklists), and real-world case references. These are provided to help you apply the concepts. For example, when you read about the requirement of a 20% project cost bank guarantee from the developer, you will find the source of that rule and how it's documented. Use the checklists to mentally walkthrough the redevelopment process from start to finish.

(iv) Frequently Asked Questions: Para 6 addresses common queries CAs have in redevelopment practice. It's structured in Q&A format for quick reference. If as you read earlier sections you think "What about taxation of the society's corpus fund?" or "Does RERA cover this aspect?", check the FAQs – likely a concise answer awaits there.

(v) Summaries and Outcomes: At the end, Para 8 ("End of Chapter – Outcome") recaps the key takeaways. This is useful for reinforcing your learning – by the time you reach it, try to see if you can answer the outcome points yourself. It will help confirm your understanding of how a CA can engage in redevelopment projects. Finally, Para 9 provides Reference Material for further reading – including links to official circulars, government websites, and professional publications. You can consult these sources for deeper study or latest updates.

By following this structure – broad context, detailed laws, practical tools, Q&A, and summary – you will effectively absorb the material.

10.4 Applicable Acts, Rules, and Regulations

Redevelopment projects in Maharashtra are governed by a robust and sometimes complex legal framework. As a CA advising on such projects, you must be acquainted with the key statutes and regulations that apply. Below we outline the major Acts, Rules, and Regulatory bodies relevant to redevelopment, with a focus on Maharashtra (while noting parallels in other Indian states). Each of these laws addresses different aspects – from society approvals to real estate sales to urban planning controls – and together they form the compliance backbone for any redevelopment project.

10.4.1 Maharashtra Co-operative Societies Act, 1960 (MCS Act)

Most urban residential buildings in Maharashtra (especially Mumbai) are owned by co-operative housing societies, making the MCS Act a crucial law in redevelopment. This Act governs the formation, management, and governance of co-operative societies in the state. Redevelopment of a housing society's building requires approval of the society members as per the MCS Act and its rules. In fact, the direction under section 79A of the MCS Act, 1960 was issued first time on 3rd January, 2009 and revised on 4th July, 2019 to facilitate redevelopment: the consent threshold for a co-op housing society to undertake redevelopment was reduced from 70-75% of members to 51% of members. At the SGM where quorum of at least 2/3rd members is required to be present, in case if the quorum is not fulfilled even at the adjourned meeting, the said meeting shall be adjourned not earlier than 7 days' and not later than next one month. If in this adjourned meeting the quorum is not fulfilled, it shall be assumed that the members are not interested in the redevelopment of the society building and the meeting shall be called off, and thereafter, the said subject shall not be placed again for the next 3 months.

This means if a simple majority of the total members agree (with due process in a general meeting), the dissenting minority cannot stall the project. The Bombay High Court has upheld that once a valid majority decision is taken, dissenting members are bound by it and cannot "act against the will of the majority" or obstruct the redevelopment.

In summary, the MCS Act, 1960 is foundational: it empowers societies to redevelop, sets the consent rule (51% majority), and via government resolutions, prescribes the step-by-step process for societies to follow. As a CA, familiarity with these provisions is essential because you may be called upon to advise societies on conducting meetings per the Act, verifying that due process (e.g. tendering and developer selection) is followed, and ensuring the resolution and agreements comply with the cooperative law. Other states have similar cooperative society acts for apartment or society management (for example, Gujarat and Delhi also require society approval for redevelopment), but Maharashtra's framework is particularly well-defined due to the prevalence of cooperative housing.

10.4.2 Real Estate (Regulation and Development) Act, 2016 (RERA)

The Real Estate (Regulation and Development) Act, 2016 – implemented in Maharashtra through MahaRERA – is a central Act that regulates real estate projects and protects the interest of homebuyers. RERA is highly relevant for redevelopment projects whenever there is a “sale component”, i.e. new flats/units are being sold to fresh buyers as part of financing the project. Under RERA, any project with more than 8 units and on land over 500 sq.m. must be registered with the Regulatory Authority. In redevelopment, if a society is only rebuilding for its own members with no sale of additional units, RERA registration is exempted. However, in practice most projects involve additional flats for sale (to cross subsidise the project cost), thus bringing them under RERA’s ambit.

RERA is a game-changer in ensuring financial discipline and transparency in real estate. In other Indian states, the same Act applies (e.g., UPRERA in Uttar Pradesh, HARYANA RERA, etc.), so the principles are similar. By mastering RERA provisions, CAs can position themselves as compliance experts or MahaRERA consultants, helping promoters register projects, manage escrow funds, file returns, and handle RERA audits and appeals.

10.4.3 Development Control Regulations:

DCPR 2034 (Mumbai) and Unified DCPR 2020 (Maharashtra) Urban redevelopment is heavily influenced by urban planning regulations that govern building permissions – chiefly the **Development Control and Promotion Regulations (DCPR)**. These rules, formulated under the Maharashtra Regional & Town Planning Act, 1966, specify what can be built: building height, Floor Space Index (FSI) limits, design norms, etc. For Mumbai city, the latest framework is **DCPR 2034 (sanctioned in 2018)**, while for the rest of Maharashtra (all municipal areas excluding Mumbai), a **Unified DCPR 2020** was introduced to bring consistency statewide.

Mumbai DCPR 2034: This is the primary rulebook for any redevelopment in Greater Mumbai. It provides various special regulations (under Section 33 of DCPR) that incentivize different types of redevelopment:-

- (i) **Regulation 33(5):** Redevelopment of **old MHADA buildings/colonies** (Cessed properties under the Maharashtra Housing and Area Development Authority). It allows increased FSI for such projects and dictates sharing of new units between tenants, developer, and MHADA.
- (ii) **Regulation 33(7):** Redevelopment of **Cessed buildings in the island city** (typically pre-1940 buildings with tenants paying controlled rents). Under DCPR 33(7), each tenant is entitled to a minimum 300 sq.ft. self-contained flat in the new building, free of cost. The Developer gets incentive FSI of 50–70% over and above what is needed for rehousing tenants effectively permitting an FSI up to 3.0 or more to make such projects viable.

- (iii) **Regulation 33(9): Cluster Redevelopment** – this allows a group of old buildings (over 1 acre, typically) to be redeveloped together as a planned cluster. It offers very high FSI (even 4.0 or more) to encourage comprehensive planning (with better open spaces, infrastructure) rather than piecemeal building-wise redevelopment. Cluster schemes have been promoted in congested areas like Bhendi Bazaar.
- (iv) **Regulation 33(10): Slum Rehabilitation Scheme (SRS)** – this covers redevelopment of slums via the Slum Rehabilitation Authority. We discuss the Slum Act separately below, but note that DCPR 2034 integrates slum rehab norms, generally allowing an FSI up to 4.0 or as needed to rehouse slum dwellers free and provide sale area.
- (v) **Other DCPR 2034 provisions include 33(7A), 33(7B) for suburban rental housing, 33(8) for government staff quarters, 33(19) etc.**, but the above are the main ones relevant to private redevelopment. DCPR 2034 also introduced the concept of fungible FSI – extra FSI that can be purchased by paying premium, to account for areas like balconies, flower beds which were earlier free of FSI. This has implications on the deals (developers often offer “fungible area” to existing members for a bigger flat, and factor the cost in financial calculations).

For a CA, understanding DCPR matters because the financial feasibility of a project hinges on how much sale area (FSI) is available. For example, Under **33(7)** if re housing existing occupants takes X area, the incentive FSI might give additional Y area to sell – a CA may be asked to analyze if selling Y area at prevailing rates covers the project cost and developer's profit. Also, compliance with DCPR rules (like minimum size of rehab flats, parking norms, amenity space provisions) can affect cost estimates and timelines that CAs review in project budgets.

Unified DCPR 2020 (UDCPR):

In December 2020, Maharashtra implemented a unified set of **Development Control rules for all cities (except Mumbai which retains its DCPR 2034)**. This was a landmark move to eliminate disparities in building rules across cities like Thane, Pune, Nagpur, etc. For redevelopment, the Unified DCPR brought several pro-growth changes:

It allowed redevelopment of any building older than 30 years regardless of its condition, giving a green signal to a vast number of aging buildings that previously sat in limbo until declared dilapidated. This means societies in cities like Pune/Nagpur with buildings from the 1980s or 90s can proactively Redevelop after 30 years, which is a huge opportunity for CAs to advise such societies.

It provides uniform higher FSI standards and potential TDR use across the state, making redevelopment more feasible. For instance, if base FSI was 1.0 earlier, the UDCPR might allow up to 2.5 or 3.0 with TDR and premiums, so that additional area can be used to fund the project. Ancillary FSI and concept of premium sharing were introduced: when extra FSI is taken by paying a fee, the state and local body share the premium 50:50, which incentivizes

authorities to support redevelopment. At the same time, Lakhs of residents in unsafe or outdated buildings benefit by getting a path to rebuild their homes safely.

Special provisions in UDCPR address redevelopment of government-planned layouts (like old City Improvement Trust schemes, or CIDCO apartments in Navi Mumbai) by removing legal uncertainties on ownership and giving clear rights to redevelop after 30 years.

In essence, **UDCPR 2020** extends Mumbai-like incentives to the entire state, fueling a surge of redevelopment proposals in places like **Thane, Navi Mumbai, Kalyan, Pune, etc.** In your professional role, if you handle clients outside Mumbai, you should check the UDCPR rules applicable to that city most of the principles (min. consent 51% for co-ops, free housing to existing residents, etc.) are analogous to Mumbai, but FSI values or procedural details might differ slightly.

Note: Other Indian metros have their own development control rules with similar aims. For example, Delhi's Master Plan and Unified Building Bye-laws now permit higher FAR (Floor Area Ratio) for redevelopment of colonies (Delhi allows up to 400% FAR in some redevelopment cases).

Similarly, Bengaluru amended its rules to allow older housing layouts to rebuild with higher FAR. CAs should be generally aware that wherever redevelopment happens, there will be local urban control regulations dictating the project's physical scope, and that directly ties into project economics.

10.4.4 Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 & Slum Rehabilitation Authority (SRA)

Mumbai's landscape is unfortunately known for its large slum settlements. To address this, the **Maharashtra Slum Areas (Improvement, Clearance, and Redevelopment) Act, 1971** – commonly called the **Slum Act** – was enacted as a social legislation for upgrading slums. Under this Act, the government can declare areas as “**slum areas**” and take steps to improve living conditions or clear and redevelop them. The Act provides for protecting occupants from arbitrary eviction while incentivizing developers to rehabilitate them in situ.

A major scheme under this law is the **Slum Rehabilitation Scheme (SRS) initiated in the year 1995**. The government created the Slum Rehabilitation Authority (SRA) to implement slum redevelopment in Mumbai. Here's how it works in brief:

A private developer (or a public agency) partners with slum dwellers to rebuild the slum into multi-storey buildings. Every eligible slum family is rehoused free of cost in a rehabilitation unit (the law originally set minimum size 269 sq.ft, later effectively 300 sq.ft; Dharavi's project is giving 350 sq.ft as a special case). The developer in return gets rights to construct sale flats/commercial space on part of the land (or an extra floor or two on the rehab buildings) which he can sell in the open market. The project becomes financially viable due to incentive

FSI — often an SRS project might have an FSI of 3 to 4, meaning the sale area subsidizes the rehab cost.

For a CA, the Slum Act/SRA matters in a few ways: -

- (i) **Project Financial Structuring:** Slum projects involve careful calculations of how many sale units are needed to offset the free rehab units and the cost of construction (plus profits). CAs may be engaged to do feasibility studies or certify project viability for lenders. The sheer scale is big – slum rehab projects constituted an estimated 50%+ of Mumbai's upcoming realty projects by area in some reports, and they involve multi-crore investments with government oversight on pricing.
- (ii) **Regulatory Compliance:** SRA projects have unique compliance needs. The developer must get consent of a certain percentage of slum dwellers (currently 51% of eligible hutments, similar to co-op society threshold). The SRA authority scrutinizes proposals, approves rehab plans, and often mandates escrowing project receivables. There are also income tax exemptions for certain notified slum rehab projects (to encourage developers). CAs should know that the rehab component is often given concessions: e.g. no stamp duty for agreements with slum dwellers, GST exemptions on construction of rehab units (considered non-commercial). Ensuring these benefits are claimed requires professional advice.
- (iii) **Accounting and Audit:** If you Audit a developer engaged in SRA projects, note that accounting for such projects can be complex (revenue recognition might be deferred since a large part of output is given free to slum dwellers; costs allocation between rehab and free-sale component; government grants if any). ICAI's Guidance Note on Real Estate Transactions touches on such scenarios where units are delivered free and how to account for the costs.

From a broader perspective, **slum redevelopment** is a specialized domain often involving joint ventures, government agencies, and community mobilization.

While not every CA will directly work on an SRA project, being aware of the Slum Act's existence is important – especially in Maharashtra. Outside Maharashtra, other states have similar schemes (e.g. Rajiv Awas Yojana at national level aimed at slum-free cities was introduced in 2013, now subsumed into PMAY – Housing for All). The principles remain: free housing to the poor, cross-subsidized by development rights. Therefore, the financial modeling, risk assessment, and compliance in such projects is a place where CAs contribute significantly, ensuring the numbers stack up while the project meets its social objectives.

10.4.5 Other Relevant Laws and Regulations

In addition to the major ones above, several other laws intersect with redevelopment Projects. A competent professional should be mindful of these as well:

- (i) **Maharashtra Apartment Ownership Act, 1970 / Maharashtra Ownership of Flats (Regulation) Act, 1963 (MOFA):** If the building is under Apartment Ownership or was originally sold by a developer, these Acts govern aspects like conveyance of land to society and protection of flat buyers. Notably, MOFA introduced “**deemed conveyance**” – if the developer fails to transfer land to the society within 4 months of formation, society can unilaterally get a deemed conveyance. In redevelopment, having conveyance is crucial (the society must own or have rights to the land/building to sign a redevelopment contract). CAs should ensure, before redevelopment starts, that conveyance is done or in process, otherwise stamp duty and legal hurdles can arise. MOFA has now been largely succeeded by RERA for new sales, but for older buildings being redeveloped, it’s still relevant for pending conveyances, etc.
- (ii) **Income Tax Act, 1961:** Redevelopment gives rise to unique tax issues. For instance, when a society or its members receive compensation – like a corpus fund, additional area in new flat, or rental income from transit accommodation – the tax treatment must be examined. A landmark Bombay High Court case **CIT v. Sambhaji Nagar CHS (2015)** held that the sale of development rights (TDR) by a housing society did not result in taxable capital gains, because no cost could be attributed to those rights (applying the principle from **B.C. Srinivasa Shetty case**) . Thus, many societies treat the one-time premium received from a developer as a capital receipt not subject to tax.

Likewise, under **Section 45(5A) of Income Tax Act** (inserted in 2017), if an individual enters a specified redevelopment agreement, the capital gain on receipt of the new flat is taxable only in the year the project is completed (when the completion certificate is issued), not at the time of signing agreement. This was meant to relieve members from tax before they actually get a new house. CAs must be ready to advise on such provisions to avoid unwarranted tax burdens on members. Additionally, concept of mutuality often shelters surplus maintenance funds of a society from tax (society funds collected from members and used for mutual benefit are not “income”). However, if a society earns money from non-members (e.g. developer pays fees or rents), that portion could be taxable unless structured carefully.

- (iii) **GST (Goods and Services Tax):** GST applies to construction services. In redevelopment, multiple transactions occur – the construction of free rehab units for existing members (which is considered supply by the developer to the society/members in return for development rights), and the construction/sale of new units to outside buyers. The GST law, through notifications, provides that the transfer of development rights by society to developer and the related construction service to members can enjoy exemption up to certain area (to ensure rehousing existing residents isn’t taxed). But any sale of extra flats to new buyers is treated like normal real estate sale (GST applicable if sold prior to completion). As a CA, one might need to structure the agreement such that GST credits are optimized and exemptions claimed properly.

- (iv) **Stamp Duty and Registration Law:** Each document in redevelopment – the development agreement between society and developer, the individual agreement allotting new flat to each member, etc. – requires stamp duty and registration. Maharashtra Government often gives concessions on stamp duty for certain Redevelopment Scenarios (e.g. reduced stamp duty if the society's conveyance is done as part of redevelopment, or exemption for documents pertaining to rehousing slum dwellers). Knowing these can save money for clients.
- (v) **Environmental and Other Approvals:** Large redevelopment projects may trigger environmental clearance norms (if land >20,000 sq.m., a clearance under Environment Impact Assessment guidelines is needed). Coastal Regulation Zone (CRZ) rules may restrict redevelopment near the coastline (common in Mumbai). While obtaining these approvals is usually architect/consultant's job, from a project planning perspective a CA should include potential delays or costs (like creation of recreation grounds required by DCPR, or premiums for coastal zone FSI) into financial projections.
- (vi) **Insolvency and Bankruptcy Code, 2016:** In unfortunate cases where a developer undertaking redevelopment goes insolvent, the homebuyers (including society members' promised flats) are now recognized as financial creditors. CAs may have to advise clients on filing claims in insolvency proceedings or represent the society in the Committee of Creditors. This is a developing area, but noteworthy given some stalled projects where developers have gone bankrupt and projects were taken over by new entities through IBC processes.

To summarize, Redevelopment sits at the intersection of numerous laws. Maharashtra has a particularly well-evolved system (**Co-operative law + specialized GRs + DCPR incentives + SRA**) which has become a model that other states observe. A Chartered Accountant in this field should aim to be a "one-stop advisor," able to flag issues whether it's a legal compliance or a finance optimization or tax planning. The next section will dive into practical provisions, forms, and checklists, translating many of these legal requirements into actionable items and templates you can use.

10.5 Key Provisions, Forms, Templates, and Case Laws in Practice

This section serves as a practical toolkit, compiling important provisions from the laws, standard forms and templates used in redevelopment, government orders/circulars that practitioners should know about, and some noteworthy case laws. Think of this as the "working manual" for executing a redevelopment project in compliance with all requirements. It will help you ensure no critical step or document is overlooked. We present the information in a structured manner – breaking it down into Provisions/Guidelines, Forms & Templates, Checklists/SOPs, and Case Laws/Precedents.

10.5.1 Notable Provisions and Guidelines (Maharashtra Redevelopment)

Below are key provisions and government guidelines that every professional should keep in mind during a redevelopment project, especially in Maharashtra:-

- (i) **Consent and General Body Resolution:** As noted earlier, at least 51% of the total members of a co-operative housing society must agree to redevelopment for it to proceed. **Government Resolution (GR) dated 4 July 2019 (issued under MCS Act 79A)** explicitly directs that after the general body passes the redevelopment resolution with minimum 51% majority, written consent of all members who voted in favor should be obtained. These individual consent letters are to affirm each member's agreement to the project and are collected for records (a template is mentioned in Forms below). Tip: Ensure that the society secures these written consents immediately after the meeting – they will protect against later claims of non consent. Kindly note though the Model Bye-laws state that quorum of the general body meeting shall be 2/3rd of members or at least 20 members whichever is less, quorum of the SGM for redevelopment has to be 2/3rd of members.
- (ii) **Feasibility Reports:** Preparation of Feasibility Reports as a subject may not be new to the Chartered Accountants, however, preparation of the Feasibility Reports for redevelopment involves additional inputs as the nature of development undertaken based on the DCPR or UDCRP provisions involved in the project. The Architect assistance in this regard will be helpful, primarily to understand the FSI currently utilised and the increase in FSI and the maximum potential on construction possible. The Cost of the TDR premium payable, development cost, construction cost, and other payout to the existing tenements, which are the key inputs of cost apart from the marketing cost, the interest and the admin cost. Determining the Sale revenue and more importantly the entire cash flow planning for the entire project.
- (iii) **Developer Selection Process (Tendering):** The Maharashtra Government's guidelines mandate a transparent tendering process. The society's managing committee, after in-principle approval to redevelop, must appoint an **Authorised Project Management Consultant (PMC)** or **Architect** who will prepare a **feasibility report** and **draft tender documents**. The **society then invites bids (at least 3 bids are recommended) from developers**, which are opened in a General Body Meeting. The bids are evaluated on **technical and financial criteria** and the preferred developer is selected by the members' majority vote. The selected developer's appointment and key terms must then be confirmed via a **Development Agreement** approved by the general body. This whole process is to be completed under supervision of the **Deputy Registrar's** office to ensure fairness. As a professional, you might be involved in evaluating the financial offers in bids — e.g. comparing how much extra area or corpus fund each bidder offers, and whether their budget seems realistic.

- (iv) **Development Agreement Clauses:** The Development Agreement between the Society and Developer is the cornerstone document. The **2019 GR** lays down some mandatory clauses that must be included-
- (a) **Area Guarantee:** The developer must provide each existing member a new flat with carpet area as promised (usually +% extra over old area or fixed new size). This area, including any additional area offered, should be explicitly stated.
 - (b) **Project Timeline:** A completion period (say 2 or 3 years from vacating) must be specified. There should be a penalty clause for delay – e.g. developer pays a higher monthly rent to members if project is delayed beyond agreed timeline.
 - (c) **Bank Guarantee:** Importantly, the Developer must furnish a Bank Guarantee equal to 20% of project cost in favor of the society. This is a security to be invoked if the developer fails to complete the project or breaches terms. The Bombay High Court in **Swashray Builders vs. Sea-Face Park CHS (2022)** stressed the significance of this 20% bank guarantee and that societies should insist on it and not release it prematurely.
 - (d) **Rent and Transit Accommodation:** The agreement must bind the developer to provide temporary accommodation or monthly rent to all members for the entire construction period (plus a grace period). Typically, rent is paid in advance and increased by 5-10% yearly. Alternatively, some developers arrange transit camps or flats for members. Hardship Allowance/ Corpus Fund: Many agreements include a one-time lumpsum payment to the society or members (often termed “hardship compensation” or corpus fund) as an incentive. While not legally mandated, if promised, it should be documented. This helps members cover increased maintenance in the new building, etc.
 - (e) **Dispute Resolution:** An arbitration clause (often subject to Mumbai Centre for Arbitration or similar) is included so that any disputes are resolved quickly without derailing the project in courts.
 - (f) **Approvals and Regulatory Filings:** The Society and Developer must obtain various approvals Commencement Certificate (CC) from the municipal corporation, NOCs from utility departments, etc. One important approval on the society’s side is the intimation to the Registrar of Societies after the redevelopment agreement is signed and members vacate. The society should file the resolution and agreement with the Registrar’s office for their records (per cooperative department requirements). Also, after completion, the society will either continue or a new society will be formed (if the original was tenant-owner type) – so planning for conveyance and formation of new entity if needed should be in the procedure.

(v) Government Resolutions (GRs) and Circulars: Apart from the major **2019 GR**, notable Circulars include-

- (a) GR dated 3 Jan 2009:** The earlier guideline which was superseded, but a lot of societies still refer to it. It had similar provisions but with 70% consent rule. Now obsolete after 2019, but historical context.
- (b) Unified DCPR Circulars 2021:** After UDCPR 2020, Govt. of Maharashtra issued clarifications in 2021 to municipal bodies on implementing new FSI rules and premium sharing. Professionals should get copies of local municipal circulars that might adjust implementation (for example Pune Municipal Corporation's circular on how to calculate existing building area for redevelopment under UDCPR).
- (c) Self-Redevelopment Scheme Circulars:** In 2019, a government notification announced a scheme to encourage societies to undertake self-redevelopment (without a developer). It promised easier access to bank finance (via Maharashtra State Co-op Bank & District Co-op Banks) and waived certain premiums. In 2025, the state further announced an 8.5% interest waiver on government premiums for self-redevelopment projects till 2026, to reduce the financial burden on societies.

CAs advising societies should keep track of such incentives as they significantly improve project viability for societies acting as their own developer

(vi) Slum Rehab Specific: SRA issues its own circulars periodically, e.g., setting cut-off dates for eligibility of slum dwellers (currently those listed in electoral rolls as of Jan 1, 2000 – and 2011 in some cases – are eligible for free housing). A 2022 circular increased the minimum rehab flat size to 300 sq.ft for all new SRA projects (earlier some got 269 sq.ft). Also, a recent government decision allows slum rehab developers to sell some rehab units to non-slum persons (to monetize better) if original occupants are less – to prevent wasted surplus area. For CAs, being aware of these rules helps in conducting due diligence and financial forecasting.

The above provisions should be part of any compliance checklist you use. Many of them (like the 20% BG, 51% consent, etc.) have been tested in courts and are now the de-facto law. Always obtain the latest copy of the government directives (the 2019 GR in English is available as a translated document). Also check the society's own bye-laws – most co-op societies have adopted Model Bye-Laws which often include a clause on redevelopment procedure aligning with government norms.

10.5.2 Standard Forms and Templates

Certain standard forms, letters, and templates are commonly used in redevelopment projects. As a practitioner, having these formats handy (and knowing how to fill/verify them) is extremely useful. Here are some key ones:-

- (a) **Member's Consent Letter for Redevelopment:** Once a redevelopment proposal is approved in the Special General Body Meeting, each member who voted in favor should sign an **irrevocable consent letter to the society**. This letter typically addresses the society, the selected developer, and relevant authorities (municipal corporation, etc.) and states:
- "I, the undersigned member of ____ CHS, owner of flat no. X, hereby give my irrevocable consent to the redevelopment of the society's building by M/s ____ (developer) as per the resolution dated ____ and in accordance with applicable DCR and rules.
- I undertake to vacate my flat when required and cooperate in the project...". It often mentions the member's entitlement (e.g. new flat with ____ sq.ft area) and the arrangements for temporary accommodation.
- A template consent letter was annexed to older Govt Circulars; one can modify it with current details. Use: CAs may be involved in collecting or notarizing these consents, and ensuring they are properly worded so that a dissent later cannot claim ignorance.
- (b) **Project Management Consultant (PMC) Appointment Letter:** If a society appoints a PMC or architect, a formal letter or agreement is executed. The template includes scope (structural audit, feasibility report, preparing tender, assist in agreement, and project monitoring), and the fees (often a percentage of project cost or fixed fee). While not every project uses a PMC, it is recommended and many banks insist on one in self-redevelopment cases.
- (c) **Tender Document Template:** The tender or Request for Proposal (RFP) issued to developers is a critical document. It contains technical details of the project (land area, existing built-up, no. of members, permissible FSI) and the bid format for developers (where they quote what they offer: e.g. "each member will get 10% extra area, ₹X per month rent for 24 months, corpus of ₹Y per f lat, and society will get ₹Z lakh as corpus", along with construction specs and timeline). CAs, when reviewing bids, should ensure comparability – that all bidders have quoted assuming the same parameters.
- (d) **Development Agreement (DA):** While usually drafted by lawyers, a CA should read the DA carefully. It's often a large document, but some annexure of interest:-
- (i) **Annexure of Bank Guarantee format** – stating unconditional BG of 20% project cost.
 - (ii) **Annexure of List of Members and Entitlements** – a table listing each member, their old unit details and new flat details (area, floor, etc.), plus any special benefits (like extra parking, if any).
 - (iii) **Payment Schedule for rent/corpus** – when and how rent will be paid (e.g. advance for 6 months on vacating, then monthly).

- (iv) **Project Schedule** – a bar chart or milestones for demolition, plinth completion, upper floors, and possession.
- (v) **Specifications of construction** – detailing quality (tiles, fittings) promised; not finance per se, but cost impact if something is changed.

CAs might particularly focus on any clauses that could impose financial liability on the society or members – e.g. some DAs say if members delay vacating beyond a date, they will stop getting rent or have to pay damages; or if the society fails to get conveyance, certain costs are on them. Flag these for clients to understand.

- (e) **Individual Agreement with Member (Permanent Alternate Accommodation Agreement PAAA):** This is an agreement between the developer and each member, agreeing to exchange the member's old premises for the new flat to be given. It mirrors many terms of the DA but is executed to ensure individual contractual privity. Stamp duty on these is often minimal (since it's exchange of property rights). CAs should ensure all members sign their PAAA before vacating, to avoid future disputes.
- (f) **Maharashtra RERA Forms:** As mentioned, Form 3 (CA's certificate for withdrawal of funds) and Form 5 (Annual Audit Report) are key forms a CA will handle. It's good to keep the latest format (available on MahaRERA website) ready. Form 3 basically requires certifying the Percentage of Completion Cost Incurred on the project and that the withdrawal is in proportion. Form 5 is an annual statement confirming that 70% of the collections were deposited and used correctly, and that no more than permissible funds were withdrawn, etc. There are also Form 1 (Engineer) and Form 2 (Architect) – while CAs don't fill those, understanding them helps coordinate
- (g) **Checklists and Reporting Forms:** The cooperative department sometimes provides checklist formats – e.g. a Checklist for Redevelopment Proposal Submission to the Registrar, which ensures copies of all requisite documents (society resolutions, minutes of meetings, consent letters, developer's license details, draft agreement, etc.) are attached. If helping a society compile a proposal, follow such a checklist to avoid back-and-forth. Similarly, banks have project appraisal checklists for sanctioning loans to self-redevelopment projects – often requiring a CA's project report with financial projections, society's financial statements, etc.

Having these templates at your disposal not only saves time but also ensures you don't miss any vital component.

10.5.3 Step-by-Step Redevelopment Process (Checklist/SOP)

Below is a checklist-cum-standard operating procedure (SOP) for a typical housing society redevelopment in Maharashtra. This is a generalized sequence integrating legal requirements and practical steps. As a professional advisor, you can use this as a roadmap when guiding a society or monitoring a project. Each step references relevant provisions discussed:-

- (i) **Building Assessment & Feasibility:** The society conducts a structural audit of the building (many old buildings in Mumbai require an audit every 5 years). If the structure is dilapidated or over 30 years old, residents consider redevelopment. The managing committee first checks title/conveyance – ensure the land is in society’s name or initiate deemed conveyance if not. Hire an architect/PMC to analyze development potential: current FSI used vs. allowable FSI (including TDR, incentive). Determine roughly how much sale area can be built and the expected benefits (extra flat size, etc.). If the society is inclined to self-redevelop, they also start exploring funding options (like bank loans, MHADA/NHB schemes)
- (ii) **Initiating Redevelopment (Member Application to Call Meeting):** As per Govt directive, at least 1/5th of society members must submit a written request to the Secretary to call a Special General Meeting to discuss redevelopment. Upon receiving such requisition, the Managing Committee must inform the Registrar and fix a date for the Special General Body Meeting (SGBM) within 2 months. They also empanel a government-approved Authorized Officer (often an Assistant Registrar) who will attend the meeting to oversee proceedings.
- (iii) **First Special General Body Meeting (Approval to Redevelop):** The SGBM is convened with the specific agenda of redevelopment. Notice of the meeting along with concept proposal should be sent to all members well in advance (14 days minimum). During the meeting:-
 - (a) The need for redevelopment is presented (PMC or managing committee explains audit results, feasibility)
 - (b) An initial resolution is moved: *“Resolved that the society’s building be redeveloped. The society shall proceed to select a suitable developer/contractor or undertake self-redevelopment as per government guidelines.”*
 - (c) This resolution must pass with at least 51% of total members’ consent. It’s recommended to aim for as high a majority as possible to show unity (often 90% in attendance will agree, barring a few dissenters).
 - (d) The meeting also typically resolves to appoint a Project Management Consultant (if not already). If a PMC is appointed here, members authorize the committee to spend necessary funds on technical reports.
 - (e) Minutes of this meeting are recorded and filed with the Registrar. After the meeting, the committee collects written consent letters from those who voted yes. Dissenting members (if any) should be politely reassured; legally once 51% approve, the rest are bound, but in practice it’s better to have everyone on board to avoid litigation.

- (iv) **Appointment of Professionals:** The society formally engages an Architect/PMC who will drive the technical process. It's advisable also to appoint a legal advisor (Advocate) at this stage to help draft documents. Many societies also rope in a Chartered Accountant as an advisor – the CA's role here could be to advise on financial feasibility, tax implications for members, and to ensure transparency in developer selection (some societies even include a CA in the bid evaluation committee). These appointments should be done via written contracts outlining scope and fees.
- (v) **Preparation of Project Report & Tender Documents:** The Architect/PMC surveys the property and drafts a Project Feasibility Report. This report calculates existing carpet areas of members, the total built-up area possible as per DCPR (including any additional FSI for road setbacks, reservations, etc.), and thereby the sale component available. It also estimates project cost. Based on this, the society decides key terms to demand from bidders (e.g. "every member should get minimum 300 sq.ft or 10% extra area, whichever more; ₹40,000 rent p.m.; ₹5 lakhs corpus each; project must finish in 2.5 years"). These become part of the Tender conditions. The PMC then publishes the tender – usually an advertisement in at least two newspapers (English and vernacular) inviting developers to collect tender forms. A reasonable timeframe (3-4 weeks) is given for bid submission.
- (vi) **Bid Evaluation and Second General Meeting:** On the appointed date, the society opens the received bids (often in the presence of the PMC, and sometimes the Registrar's representative). The PMC prepares a comparative chart of offers and checks each bidder's technical and financial capacity (past projects, balance sheet strength, etc.). They might score bidders on qualitative criteria too. Then a General Body Meeting (often SGBM 2) is called where PMC presents the comparison. Members may ask questions or clarifications from bidders (sometimes top 2 bidders are invited to give presentations). Finally, the society passes a resolution selecting the Developer/Contractor by majority vote. This selection is recorded and communicated to all members via minutes. Importantly, the members usually also authorize the committee (or a subcommittee) to negotiate and finalize the terms of the Development Agreement with the chosen developer as per the bid.
- (vii) **Execution of Development Agreement (DA) and related documents:** The society's authorized signatories (Chairman, Secretary, etc.) enter into a registered Development Agreement with the selected developer. This is a detailed contract (see Templates above for contents) covering roles, responsibilities, and terms. At the same time, the society typically gives the developer a Power of Attorney (POA) to deal with municipal authorities for permissions, sell the agreed sale portion, etc.

Note: The POA should be specific and ideally conditional (e.g. only comes into effect after certain % of members vacate and after Bank Guarantee is given). The developer, on his part, will provide the Bank Guarantee (20%) at this stage and often post-date

cheques for future rent compensation. All members should be made party or at least acknowledged in the DA to avoid any privity issues. The DA must be registered with the Sub-Registrar of Assurances and appropriate stamp duty paid. A copy of the registered DA is submitted to the Registrar's office as well.

- (viii) **Individual Agreements and Preparatory Work:** Subsequent to the DA, the developer will execute Permanent Alternate Accommodation Agreements (PAAA) or similar with each member, enumerating their entitlement (flat no., area, floor, etc.) and the terms (this can be a tri partite agreement including society, member, and developer). Meanwhile, the developer's architect submits plans to the municipal corporation for approval. The society should assist in getting any signatures or documents for approvals. During this phase, the developer might also need to obtain the Commencement Certificate (CC) up to plinth from authorities. Demolition cannot begin until certain approvals (like IOD – Intimation of Disapproval – essentially list of conditions from BMC) are in place.
- (ix) **Vacating the Building and Demolition:** Once all legal documents are in place and initial approvals obtained, the society gives members a formal notice to vacate by a certain date (coordinating with the developer). Members move to their temporary accommodations. The developer typically pays moving charges and deposits for rentals as per agreement. Before vacating, ensure:
 - (a) All members have signed their individual agreements.
 - (b) The developer has paid any agreed corpus or first installment of it.
 - (c) The bank guarantee is verifiably active.
 - (d) An inventory of society's property is made (anything to salvage from building, e.g. lifts or scrap).
 - (e) Project insurance is taken by developer (covering site accidents, third-party liability, etc.). Though not mandated by law, it's prudent.
 - (f) If a member refuses to vacate despite everything, the society can invoke dispute resolution. High Court decisions also allow eviction of dissenters as a last resort.
 - (g) After vacating, the building is handed over to developer and demolition begins in accordance with safety rules. The society's role now transitions to monitoring the progress.
- (x) **Construction Phase Compliance:** During construction, the Developer is in charge, but the society (and its PMC, if any) should keep oversight. Key points:-
 - (a) **Project Account & RERA:** Once the saleable apartments are launched for sale ~~sales launch~~, the developer must follow RERA's money handling. Professional role: A CA might be employed to do quarterly checks or certify RERA

withdrawals. The society can request periodic updates on sales and collection since their members' fate is tied to project finances.

- (b) **Quality Checks:** The PMC/architect should inspect at milestone stages to ensure quality as per agreement. Any deviations should be flagged early.
- (c) **Rent and Other Payments:** The CA or society treasurer should track that rent is being paid timely to all displaced members (and yearly increments applied). If a member has a complaint (e.g. rent not received on time), address it with the developer immediately as per agreement terms. Adjustments: Sometimes during construction, minor changes happen (layout tweaks, etc.). Ensure any change affecting members (like flat area or floor) is with written consent of that member and preferably with compensatory benefit.
- (d) **Extensions:** If the project is delayed due to force majeure (e.g. a flood or pandemic lockdown), document it via formal letters. If delay is beyond agreed timeline, invoke the penalty/rent escalation clauses.
- (e) **Completion and Handover:** As construction nears completion, the developer will apply for Occupation Certificate (OC) from authorities. Society should prepare for possession:

Form an allotment committee to manage allocation of flats if floors or views differ, though generally each member gets the flat as per the agreement (some societies do a lottery for allocation if not pre-decided).

Inspect the finished flats and building with the help of the architect for any defects. A snag list can be given to developer to fix before formal handing over.

Organize the paperwork: new property tax IDs, electricity meter transfers, formation of new society (if required). Often the existing society continues, just with a new building name, but if it was originally tenanted building and now ownership flats, a new cooperative society or condominium may need registration. CAs can assist in setting up the new society's accounting records post-redevelopment.

The developer will hand over the building's corpus (if any lump sum for maintenance), all original guarantees for equipment (lifts, pumps), building plans, OC copy, and execute the conveyance deed of the new building in favor of the society (if land was not already in society's name).

Finally, the bank guarantee (BG) can be proportionately released (often part on getting OC and part after defect liability period, say 5 years). Ensure no release of BG without member consensus that developer fulfilled obligations.

- (xi) **Post-redevelopment and Defect Liability:** After moving in, any structural defects or poor Workmanship discovered within (typically) 5 years are the developer's liability as

per RERA and contract. The society should notify and follow up for rectification. From a CA's perspective, this phase might involve preparing final accounts of the redevelopment (some societies prepare a statement of what they gave up and what they received, and how the corpus was utilized). It's also time to plan for future – investing the corpus fund (if it's meant to generate interest for maintenance), revising maintenance charges for the new building, etc., where CAs advise.

This checklist encapsulates the lifecycle of a project. Real-world scenarios can deviate (for example, some societies directly choose a developer without PMC – not recommended but happens; or self-redevelopment will skip the developer tender steps but add steps for loan sanction). Nonetheless, having a standard SOP helps catch missing steps. As an advisor, you can tick off each milestone and ensure compliance at that stage. Also, maintain proper documentation at every step – if disputes arise, those minutes, notices, letters, and certificates will be crucial evidence that due process was followed.

10.5.4 Significant Case Laws and Precedents;-

Over the years, numerous legal disputes around redevelopment have shaped the practices. While we've mentioned a few already, here is a short list of noteworthy case laws/precedents that a practitioner should be aware of:

- (i) **Minority Dissenters vs. Society (Bombay High Court, 2014 & 2022):** In a landmark judgment, the Bombay HC held that dissenting members of a cooperative housing society cannot stall redevelopment approved by majority – “their identities are subsumed into that of the society” in such decisions. **In Pantnagar Pearl CHS vs. Choice Developers (2022)**, the HC fined dissenting members who refused to vacate, reiterating that once an agreement is signed and 26 of 30 members vacated, the remaining must comply or be evicted in arbitration. **Takeaway:** Societies can be confident about legal backing when they have followed procedure (51% consent and Registrar's nod) – the court will generally not allow a few people to hold the project hostage
- (ii) **Sambhaji Nagar CHS vs. CIT (Bombay High Court, 2015):** This income tax case provided relief to societies by ruling that the one-time premium from the developer for additional FSI/TDR is a capital receipt not liable to capital gains tax in absence of cost of acquisition . It referred to the Supreme Court's BC Srinivasa Shetty principle. **Takeaway:** A well-drafted development agreement can emphasize that the society is granting development rights (which were inherently attached to the land). CAs can use this ruling to argue non-taxability of such receipts in assessment proceedings, citing the Bombay HC precedent.
- (iii) **Vaidehi Akash Housing (MahaRERA Order, 2019):** In one of MahaRERA's early redevelopment related orders, it clarified that RERA's jurisdiction is limited to buyers' issues. In that case, society members who were to get rehab flats complained to RERA

about delay. The authority ruled it cannot adjudicate on agreements between society and developer for rehab portion – those are outside RERA, which covers allottees of sale component only.

Takeaway: Original occupants should approach other forums (cooperative court or civil court) for enforcement of development agreement; RERA won't directly help them if they are not buyers of new units. However, if they also had to pay anything or if the developer sold their flats to someone else, then RERA could be involved.

- (iv) **Gujarat High Court on Redevelopment (2022):** Outside Maharashtra, an interesting case in Gujarat HC ordered dissenting members of a society in Ahmedabad to vacate, upholding a 75% consent provision in Gujarat law . It shows a similar judicial trend in other states to favor collective decision over individual hold-outs, signaling that across India, courts favor redevelopment when due process is observed.
- (v) **Consumer Fora on Rental Compensation:** In a few cases, consumer courts (pre-RERA era) treated failure to pay transit rent or delay compensation as “deficiency of service” by the developer, allowing society members to claim compensation. Now those would likely go to arbitration or cooperative courts, but it's worth noting that developers face multi-pronged liability (under consumer protection, under contract, under RERA for buyers). A case in point: Sagar Suryacity CHS vs. Builder (Mumbai District Forum, 2016) where members got relief for delayed project and no rent.
- (vi) **HC on Self-Redevelopment (2020 PIL):** A public interest litigation in Bombay HC nudged the state to facilitate self-redevelopment by simplifying approvals. This wasn't a judgment per se but led to administrative instructions that applications for self-redevelopment should be cleared in 3 months, etc. It indicates the judiciary encouraging policy to remove bottlenecks, which as a CA you should leverage (quote these intents when pushing a file with a government office).

In practice, every dispute and its outcome can set some precedent, but the overarching theme from case law is: follow the prescribed process faithfully and the law will shield the project. Projects that got stuck often had lapses like no tender, or allegations of committee misappropriation, which gave dissenters ammo. As an auditor or advisor, one role could be to act almost like an independent monitor – ensuring the society's actions are above board, which in turn fortifies them legally. Use case laws to educate your clients: e.g., tell hesitant members about the HC rulings to assure them their rights are protected in the new building, but not at cost of blocking everyone else's rights.

The provisions, forms, SOP, and case insights above collectively provide a reference library for executing redevelopment in compliance with laws and best practices. In the next section, we address common questions CAs might encounter when engaging in redevelopment assignments, to clear any lingering doubts and solidify your understanding.

10.6 FAQs – Frequently Asked Questions (for CAs in Redevelopment Practice)

In this para, we address some frequently asked questions that Chartered Accountants may have when they first venture into assisting with redevelopment projects. The Q&A format will help clarify specific scenarios and concerns:

Q1. Does RERA apply to projects where an old housing society is redeveloping its building?

- A.** Yes, MahaRERA registration is required if the project involves selling new units to outsiders beyond the existing members and if the total new units exceed 8 and land area is more than 500 sq.m. For example, if a society of 20 members rebuilds and creates 5 extra flats for sale, that sale component triggers RERA. If it's pure self-redevelopment with no sale, then RERA doesn't apply to that project (no "promoter" in the eyes of law, since it's for self-use). Even when RERA applies, remember it oversees mainly the sale portion and protects external buyers; the rehab portion for existing members is governed by the development agreement and cooperative law. Nonetheless, many RERA compliance steps (like project account, CA certificates) end up benefiting all as they instill financial discipline.

Q2. Our society is getting a corpus fund and extra area from the developer – is this taxable for members or the society?

- A.** Generally, such benefits can be structured as capital receipts not subject to income tax. The additional area in a new flat is not taxed at handover because it's part of an exchange of your old property rights for new, which falls under capital gains (and thanks to Section 45(5A), that gain is calculated in the year you get possession/OC). However, since usually members do not pay anything and just swap, any capital gain would largely be on any additional cash compensation. The Bombay High Court in Sambhaji Nagar CHS held that amounts like TDR premiums to a society were not taxable as capital gains. If the developer gives a corpus fund to the society (for maintenance of new building), many societies treat it as a capital receipt utilized for collective benefit – often not offering it as taxable income, citing mutuality (if seen as contributed by developer on behalf of members). Each case can differ: if the corpus is huge and society parks it in FD, the interest earned is taxable (interest income is outside mutuality). For individual members, if they get a one-time hardship compensation (say ₹5 lakh each), conservative approach is to treat it as capital proceeds for surrender of rights and since they got a flat in return (which is a capital asset), one could argue it's part of a single capital transaction. It's safest for members to claim exemption under Section 54 (investment in residential house) if possible, though that's a grey area since they got the new flat, not bought another. Bottom line: Proper planning and documentation can minimize tax – involve a CA in structuring the agreement to phrase

these payments in a manner that supports non-taxability. And always disclose such transactions in IT returns with a note referencing applicable case law to avoid later allegations of concealment.

Q3. The developer will be paying for our temporary rental accommodation. Is GST applicable on these rent payments or any other GST issues members should know?

- A.** The GST on temporary rent is typically taken care of by the developer – usually, the developer directly pays the rent to the landlord of the transit house (so any GST on that rent, if commercial, is developer's input). If the developer reimburses the member for rent, technically the member is the service recipient for the rental (which is usually a residential rent, exempt from GST if the landlord is individual). So members need not worry about GST on the rent they receive, because renting a residential dwelling for personal use is not taxable to begin with. The more pertinent GST issue is: the construction service the developer is providing to members (free flats) is a supply exchanged for development rights the society gave. The government has largely exempted GST on the rehab portion– as long as the project's new flats for existing members are within 30 sq.m carpet in metros (or 60 sq.m in non-metros) and the consideration is in development rights, no GST on that exchange (as per notifications in 2019). The Developer will pay GST on sale of extra flats to new buyers (at 5% without ITC for residential, as per current rates). As members, you may get asked to sign a letter about this arrangement for the developer's GST records. As a CA, if advising the developer, ensure compliance with Notification 4/2019 on GST treatment of Transfer of Development Rights (TDR) – it says TDR (from society) and rehab flat construction (by developer) are exempt, but the developer must sometimes pay GST on a reverse charge basis on proportion of TDR used for commercial units, etc. This is on the developer's side, though. So, for members: No GST on the free flat you get, nor on the rent compensation you receive. Any corpus money given (if not for a specific service) is not under GST as it's not a consideration for a supply by the society.

Q4. What if the project gets delayed or the developer abandons it? What recourse do we have as a society and how can a CA help in such a scenario?

- A.** This is a critical risk that needs to be mitigated from the start. First, the 20% bank guarantee is your safety net – if the developer abandons, the society can encash it and hopefully use the funds to secure the site and maybe complete some work or at least pay rent to members in interim. Second, there is usually a termination clause in the Development Agreement allowing the society to terminate the developer for cause (e.g. project halted for 6 months without progress) . Enforcement would be through arbitration or court. As a society, you could then bring in a new developer to complete the balance work (with consent of remaining buyers and with MahaRERA approval). MahaRERA has provisions where, in case of developer default, it can consult with

society/allottees and facilitate project completion via a new builder – though RERA can't force redevelopment completion, it can deregister a rogue promoter and help remaining stakeholders take charge (in purely sale projects, allottees have done that; in society, society itself can take over completion). A CA can assist by providing an honest status report of project finances at abandonment – how much money was collected, used, what liabilities remain – essential data for rescue planning. Also, having a CA or professional monitor from the outset reduces the chance of abandonment (you'd likely catch financial troubles early if you see the developer is short on funds or diverting money). In worst case, if insolvency is initiated against the developer, the society (or members with pending flats) must file their claims with the Insolvency Professional. A CA can help represent these claims correctly (quantifying the work done vs. not done, damages, etc.). It's a messy scenario, but proactive financial oversight and strong contractual safeguards (BG, escrow control) significantly reduce the risk.

Q5. Our society has some members who are very elderly or some NRI owners abroad. How do we manage their involvement or consent in the process?

- A.** Legally, every member (person whose name is on the share certificate) has to be given notices and has a right to vote in meetings. If someone cannot attend, they may give a proxy to a relative (if allowed by bye-laws) or the society can allow video/teleconferencing if feasible (Post-Covid, many Registrars allow AGMs via Zoom; for SGM it should be okay with prior permission, though physical presence of some is needed to sign). For NRIs or out-of-station owners, get them to sign a Power of Attorney (POA) in favor of a trusted person (often a committee member or another society member) to act on their behalf for redevelopment matters. This POA should allow signing of agreements, vacating, etc. Ensure such POA's are registered or notarized as required. For very elderly or infirm, the society can arrange a special outreach – e.g. taking the minutes book or consent form to their residence for signature to avoid them traveling. If a member is mentally incapacitated, their legal guardian (with court permission if needed) should sign. All these scenarios basically boil down to ensuring no one's left out. From a CA's perspective, it's more about advising the society on proper records – keep letters sent to members, their acknowledgments, etc., so later no heir claims "my father was not aware". Also, verifying if any flats have changed hands (sale or inherited) during the process – the new owner steps into the shoes, but paperwork must catch up (update share certificate, etc., otherwise who signs the agreement?). Encourage society to update membership records before starting redevelopment.

Q6. In self-redevelopment, what is the role of a CA?

- A.** In self-redevelopment, the society itself acts as the "**Developer**" – which actually enhances the role of a CA multifold. The society will need to handle project finance: obtaining a loan (CAs assist in preparing the project report for bank), managing the

construction outflows, and marketing and selling the extra flats (ensuring compliance with RERA as a promoter). A CA could be engaged as a Project Finance Manager, maintaining books of account for the project, preparing cost-to-complete statements, and submitting CA certificates to the lending bank periodically. Also, since the society's office-bearers may not be experienced in real estate, a CA can guide them on tax deductions (TDS to be deducted on contractor payments, GST input credit on materials, etc.). Another area is internal audit – members will feel more comfortable if an independent CA periodically audits the project expenses to make sure there's no mismanagement by the managing committee. Essentially, in self-redevelopment the CA's role is analogous to a CFO of the project. Maharashtra's self-redevelopment scheme even recommended that societies appoint professionals like project management consultants, architects, and financial consultants at the outset.

Q7. What professional opportunities exist for CAs with respect to developers in redevelopment?

- A.** Apart from advising societies, CAs have opportunities on the developer side too. Many real estate developers engage CAs for:- **Financial modeling & feasibility:** Before taking up a redevelopment project, a developer might hire a CA to do a detailed viability study (project IRR, cash flow timing, sensitivity to sales prices). This is a high-value service, given the razor-thin margins some deals have. **Fund raising:** Redevelopment projects often require construction finance or bridge finance. CAs can help prepare loan proposals, represent the project to financial institutions, or advise on joint ventures/private equity deals. - **RERA compliance:** As mentioned, filing RERA project registration documents, quarterly updates, annual audits – developers typically outsource this to specialized CA consultants or firms. - **Tax and Regulatory Advisory:** Developers need advice on structuring the deal with the society (for example, whether to do an outright purchase of the society's land vs development agreement, which has different GST/tax implications), handling stamp duty efficiently, and ensuring their agreements minimize future litigation. CAs with good knowledge of stamp duty, income tax, GST, and company law can position themselves as full-suite advisors for redevelopment firms. - **Forensic and Dispute Consulting:** If a redevelopment project turns sour, developers or societies might call on a CA to unravel accounts, document misuse of funds, or to serve as an expert witness in disputes. This is a niche but important opportunity – real estate is prone to allegations of misaccounting, and an independent forensic accounting by a CA can be crucial evidence in arbitration or court.

Q8. Our society's building is very small (say 6 units) – can we still do redevelopment, and what's the CA's role there?

- A.** Yes, even small societies can redevelop, though the approach may differ. If the plot is too small or project not financially attractive for a developer, one option is cluster with neighbors – multiple adjacent societies can jointly redevelop to make a viable package.

That requires coordination between entities (forming a federation or appointing a common developer). A CA could help by creating a sharing formula for benefits between the societies (how to distribute extra flats or cash in proportion to land contribution). If clustering isn't possible, a 6-unit society might opt for self-redevelopment with a bank loan. In that case, the bank will heavily rely on the project's CA-certified financial projections and the CA's comfort on the society's repayment capacity (which comes from selling new flats). So, regardless of size, the financial planning must be solid – CAs provides that solidity. Also note, RERA exempts projects up to 8 units, so a 6-unit self-redevelopment wouldn't need RERA registration, easing compliance a bit

Q9. Are there any special audit or certification requirements for housing societies during redevelopment apart from RERA?

- A.** The cooperative housing society still needs to undergo its annual statutory audit as required by the Co-operative Societies Act. The auditor in those years should disclose that the society is undergoing redevelopment and mention any significant financial transactions related to it (like receipt of corpus, project funds movement, etc.). If the society receives and disburses large sums (e.g. received corpus from developer and distributed to members, or collected money from members for self redevelopment), those should be properly accounted with separate ledger tracking. The District Deputy Registrar might ask for a specific report on redevelopment progress during audit. There isn't a separate official "redevelopment audit", but some societies proactively get an audit of the developer's project expenses (if agreed in contract, developer provides accounts of construction cost to show he spent what was estimated). A CA could be appointed jointly by society and developer to audit the project cost especially if the agreement has a clause like "if actual cost is less, savings shared" or so. Lastly, if society invests interim funds, ensure audit checks that those are in permitted instruments (co-op societies have restrictions on investments).

Q10. What are some key risks or red flags a CA should watch out for in a redevelopment project?

- A.** Some key red flags include: - Developer's Financial Health: Analyze the developer's financial statements and project portfolio. If they are over-leveraged or have many stalled projects, be cautious. Check their MahaRERA history – any past complaints or delays. - Unrealistic Promises: If a deal seems too good (e.g. extremely high corpus or area being offered) that the math doesn't support based on sale potential, flag it. There have been instances of fly-by-night operators who promise big to win bids and then fail to deliver. - Title or Legal Hiccups: If the land title is not clear or there are disputes (like some units owned by outsiders or pending litigation on property), that can derail a project. Ensure all such issues are resolved or at least disclosed to the developer in contract (so society isn't blamed later). - Non-compliance with Process: If a society tries

to shortcut (like selecting a developer without proper tender or not informing all members), that can result in lawsuits which stall progress. As a CA on board, always advise them to stick to due process, even if it's slower. - Regulatory Changes: Keep an eye on any changes in DCPR, TDR policies, or taxes that could affect viability. For example, if ready reckoner rates (for stamp duty) jump or if a premium waiver is ending, incorporate that in cost. - Member's Expectations Management: From a soft perspective, if there is discontent among members (maybe a group feels they are not getting enough or they distrust the committee), that is a social risk. Suggesting measures like forming a Redevelopment Committee including representatives of all groups, regular communication meetings, etc., can mitigate this. Contentious members can cause legal delays.

Each project is unique, but with diligent financial oversight and legal compliance, these risks can be managed. As a CA, you are the "risk manager" in many ways – your focus on numbers and rules complements the engineer's focus on cement and bricks. Together, a successful redevelopment can be achieved.

These FAQs address common points of confusion. They illustrate that a Chartered Accountant's involvement goes well beyond bookkeeping – you are a consultant, watchdog, and problem-solver throughout the redevelopment journey. With these clarifications, you should feel more confident in tackling the multidisciplinary challenges that come your way in redevelopment practice.

10.7 Glossary of Redevelopment Terms

Real Estate and redevelopment come with a heavy dose of jargon. Below is a glossary of key terms and acronyms you will encounter, with brief definitions tailored for the context of redevelopment projects.

- (i) **FSI (Floor Space Index)** – The ratio of total built-up area permitted to the total plot area. For example, FSI 2.0 on a 1,000 sq.m plot means you can build 2,000 sq.m of floor space. Higher FSI is often given as incentive in redevelopment to accommodate more units and fund the project.
- (ii) **TDR (Transfer of Development Rights)** – A development right (additional built-up area) granted when a landowner surrenders land for public purposes or in rehab projects. These rights can be sold and "transferred" to be used on another project. In redevelopment, TDR is generated e.g. for providing housing to tenants/slum dwellers, and can be utilized as additional FSI in the project or sold.
- (iii) **Carpet Area / Built-up Area / RERA Carpet** – Carpet area is the net usable floor area within walls of a flat. Built-up includes carpet + thickness of walls + balconies, etc. RERA mandates that flats be sold on carpet area (excluding wall thickness) to standardize measurements. In redevelopment, offers to members are always quoted in carpet area to ensure clarity.

- (iv) **Development Agreement (DA)** – The legal contract between the society (Or land owner) and the developer that lays down terms of redevelopment. This includes area to members, sales rights, timelines, etc. It's the principal document governing the relationship.
- (v) **General Body Meeting (GBM)** – A meeting of all members of the co-operative society. A Special General Body Meeting (SGBM) is one called for a specific agenda like redevelopment (not the regular Annual General Meeting). Key decisions like approving redevelopment or selecting developer must happen in a GBM with proper quorum and voting.
- (vi) **MahaRERA** – The Maharashtra Real Estate Regulatory Authority, established under RERA 2016. It is the state body where projects are registered and where aggrieved allottees (buyers) can file complaints. MahaRERA is mentioned separate from the Act to denote the authority/website.
- (vii) **MCS Act** – Abbreviation for Maharashtra Co-operative Societies Act, 1960. Governs housing societies, their elections, meetings, etc. (See Section 4.1 for its role in redevelopment).
- (viii) **79A (Directive)** – Reference to Section 79A of the MCS Act, under which the state government issues binding directives to societies. “**79A Guidelines**” colloquially means the government’s policy/guidelines on redevelopment (latest issued in 2019)
- (ix) **Consent Letter** – The letter by which a member gives consent to the redevelopment project (often irrevocable). It typically follows the format mandated by 79A guidelines and includes member’s acceptance of new flat and willingness to vacate.
- (x) **PIO / IOD (Intimation of Disapproval)** – In Mumbai, when a building plan is sanctioned, the first document issued is IOD, listing conditions (like NOC from fire dept, environment, etc.) that must be met. It’s essentially a “provisional sanction”. Only after fulfilling those conditions does one get the Commencement Certificate.
- (xi) **Commencement Certificate (CC)** – The permission given by the municipal corporation to begin construction. It is often given in stages (plinth CC, then full CC). Without CC, no lawful construction can start.
- (xii) **Occupation Certificate (OC)** – A certificate from the local authority that a building is complete as per approved plans and fit for occupation. In redevelopment, members should only reoccupy once OC is obtained (to ensure building is legal and safe).
- (xiii) **In-situ** – Latin for “in the original place”. In redevelopment context, it means rehousing people in the same site (as opposed to relocating them elsewhere). Slum rehabs are usually in-situ redevelopment of the slum land itself.

- (xiv) **LOI (Letter of Intent)** – In SRA projects, after initial approval, the Slum Authority issues an LOI outlining conditions and project details. It's analogous to IOD but for slum schemes. It authorizes the developer to clear the slum and start work after meeting listed conditions.
- (xv) **Rehab Component / Sale Component** – These refer to parts of a redevelopment project. Rehab component is the portion used to rehouse existing occupants (society members or slum dwellers), which is given free to them. Sale component is the additional flats/commercial area which the developer builds to sell on the market to recover costs and profit.
- (xvi) **Self-Redevelopment** – A scenario where the society does not appoint a private developer; instead, it undertakes the project by hiring contractors and professionals, effectively acting as developer itself. The society may take a bank loan for construction, and sells extra flats directly. Government schemes provide incentives for this (like interest waiver on premiums).
- (xvii) **Cluster Development** – A scheme where multiple neighboring plots are combined and redeveloped together (see DCPR 33(9)). Instead of building-wise, it's area-wise renewal. Yields better planning (parks, wider roads internally) and higher FSI to encourage participation.
- (xviii) **Cessed Building** – In Mumbai, buildings built prior to 1970 and governed by the MHADA (as they paid a repair cess). They often have tenants paying low rents. These buildings are eligible for special redevelopment under DCR 33(7) with incentives due to their poor conditions.
- (xix) **MHADA** – Maharashtra Housing and Area Development Authority. Apart from repairs, MHADA also builds affordable housing. In redevelopment context, if the property is owned by MHADA (like a transit camp or colony), MHADA's no-objection and share in the project (sometimes MHADA gets housing stock or monetary premium) is required.
- (xx) **Conveyance / Deemed Conveyance** – Conveyance is the transfer of title of the land and building to the cooperative society by the original owner/developer. Many old societies lack proper conveyance. Deemed conveyance is a legal remedy where, if the developer refuses to convey, the society can apply to the government which, after inquiry, executes the conveyance in favor of society by law. Without conveyance, a society cannot freely redevelop as it isn't the legal owner of land, so obtaining it is a crucial step.
- (xxi) **MOFA** – The Maharashtra Ownership Flats Act, 1963 (superseded in part by RERA). It mandated promoters to convey title, form societies, etc. Deemed conveyance was introduced under MOFA. Many of its provisions now live on in RERA or housing rules.

- (xxii) **Defect Liability Period** – Post-construction guarantee period during which the developer must fix any construction defects at no cost. In many agreements it's 2-3 years; RERA actually makes promoters liable for structural defects for 5 years. It's important to document issues within this time so developer addresses them.
- (xxiii) **Right to Services Act** – A Maharashtra act that sets time-bound limits for government services. Recently the government brought certain redevelopment approvals under its purview, meaning if an official delays beyond stipulated time, they can be penalized. For instance, approving building plans or issuing commencement certificate might have a 60-day limit now. This is to curb bureaucratic delays in redevelopment.
- (xxiv) **Premium (Government)** – Charges payable to authorities for various concessions. E.g., staircases used to be free of FSI but under new rules counted in FSI; however you can purchase “fungible FSI” by paying a premium (a % of ready reckoner land value). Also, when using TDR, a premium is often payable. The state's interest waiver on premium was about waiving interest on installment payments of such premium amounts to encourage projects.
- (xxv) **HVAC, STP, Rainwater Harvesting, etc.** – Modern buildings require these facilities: HVAC (Heating, Ventilation, Air Conditioning – relevant if the new building has centralized systems or basement ventilation), STP (Sewage Treatment Plant – mandatory for large projects to treat waste water on site), and rainwater harvesting systems. These technical terms might appear in the context of approvals (environment clearance requires STP for projects over certain size, etc.). Not directly finance terms, but as CA, if you see them in budgets, you'll know they're compliance related cost items.

This glossary is not exhaustive, but covers the core terms you'll frequently encounter. Mastering this vocabulary will make it easier to read through agreements, regulations, and correspondences without confusion. When in doubt, refer back to these definitions. Real estate documentation often uses acronyms like a second language – now you're conversant in it.

10.8 End of Chapter – Outcome (Key Takeaways)

In this chapter, we delved into the landscape of redevelopment projects and the pivotal role Chartered Accountants can play. By the end of this comprehensive study, you should have achieved the following outcomes:

- (i) **Grasped Redevelopment Trends and Context:** You understand why redevelopment is booming– aging buildings, urban densification, slum upgrading – particularly in Mumbai/Maharashtra, and how this trend is creating numerous projects (over 3,000 in MMR as of 2025). You also recognize the challenges (infrastructure strain, need for

professional oversight) that underline the importance of capable advisors in these projects.

- (ii) **Familiarity with Applicable Laws:** You have a solid overview of the legal framework governing redevelopment. This includes the cooperative society laws (MCS Act – with its 51% consent rule and government guidelines), real estate regulations (RERA – protecting buyers and mandating project escrow and CA certification), urban development rules (DCPR 2034 and UDCPR 2020 – providing FSI incentives and norms) and the Slum Act for rehabilitation projects . You should be able to identify which laws apply in a given situation and the key compliance points from each.
- (iii) **Knowledge of Process and Documentation:** You can outline the step-by-step process of a housing society redevelopment – from the initial resolution and member consents, through tendering and agreement execution, to construction and handover. Alongside, you’ve learned about crucial documents like the Development Agreement, individual member agreements, and various forms (consent letters, RERA CA certificates, etc.). This positions you to help prepare or review such documentation systematically.
- (iv) **Awareness of CA’s Roles and Opportunities:** You have identified the multiple roles a CA can play – as a financial consultant for societies (e.g. evaluating developer offers, securing bank finance for self-redevelopment), as a compliance/audit expert ensuring RERA and 79A guidelines are followed, as a tax advisor structuring deals to be tax-efficient (e.g. leveraging the Sambhaji Nagar CHS case to avoid capital gains tax), and as a watchdog safeguarding the project’s financial health through ongoing audits. You also see opportunities with developers (project finance, RERA filings) and in dispute resolution (forensic accounting, arbitration support). Essentially, you can articulate how and where CAs add value in redevelopment projects.
- (v) **Problem-Solving in Common Scenarios:** Through the FAQs, you have gained insight into handling typical issues: RERA applicability, tax on member payouts, GST nuances, recourse in case of developer default, dealing with dissenting members and unusual situations (small societies, NRIs, etc.). This practical knowledge means you are better prepared to answer client questions and solve real-world problems confidently and correctly.
- (vi) **Terminology and Concepts Mastered:** You have become conversant with the jargon – FSI, TDR, fungible, OC, conveyance, cluster, SRA, and so on – which will enable you to read and draft correspondences or reports in this domain with clarity and precision . This avoids misunderstandings and helps in communicating effectively with architects, lawyers, and others on the project team.
- (vii) **Resourcefulness and Further Reference:** Lastly, you know where to look for authoritative reference material. Whether it’s a government GR (like the 2019 Maharashtra directive) for procedural clarity or the MahaRERA website for rules and

forms, or academic/ICAI publications for accounting guidance – you have a curated list of sources to deepen your knowledge or get updates (some key ones are listed in the next section). This ability to tap into the right resources will keep you updated, given that laws and regulations do evolve (for instance, new incentives or amended rules may come, and you'll now be able to find and interpret them).

In essence, the outcome of this chapter is to transform a potentially unfamiliar and interdisciplinary topic into a structured body of knowledge that a Chartered Accountant can comfortably navigate. You should now be able to approach a redevelopment project – whether advising a society or a developer with a clear roadmap, awareness of compliance checkpoints, and the confidence to assert your role as a finance and governance professional who will ensure the project's success and integrity. Redevelopment is not just about constructing new buildings; it's about reconstructing compliance and financial frameworks as well – and that's where you, as a CA, now have the toolkit to excel.

10.9 Reference Material (For Further Reading):-

For those who wish to explore more or need to reference official documents and expert analyses, below is a list of recommended reference material related to redevelopment in Maharashtra and India:

Government Regulations and Circulars:-

- (i) **Government Regulations and Circulars:** Government of Maharashtra, Co-operation Dept. – **Directive under Section 79(A) dated 4 July 2019** (Redevelopment Guidelines) provides the official stepwise procedure for housing society redevelopment.
- (ii) **Maharashtra Real Estate Regulatory Authority (MahaRERA)** – Rules and Regulations, 2017: Refer to MahaRERA website for PDF of Maharashtra RERA Rules and FAQs. Particularly see Rule 5 for withdrawals and the Form 5 auditor report format.
- (iii) **Development Control and Promotion Regulations 2034** – Municipal Corporation of Greater Mumbai. (MCGM's official publication of DCPR 2034, detailing Regulations 33(5), 33(7), 33(9), etc. Use this for exact FSI and eligibility conditions.)
- (iv) **Unified DCPR 2020 for Maharashtra** – Urban Development Dept. Notification dated 2 Dec 2020. (Available on Maha Urban Dev Dept site; a 397-page document 25 27 with state-wide building norms. Focus on Chapter 7 which deals with redevelopment incentives outside Mumbai.)
- (v) **Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971** – Bare Act. (Can be found on SRA's official site or legal databases. Key sections: 3 (declaration of slum), 11 (improvement), 13 (schemes), 14 (Rehousing and development))

Websites:

- (i) **MahaRERA Official Website – maharera.mahaonline.gov.in** – for project registration details, developer profiles, and rulings. (You can search orders/judgments by project or promoter name to see if any redevelopment issues have been adjudicated.)
- (ii) **Slum Rehabilitation Authority (SRA) Mumbai – www.sra.gov.in** – repository of SRA policies, circulars, project status, and guidelines for slum redevelopment.
- (iii) **Maharashtra Housing Department – housing.maharashtra.gov.in** – often posts GRs and housing policy news (e.g., self-redevelopment schemes, interest waiver announcements).
- (iv) **Maharashtra Societies Welfare Association (MahaSeWA) – mswa.co.in** – NGO site with resources like model documents, articles on society management and redevelopment. (They often publish translations of govt circulars, legal case updates, etc.)
- (v) **Brihanmumbai Municipal Corporation (BMC) – Downloads – portal.mcgm.gov.in** – has links to important circulars, like those on cess building redevelopment, cluster approvals, etc.
- (vi) **Griharmony Redevelopment Stakeholder's Federation (GRSF)- grsf.in** – A Charitable Body registered under Sec 8 of Companies Act, 2013 as a Federation of Self-Regulatory Organizations of various stakeholders in Redevelopment, dedicated to Information Dissemination, Stakeholder Collaboration, Informed Decision Making, Tech-enabled Project Monitoring and Alternate Dispute Resolution.

Professional and Academic Publications

“Redevelopment Laws in Mumbai – A Legal Overview” – by Katarki & Associates (2023) . (A thorough article reviewing all laws; useful for legal background and references.)

Bombay Chartered Accountants' Journal (BCAJ) – e.g., “Slum Redevelopment – Part I” by Anup Shah (Aug 2011) 15 38 and Part II (Sep 2011). (Though a bit dated, these articles explain SRA schemes, tax implications, with case citations.)

ICAI Guidance Note on Accounting for Real Estate Transactions (Revised 2012) . (Covers revenue recognition for developers; has a section on redevelopment arrangements and how to account for them under various scenarios.)

“FAQ's on Redevelopment of Co-operative Housing Societies” – a book by CA Ramesh Prabhu (President of MahaSeWA). (It's a comprehensive Q&A format book addressing legal and tax issues – a good practical guide.)

“Guide to Redevelopment of Co-operative Housing Societies” Procedures and Checks based on Laws Applicable in Maharashtra, By CA. S. H. Teckchandani – Past Chairman Navi Mumbai Branch of WIRC of ICAI. (A comprehensive book covering the entire subject of

Redevelopment including the development Control regulations, taxation and dispute redressal.)

Research papers / World Bank reports on Mumbai redevelopment: e.g., “Addressing Slum Redevelopment Issues in India” (University of Michigan, 2014) – provides context on slum policies and FSI incentives

News Articles and Case Studies:

Indian Express (Cities) – “Redevelopment boom in Mumbai: How it will shape the city...” (April 2, 2025) – gives latest stats and expert opinions on current redevelopment scenario.

Times of India – “CM announces 8.5% interest waiver on self-redevelopment premiums” (Feb 26, 2025) – details new incentives for societies

Moneycontrol / Housing.com News – they have explanatory articles like “Unified DCPR – win-win for Maharashtra real estate” and FAQs on redevelopment in Mumbai (older but conceptually useful)

Case law references: Use indiankanoon.org or Judis.nic.in to find full text of judgments like Bombay High Court W.P. 2737 of 2019 (Pantnagar Pearl CHS vs. Choice Developers) for majority vs minority rights, or Bombay HC ITA 1353 of 2012 (Sambhaji Nagar CHS) for taxation

Each of these sources can provide more depth or serve as evidence when advising clients. Government sites give you primary documents (always the most reliable for compliance), while professional analyses help interpret them. As redevelopment practices evolve, stay alert to new GRs or court judgments (for instance, any new High Court ruling on GST or a change in consent percentage law). The references above were current as of 2025 and form a solid foundation for your continued learning and reference.

By combining the knowledge gained in this chapter with these resources, you’ll be well-equipped to confidently navigate and lead in the domain of redevelopment projects – contributing your financial acumen to the creation of new urban skylines and communities

10.10 Self Appraisal

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 11

GST in Real Estate

11.1 Introduction

Real Estate transactions traditionally fall under the Entry-49 of List-II of the Seventh Schedule to the Constitution of India, granting states the authority to levy taxes on such dealings. As a result, these transactions are generally outside the purview of the Goods and Services Tax (GST). However, following the Supreme Court's ruling in the case of ***K. Raheja Development Corporation versus State of Karnataka*** dated 05.5.2005 [Citation: 2005 (5) TMI 7 - SUPREME COURT], construction services- particularly those involving agreements between builders and buyers prior to or during the construction phase- are treated as services. This distinction brings certain construction- related activities within the scope of GST, separating them from pure real estate transactions.

Under the service tax regime, there was no mechanism to determine the value of the service component in builder-customer composite contracts. In ***Suresh Kumar Bansal*** [2016 (6) TMI 192], dated 03.06.2016, the **Delhi High Court** held that while Parliament could tax the service element, the levy was invalid without a valuation mechanism. Hence, no service tax could be levied under Section 66 read with Section 65(105)(zzzh). In contrast, GST law provides specific provisions and a valuation mechanism to tax such composite supplies.

Under GST law, **construction activities** are treated as supply of services as per **Schedule II** of the CGST Act. If any consideration is received before the issuance of a completion certificate, the transaction is taxable. In contrast, sale of land and sale of completed buildings are excluded from GST under **Schedule III** with a principle of treating it as immovable property transactions. This distinction is key: while such sale of land and completed building is outside GST, most real estate activities—such as development, construction, marketing— fall within its scope.

GST is embedded across the entire project life cycle—from acquiring **development rights (TDR/FSI)**, procurement of inputs, execution of Joint Development Agreements, construction, unit sales during construction, to post-possession services like maintenance. Each phase carries its own GST implications.

Critical issues include **input tax credit (ITC)** restrictions, **reverse charge mechanism (RCM)**, valuation challenges, and exemption conditions. Complex arrangements like JDAs, leasehold rights, and redevelopment further add to the sector's tax intricacy.

This course is designed to help participants build a general understanding of GST in real estate—covering legal provisions, practical application, and compliance—regardless of prior exposure to the subject.

11.2 Objective and importance

This chapter aims to explain why understanding GST in real estate is essential for professionals involved in this sector. GST impacts every stage of a real estate project right from land acquisition to handover of possession.

Construction against advance booking by a prospective buyer is treated as a **supply of service** under GST, while sale of land and completed buildings are excluded. This distinction is vital for tax compliance and planning.

Real estate involves high-value, long-duration transactions. Misapplying GST provisions can lead to loss of input tax credit, penalties, and litigation.

This chapter helps to understand how GST may affect pricing, contract structuring, valuation, and financial decision-making in the real estate industry.

It introduces the legal framework, key concepts, and the broad impact of GST across the project lifecycle, laying the groundwork for deeper learning in upcoming chapters.

11.3 How to Read and Understand GST for Real Estate

Understanding GST in real estate requires a layered and structured approach. Start with **Section 9**, the charging section which says “supply” is the object of taxation, followed by **Section 7**, which defines “supply.” Then read other relevant provisions of the **CGST Act**, such as Section 15 dealing with valuation, Section 13 dealing with time of supply of services, and Section 16 to 21 dealing with input tax credit.

Since the Act often uses the phrase “**as may be prescribed**,” it’s essential to refer to the **CGST Rules** for procedural clarity. Rules bridge the gap between statutory provisions and practical implementation.

Next, consult applicable **Notifications** for tax rates, exemptions, and special provisions related to construction, TDR, FSI, leasing, and JDAs. Follow this with **CBIC Circulars**, which explain departmental interpretations and offer clarity on common industry issues.

Finally, refer to **case laws** to understand judicial interpretations and real-world application of the law. Though Advance Rulings are not precedents, it can be referred to consider various issues that can arise and possible possible interpretations relating to the same. Reading in this sequence **Act, Rules, Notifications, Circulars, Case Laws** ensures accurate, compliant, and well-rounded understanding of GST in real estate.

11.4 Extract of Relevant Statutory Provisions [ACT & RULES]

Section 9: Levy & Collection

Section	Sub-Section	Particulars
Section 9	1	Levy of CGST on all intra-State supplies of goods or services or both, excluding alcoholic liquor for human consumption and certain alcohols, based on value under section 15 and at notified rates, to be paid by the Taxable Person.
	2	Levy of CGST on five petroleum products to be notified by Government on recommendation of the Council.
	3	Reverse charge mechanism: Specified goods/services where recipient pays tax, as notified by Government on Council's recommendation.
	4	Reverse charge on supply from unregistered suppliers to specified class of registered persons, on specified goods/services as notified.
	5	E-commerce operator is liable to pay CGST on the specified intra-State services supplied through it. Responsibility shifts if no physical or representative presence.

Section 9: Levy and Collection

1. Levy CGST on intra-state supplies except on alcoholic liquor and certain alcohols, of value determined under Sec 15, at a rate **not exceeding 20% (40% u/s 5 of IGST Act, 2017 in case of inter-state supplies)**, payable by taxable person.

5. Specify category of services – tax to be paid by E-commerce operator for supply of services through it. Provided if E-comm operator does not have physical presence, any person representing them shall be liable to pay tax.

Central Govt. shall

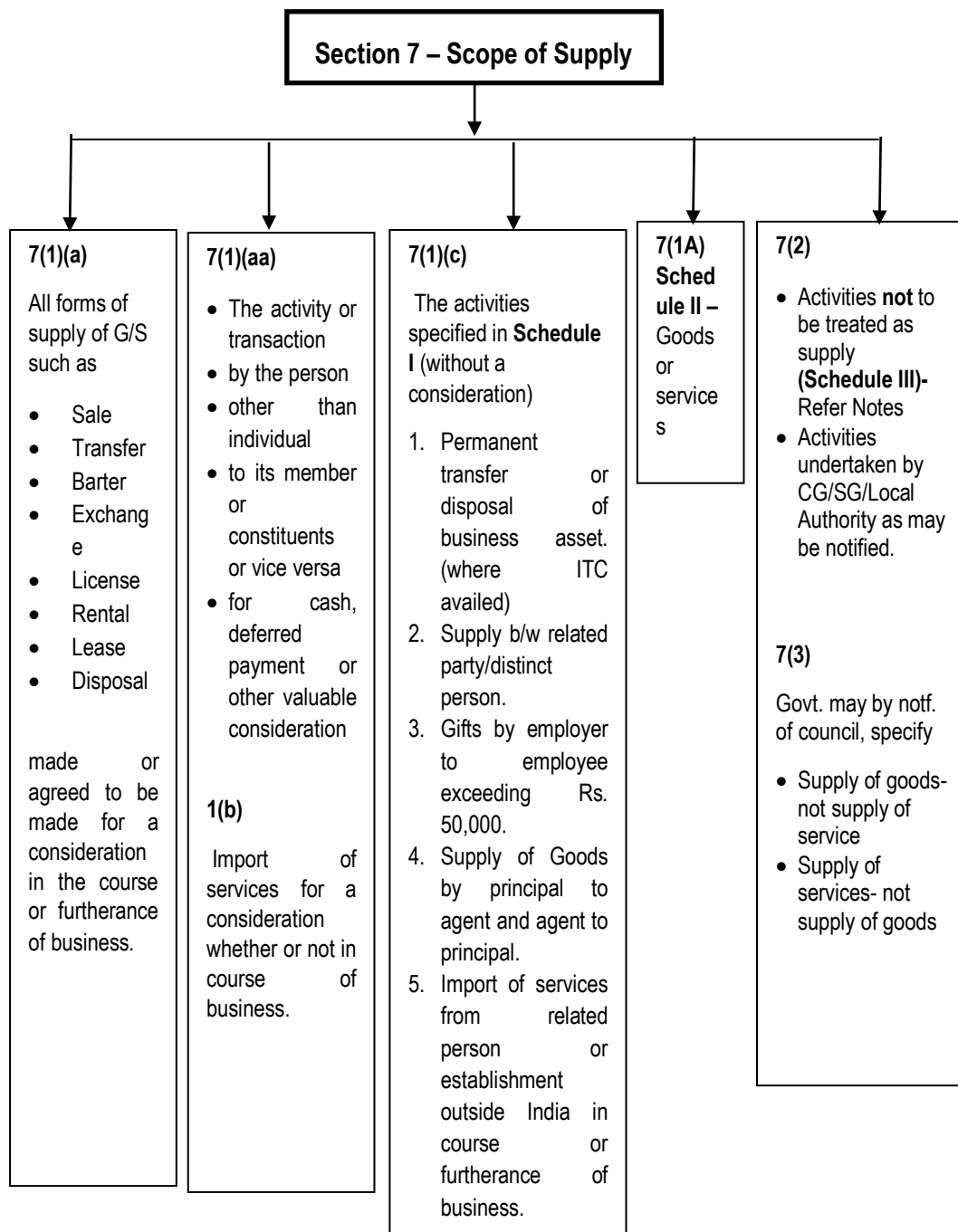
2. central tax on supply of petroleum crude, high speed diesel, petrol, natural gas and aviation turbine fuel shall be levied from such date as may be notified.

4. Specify class of registered person - Supply of specified G/S by an **unregistered person to a registered person** - tax to be paid by recipient on Reverse charge basis.

3. Specify categories of G/S - tax payable on **Reverse Charge** basis.

Section 7: Scope of Supply

Section	Sub-Section	Particulars
Section 7	1(a)	Includes all forms of supply such as sale, transfer, barter, exchange, lease, etc., for consideration in the course or furtherance of business.
	1(aa)	Supply includes activities or transactions between a person (other than individual) and its members/constituents for consideration. Deemed to be between two separate persons.
	1(b)	Import of services for consideration is considered supply, regardless of business purpose.
	1(c)	Activities listed in Schedule I are deemed supply even if made without consideration.
	1A	Activities constituting supply under sub-section (1) shall be classified as either supply of goods or supply of services as per Schedule II.
	2	Certain activities listed in Schedule III or notified public authority activities are neither supply of goods nor supply of services.
	3	The government may notify whether a transaction is to be treated as either supply of goods or supply of services based on Council recommendation.



Schedule II – Activities to be Treated as Supply of Goods or Services

Sl. No.	Activity/Transaction	Nature of Supply
1	Lease, tenancy, easement, or license to occupy land	Supply of Services
2	Lease or letting out of building (commercial, industrial, or residential) for business or commerce	Supply of Services
3	Renting of immovable property	Supply of Services
4	Construction of complex/building intended for sale (unless entire consideration received post-completion)	Supply of Services
5	Temporary transfer/use of intellectual property right	Supply of Services
6	Development, design, etc., of IT software	Supply of Services
7	Agreeing to refrain from an act, to tolerate an act/situation, or to do an act	Supply of Services
8	Transfer of right to use any goods for consideration	Supply of Services

Schedule III – Activities Treated Neither as Supply of Goods nor Services

Sl. No.	Activity/Transaction	Classification
1	Sale of land	Neither Good nor Services
2	Sale of building (post completion certificate or first occupation)	Neither Good nor Services

Rate of Tax – As per Notification No. 11/2017 – CT (R) dated 28.06.2017 as amended vide Notification No. 03/2019–CT(R) dated 29.03.2019.

Rate of Tax [N/N 03/19–CT(R)]							
RREP (R+C) (C≤15%)		REP (Other than RREP) (C>15%)		Ongoing -Scheme (any) -Option		Others	
(i) ARA	1%	(ic) ARA	1%	(ie) Apartme nt	6%	(if) Complex Commercial RA (Other than ARA)/	12%
(ia) Other	5%	(id) Other	5%			Ongoing/ Option	12%
(ib) Commercial	5%						12%

Conditions for availing benefit of reduced rates

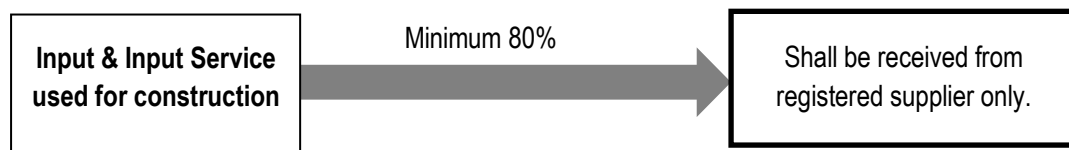
- 1) **Tax shall be paid in cash**, i.e by debiting the e-cash ledger only,
- 2) **Credit** of input tax on G/S used in supplying the services has **not been taken except** to the extent as prescribed – **Annex I & II**.

[ITC on G/S received on/after 01.04.2019 = **Total ITC** availed on inputs & input services **from 01.07.2017 to 31.03.2019** – **Eligible ITC** attributable to construction of commercial & residential portion, TOS of which is on/before 31.03.2019]

- 3) **Pay** in cash or credit = **ITC** attributable to construction, TOS of which is on/after 01.04.19.

[**Amt payable** = Total ITC availed on inputs & input services from 01.07.2017 to 31.03.2019 – Eligible ITC attributable to construction of Commercial & Residential portion whose TOS on/before 31.03.2019]

- 4) In case transfer of DR against consideration, wholly or partly, in form of construction of apartments, developer shall pay tax on supply of construction of apartments to the L/O.
- 5) L/O eligible for credit of taxes charged by developer for construction of apartments, provided L/O further supplies such apts to buyers & pays tax on the same which is not less than the tax charged from him by developer.
- 6) 80:20 Compliance
 - All cement must be purchased from registered supplier only.
 - If not so received, the promoter is required to pay GST @28% under RCM on monthly basis.
 - **After considering payment of GST on cement**



Other than services by way of grant of development rights, long term lease of land or FSI, electricity, high speed diesel, motor spirit, natural gas

In case of shortfall computed F.Y. basis, GST @ 18% is payable on value to the extent of shortfall

Section 15: Value of Taxable Supply

Section	Sub-Section	Particulars
Section 15	1	Transaction value is the price actually paid or payable when supplier and recipient are not related and price is the sole consideration.
	2	Value includes: taxes (other than taxes and cesses under GST laws), supplier's liabilities paid by recipient, incidental expenses, late fees/penalties, and price-linked subsidies (excluding govt subsidies).
	3	Value excludes discounts if given before or at supply and recorded in invoice, or after supply if pre-agreed, invoice-linked, and ITC reversed by recipient.
	4	If value cannot be determined under sub-section (1), it shall be determined as prescribed.
	5	Government may prescribe valuation method for notified supplies, overriding subsections (1) and (4).

Section 15- Value of Taxable Supply

15(4): Value of supply cannot be determined



Refer Rule 27 - 31
for Rule 31A, 32, 33, 34

15(5): Special Cases



Refer Rule 31A-C, 32, 33, 34
Refer Rule 31A, 32, 33, 34
fer Rule 31A. 32. 33. 34

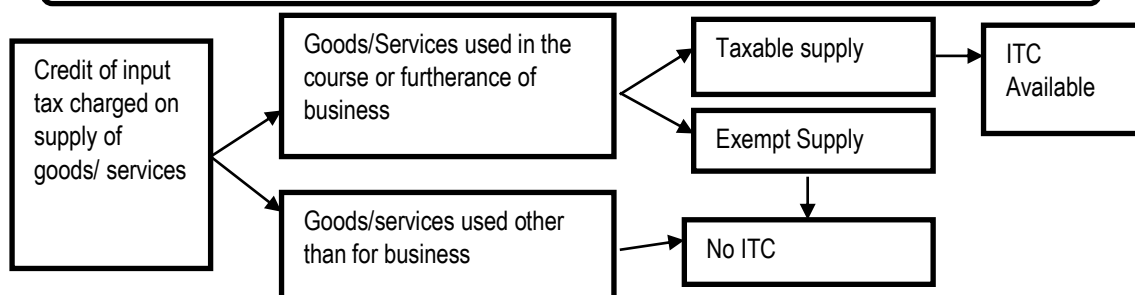
Computation of GST= Value of supply of Goods/services: Section 15 × Rate of Tax

15(1) Value of Supply = Transaction value - Transaction value is Price Actually paid or payable - where the supplier and recipient are not related and - price is sole consideration	15(2) Value of supply <u>include</u>: - All Taxes (Exc. GST & Comp. cess) - Supplier's Obligations. Amount Payable by Supplier but incurred by Recipient - Expenses Incidental (Packing, Commission etc.) - Delayed Payment, Interest & Penalty - Non-Govt. Subsidy	15(3) Value of supply <u>exclude</u>: Discount known at the time of Supply.

Rule 27	Rule 28	Rule 29	Rule 30	Rule 31
Consideration not wholly in money.	B/W related or distinct person.	Supply made/ received through agent.	Value of supply of G/S based on cost	Residual method
a. Open market Value of such supply. b. consideration in money+ money value of other consideration.	1.a. Open market value (OMV) of such supply. Provided where the recipient is eligible for ITC, the value declared in the invoice shall be deemed to be the open market value.	a. Open market value of such supply or 90% of the price charged by the supplier when sold to unrelated person. - Option between two	Value not determinable under previous rules- then it shall be 110% of cost of production or manufacture or cost of acquisition G/S.	Value cannot be determined under rule 27 to 30, then- determined using reasonable means under provisions of sec- 15 and these rules.
c. Value of supply of like kind and quality.	b. Value of supply like kind and quality. c. As per rule 30 or 31.			Provided that in case of supply of services, the supplier may opt for this rules, disregarding rule 30.
d. As per rule 30 or 31.	2. Providing Corporate Guarantee to Banking Co. Or FI Value of Supply of Services Higher of - 1% p.a. of guaranteed amt OR - Actual Consideration.	b. As per rule 30 or 31.		

Section 16: Eligibility & Conditions for taking Input Tax credit

Section	Sub-Section	Particulars
Section 16	1	Registered persons can claim input tax credit (ITC) on supplies used or intended for business, subject to conditions and credited to electronic credit ledger.
	2	Conditions for availing ITC: possession of valid document, invoice reported by supplier, receipt of goods/services, tax paid to government, and return filed. ITC reversal if payment not made within 180 days, but can be reclaimed upon payment.
	3	No ITC allowed if depreciation is claimed on tax component of capital goods or machinery under Income-tax Act.
	4	ITC must be claimed by 30th November of the following financial year or before filing the annual return, whichever is earlier.
	5	Special provision for FY 2017–18 to 2020-21 invoices if returns filed before 30 th November 2021.
	6	If returns could not be filed due to the cancellation of registration and on the date of cancellation the input tax credit could have been claimed will be eligible if the returns are filed within 30 days of restoration of registration.

Section 16 (r/w rule 36 & 37): Eligibility & conditions for taking Input tax credit

Conditions for claiming ITC [Sec 16 (2)]
*Tax paying document (Docs – Rule 36(1))
*Goods/ Services Received
*Reflection in GSTR 2B
*Not restricted u/s 38
*Tax paid to Govt
*Return furnished

Section 17(5): Blocked Credit

Section	Sub-Section	Particulars
Section 17	5(c)	No ITC on works contract services for construction of immovable property (except plant and machinery), unless used for further supply of such services.
	5(d)	No ITC on goods or services received for construction of immovable property on own account, even if used in business. "Construction" includes capitalised repairs, renovation, alterations.

17(5): Blocked Credit

c) Works contract service for construction of immovable property, other than P&M **except** where **outward supply** is also **works contract service**,

Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

d) Goods/services received for **construction of immovable property** other than P and M, on his **own account**

Notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal or any other authority any reference to P or M shall be construed as P and M.

Rule 42: Manner of determination of ITC in respect of inputs or input services and reversal thereof

Reversal of ITC of Inputs & Input services: There are both **exempt & taxable** supplies (including zero rated), or **business & non-business** transactions.

Particulars	Amount
Total Credit for the Month (T)	
Credit exclusively used for Other than Business (T1)	
Credit exclusively used for exempt supply (T2)	
Blocked Credit as per sec 17(5) (T3)	
Credit taken in Electronic Credit Ledger [C1 = T-(T1+T2+T3)]	
Credit exclusively used for taxable supply (T4)	
Common Credit [C2 = C1-T4]	
Exempt supply during taxable period (E)	
Total turnover in a state during taxable period (F)	
Proportionate Credit to be reversed for exempt supplies [D1 = E/F*C2]	

➤ Credit attributable to non-business purpose = $D2 = 5\% * C2$
➤ Eligible ITC (attributable for business purpose & for effecting supplies other than exempt but including zero rated): $C3 = C2 - (D1+D2)$
➤ Credit calculated for Central, State, UT & Integrated separately
➤ ITC calculated using aforesaid formula shall be calculated finally for the year, before the due date of filing return for the month of September following the end of F.Y to which the credit relates
➤ Final amount > Value as per formula: Excess shall be reversed & interest should be paid.

Rule 43: Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases

Capital Goods: There are both **exempt & taxable** supplies (including zero rated), or **business & non-business** transactions. Reversal of ITC - Formula prescribed under **Rule 43(1)**.

➤ Calculate common credit, by reducing Total credit with the followings: -
• ITC on Non-Business Supplies
• ITC on Taxable Supplies

•	ITC on Exempt Supplies
➤	Common credit (T_c)– treat as follows: Amount attributable to tax period for a particular Capital good (T_m) = $T_c \div 60$ (ITC on capital goods is allowed for 5 years {12 * 5= 60})
➤	Total of all such $T_m = T_r$
➤	Amount of credit attributable to exempt supplies = $T_e = (E \div F) \times T_r$ (E – Exempt supplies and F – Total turnover for tax period) Such T_e along with interest is to be added to output tax liability
➤	Common credit should be adjusted, with any change in nature of Capital goods (example, assets used only for exempt supplies, is thereon used for providing taxable supplies)
➤	Such a change is subject to deduction of base points 5% per quarter.

Summary Table of Relevant Notifications

Notification No.	Subject	Particulars
03/2019-Central Tax (Rate)	Introduced new GST rates for construction services	• 0.75% for low-cost residential apartments in RREP. • 3.75% for other residential and commercial flats in RREP. • Tax can be paid in cash only; no ITC permitted except as per Annexure I/II. • 80% of input services to be obtained from registered suppliers. • Shortfall to be taxed @ 18% under RCM; cement to be taxed under RCM if sourced from unregistered. • Developer-promoter to pay GST on supply to landowner-promoters. • Landowner-promoter: Eligible for ITC if subsequent supply is taxable. • Special valuation rules and project-wise ITC reversal/RCM liability envisaged.
04/2019-Central Tax (Rate)	Exempted GST on transfer of Development Rights	• Exemption on TDR and FSI. • Long-term lease (30 years or more) for residential construction is exempted.

	(TDR) and Floor Space Index (FSI)	- Exemption limited to proportion booked before completion certificate. - RCM liability for unbooked apartments at completion; capped at 0.5% (affordable) or 2.5% (others). - Project-wise tracking of bookings and carpet area required for valuation.
05/2019-Central Tax (Rate)	Specified promoters liable under RCM for services by TDR, FSI, long-term lease	- Promoters are liable under RCM for services by TDR, FSI. - GST to be paid by promoter when services are received from any person.
06/2019-Central Tax (Rate)	Notified specific classes of promoters liable under RCM	- Liability under RCM for receipt of TDR/FSI for residential or commercial construction. - Liability for receipt of long-term lease for residential projects. - Tax to be paid before or at completion/first occupation. - Clarified timeline and valuation methods for such transactions.
07/2019-Central Tax (Rate)	Mandated RCM on shortfall in procurement from registered suppliers	- RCM on shortfall in procurement from registered suppliers (<80%). - Cement procured from unregistered person (chapter 2523). - Capital goods procured for construction. - Applies only to projects under 03/2019 for these items.
08/2019-Central Tax (Rate)	Inserted 9% tax under Schedule III for goods supplied by unregistered persons	9% tax on goods (excluding capital goods and cement) supplied by unregistered persons to promoter. - GST liability on promoters under RCM for such goods.

Summary Table of Relevant Circulars

Circular No.	Subject	Particulars
228/22/2024 dtd. 11.07.2024	Clarification on GST applicability on statutory collections by RERA	• RERA constituted under the Real Estate (Regulation and Development) Act, 2016. • Performs regulatory functions under Entry No. 1 and 2 of Twelfth Schedule of Constitution. • Identified as "governmental authority" under Notification No. 12/2017-CT(R) dated 28.06.2017. • Covered under Sl. No. 4 of same notification. • 53rd GST Council recommended exemption clarification. • Statutory collections by RERA are exempt from GST under Sl. No. 4 of Notification No. 12/2017-CT(R).
206/18/2023-GST dtd. 31.10.2023	Clarification on GST applicability on reimbursement of electricity charges by real estate entities	• Electricity supplied bundled with renting/maintenance forms a composite supply; taxed as per principal supply. • Even if billed separately, it is taxed as renting/maintenance. • If electricity is charged at actuals as per DISCOM/state board rates, and the entity acts as pure agent, GST is not applicable.
177/09/2022-TRU dtd. 03.08.2022	Clarification on GST applicability on location/preferential location charges (PLC) with lease premium	• Upfront location charges are part of lease premium for long-term lease of land. • Such charges are exempt under Sl. No. 41 of Notification No. 12/2017-CT(R) dated 28.06.2017. • PLC being integral to long-term lease is treated similarly for GST exemption.
109/28/2019-GST dtd. 22.07.2019	Clarification on GST exemption on maintenance charges by RWAs	• Exempt if charges $\leq$ ₹7500/month/member; earlier ₹5000 till 25.01.2018. • If turnover $\leq$ ₹20 lakh, no GST

		registration is required even if charges > ₹7500. • GST applies on entire amount if charges > ₹7500/month/member. • Exemption limit applies per flat owned. • ITC available for GST paid on goods/services used. • RWAs must charge GST if both turnover > ₹20 lakh and maintenance > ₹7500/month.

Summary Table of Relevant Judicial Pronouncements

Case Name	Citation	Issue	Court's Findings and Decision
Alembic Ltd v. Commissioner	[2019 (29) GSTL 625 (Gujarat)] dated 23.07.2018	Whether Cenvat credit availed on input services must be reversed after output service becomes exempt due to completion certificate.	Held: No reversal required for input services already used when the output was taxable. Exemption applies only post-completion. Rule 6 of Cenvat Credit Rules not applicable retrospectively.
Subhash Chand Surana v. Commissioner	[2019 (21) G.S.T.L. 533 (Tri. - Delhi)] dated 22.05.2018	Whether Service Tax is payable by landowner on flats sold under Joint Development Agreement (JDA) before and after completion certificate.	Held: Service Tax applicable on flats sold before obtaining completion certificate. Not applicable for flats sold post-completion as no construction service was rendered thereafter.
Nirmal Lifestyle Developers Pvt. Ltd. v. Union of India & Others	2025 (4) TMI 809 – Bombay High Court dated 09.04.2025	Whether revenue sharing under development agreement is a taxable supply of service.	Held: Revenue sharing under development agreement not a supply of service under GST; interim relief granted based on arguable question of law; matter pending final hearing.

M/s Shrinivasa Realcon Pvt. Ltd. v. Dy. Commissioner, Anti-Evasion Branch, CGST & CE, Nagpur & Ors.	2025 (4) TMI 931 – Bombay High Court dated 08.04.2025	Whether the use of existing FSI without TDR transfer attracts GST under Entry 5B.	Held: No GST applicable as no transfer of TDR/FSI occurred; show cause notice and order quashed.
Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors.	2025 (1) TMI 516 – Gujarat High Court dated 03.01.2025	Whether assignment of leasehold rights is a taxable service under GST.	Held: Assignment of leasehold rights is transfer of immovable property; not liable to GST under Schedule III.
Prahitha Construction Pvt. Ltd. v. State of Telangana	2024 (2) TMI 902 - TELANGANA HIGH COURT	Whether TDR under JDA is taxable under GST or exempt as sale of land.	Held: TDR is a taxable service as no ownership is transferred; GST Notification valid; exemption under Schedule III not applicable.
Builders Association of Navi Mumbai v. Union of India	2018 (4) TMI 461 - BOMBAY HIGH COURT	Whether lease for 99 years is a sale of land and thus exempt from GST.	Held: 99-year lease is not a sale; considered service and taxable under GST; CIDCO not exempt.
Munjaal Manishbhai Bhatt v. UOI	2022 (5) TMI 397 - GUJARAT HIGH COURT	Whether the 1/3rd deemed deduction for land under the notification is ultra-vires the CGST Act and Constitution?	Held: Notification introducing a uniform 1/3rd land deduction is arbitrary, lacks statutory backing, and violates Sections 7, 9, and 15 of the CGST Act. Valuation must be based on actual consideration, not deeming fiction. The notification was declared ultra-vires and violative of Article 14 of the Constitution.
Chief	2024 (10) TMI 286	Whether clauses	Held: The validity of

Commissioner Of Central Goods And Service Tax & Ors. Versus M/S Safari Retreats private Ltd.	- SUPREME COURT / 2024 (90) GSTL 3 (SC)	(c) and (d) of Section 17(5) of the CGST Act, 2017 blocking ITC on goods/ services used for construction of immovable property are constitutionally valid	Section 17(5)(c) & (d) of the CGST Act, ruling that ITC is a statutory benefit and exclusions are valid. It held that “plant or machinery” in Section 17(5)(d) differs from “plant and machinery” and cannot be interpreted beyond the statute. Whether a mall, warehouse, or similar building qualifies as a “plant” is a factual matter based on its role in the taxpayer’s business.
Shashi Ranjan Constructions Private Limited vs. Union of India	Order dated 05.05.2025 in Civil Writ Case No.6700 of 2024 Patna HC	When JDA was entered into prior to GST whether GST to be paid on construction happened post GST	Held: There is no evidence of transfer of land to the developer through the 2014 development agreement. The agreement only gave a license to develop the land. The petitioner was not taxed for supply of TDR, but rather for construction services. Hence the levy of GST on construction services upheld.

11.5 Frequently Asked Questions (FAQ's)

1. Is GST applicable on the sale of an apartment before and after obtaining Completion Certificate (CC)?

Ans: Before CC: Treated as supply of service and GST at the applicable rates 1.5%/ 7.5% or 18% as applicable, as per Notification No. 11/2017- CT dated 28.06.2017 shall apply.

After CC: Not a supply under GST; covered under Schedule III; GST not applicable.

2. In a real estate transaction involving the sale of a flat, certain additional charges are commonly levied by the builder/promoter such as Preferential Location Charges (PLC), External Development Charges (EDC), Internal Development

Charges (IDC). *Whether such charges form an integral part of the sale of a flat, would they be treated as part of a composite supply under GST?*

Ans: These charges forms part of composite supply and shall be taxable at the same rate as the construction service. [Ref Circular No. 234/28/2024 dated 11.10.2024]

3. What is a Real Estate Project (REP)?

Ans: “Real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

4. What is Residential Real Estate Project (RREP)?

Ans: RREP shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

5. Is proportionate reversal of input tax credit required in relation to the one-third deduction claimed towards the value of land on sale of property?

Ans: The sale of land is not considered a supply under GST. Since input tax credit (ITC) reversal is applicable only in respect of exempt supplies, no proportionate reversal is required for the sale of land.

6. What is a Joint Development Agreement?

Ans: A **Joint Development Agreement (JDA)** is a contractual arrangement between a landowner and a developer, where the landowner contributes land and the developer undertakes the responsibility of construction, approvals, marketing, and overall project execution. Under a JDA, the landowner typically allows the developer to construct a residential or commercial project on the land. In exchange, the landowner receives consideration in the form of a share in the constructed area.

7. What is Revenue Sharing Model?

Ans: In this model, the landowner grants development rights to the developer. The developer undertakes the construction and sale of the project, and the landowner receives a predetermined percentage of the revenue generated from these sales.

8. What is Area Sharing Model?

Ans: Under this arrangement, the landowner grants development rights to the developer and, in return, receives a specific portion of the constructed area (e.g., certain flats or commercial spaces) upon project completion.

9. What are the tax implications on one-time upfront amount charged on lease transactions?

Ans: One **time upfront amount** (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of **industrial plots** or plots for development of infrastructure for financial business,, provided by the State Government Industrial Development Corporations or Undertakings to industrial units is exempted from GST as per Entry No. 41 of **Notification No. 12/2017- Central Tax dated June 28, 2017.**

11.6 Glossary/Abbreviation

Sr No.	Abbreviation / Term	Full Form / Description
1.	RREP	Residential Real Estate Project – Project in which commercial portion is $\leq 15\%$ of total carpet area; qualifies for concessional GST rates.
2.	REP	Real Estate Project – Any real estate project not fulfilling the RREP condition; includes larger commercial share.
3.	TDR	Transfer of Development Rights – Rights transferred by landowners to developers to build beyond base FSI. Taxable under RCM.
4.	FSI	Floor Space Index – The ratio of permissible built-up area to the plot area as allowed by building regulations.
5.	JDA	Joint Development Agreement – Agreement where landowner contributes land and developer undertakes construction; GST implications arise on both sides.
6.	RCM	Reverse Charge Mechanism – A tax collection system under which the recipient of goods/services pays GST directly to the government.
7.	ITC	Input Tax Credit – Credit for the GST paid on purchases (goods/services) used in business. Limited in residential construction.
8.	OMV	Open Market Value – The price at which goods/services would be sold in an open market between unrelated parties.
9.	CC	Completion Certificate – Official document certifying project completion. Sales post-CC are not taxable under GST.
10.	PLC	Preferential Location Charges – Charges for units in

		preferred locations (e.g., corner, park-facing); taxable if charged before CC.
11.	EDC / IDC	External / Internal Development Charges – Charges for external or internal infrastructure works. Taxable prior to CC.
12.	RWA	Resident Welfare Association – Society managing common services for housing societies. Subject to GST if thresholds exceeded.
13.	P or M	Plant or Machinery
14.	P and M	Plant and Machinery
15.	ARA	Affordable Residential Apartment – Apartment having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.
16.	TOS	Time of Supply
17.	DR	Development Rights
18.	G/S	Goods or Services or Both
19.	L/O	Land Owner in JDA
20.	N/N	Notification Number
21.	F.Y.	Financial Year

11.7 Outcome

By the end of this chapter, participants expected to have acquired a clear and structured understanding of how GST applies to the real estate sector. They would now be able to distinguish between taxable and non-taxable transactions recognizing that construction activities are treated as supply of services under GST when sold before completion, while sale of land and completed properties are excluded from its scope. The chapter has laid the legal foundation by introducing key sections of the CGST Act, including Sections 7, 9, 15, 16, and 17, along with relevant Rules, Schedules II and III, and the practical relevance of Notifications and Circulars. Participants have been introduced to critical issues such as valuation, reverse charge, input tax credit restrictions, and the tax treatment of development rights and joint development agreements. With this initial exposure, participants are encouraged to further explore the legal provisions, refer to case laws and department clarifications, and build a deeper understanding. This will enable them to gradually develop the competence required to handle GST implications in real estate transactions with greater clarity and confidence.

11.8 Reference Material

- Publications on GST by the Indirect Taxes Committee of ICAI
- CBIC (Central Board of Indirect Taxes & Customs)
- TMI (Tax Management India)
- Centaxonline.com

11.9 Self Appraisal

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 12

Notices under GST

12.1 Introduction

The Goods and Services Tax (GST) regime imposes stringent compliance requirements on developers, landowners, and contractors in the real estate sector. Non-compliance, whether substantive or procedural, often results in notices from the GST department. This chapter aims to familiarize readers with the common types of GST notices issued to real estate stakeholders, highlight key areas of non-compliance that trigger. Such notices typically stem from issues including improper input tax credit claims, erroneous return filings, undervaluation of supplies, tax evasion in Joint Development Agreements, or failure to transfer tax benefits to buyers. These notices may demand payment of tax, interest, and penalties, seek clarifications, or initiate audits and investigations. Given the complexities of the real estate sector, interpretational challenges, and case-specific contractual terms, tax disputes are highly individualized. Consequently, the sector faces rigorous scrutiny by Revenue authorities, with the recent increase in notices driven by enhanced automation of departmental processes.

12.2 Objective and importance

This chapter draws attention to critical areas of non-compliance that may trigger such notices. In recent times, the department has been issuing notices for minor clerical discrepancies in GST monthly returns, as also substantive violations. With reference to GST Rate in alignment with the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA) a series of notifications were issued in the year 2019 necessitating time bounding intimation of opting for schemes on the on ongoing projects.

Upon receipt of any notice, the taxpayer must provide a timely and suitable response to the Proper officer. While formulating a reply, taxpayers must exercise due diligence in evaluating key aspects, including the jurisdiction of the issuing authority, the time limit within which the notice was served, the legal validity of the notice, and whether the officer issuing the notice is duly empowered under the applicable statutory framework. It is important to understand relevant provisions and related judicial precedents while responding to the notices.

12.3 Understanding Notices under GST

To effectively comprehend and respond to GST notices pertaining to the real estate sector, it is imperative for a professional to possess a thorough understanding of the provisions of the Goods and Services Tax Act, the associated Rules, and prevailing industry practices. This includes, but is not limited to, matters concerning the issuance and implications of occupancy certificates, completion certificates, and the registration of immovable properties as governed by the respective State laws. Furthermore, practical knowledge of the relevant State

legislations—such as the Town and Country Planning Acts, stamp duty regulations, and registration fee structures applicable to immovable property transactions is essential for forming a well-reasoned and legally sound response.

12.4 Provisions in GST relating to Real Estate sector

Below is a detailed overview of key provisions under the CGST Act, 2017, and related rules that specifically impact the real estate sector, with a focus on developers, landowners, and contractors, as well as compliance requirements. The provisions are aligned with the Real Estate (Regulation and Development) Act, 2016 (RERA) where applicable, and address issues like GST rates, input tax credit (ITC), reverse charge mechanism (RCM), and notices for non-compliance.

(i) Definition of Supply (Section 7)

Under Section 7 of the CGST Act, "supply" includes all forms of supply of goods or services, such as sale, transfer, barter, exchange, license, rental, lease, or disposal, made for consideration in the course or furtherance of business. This covers transactions like the sale of under-construction properties, leasing of land or buildings, and transfer of development rights (TDR) or floor space index (FSI). For example, construction services provided by developers or contractors are taxable supplies.

(ii) Schedule II and Schedule III: Classification of Activities & Schedule II (Activities Treated as Supply of Services)

- Clause 5(b) of Schedule II classifies the construction of a complex, building, or civil structure, including those intended for sale, as a supply of services, unless the entire consideration is received after the issuance of a completion certificate or first occupation, whichever is earlier.
- Entry 5 of Schedule III excludes the sale of land and the sale of buildings (subject to Clause 5(b) of Schedule II) from GST.

(iii) GST Rates for Real Estate (Notifications and GST Council Decisions)

- The GST Council, in its 33rd and 34th meetings, introduced a special scheme for the real estate sector, reducing effective GST rates for under-construction properties, effective from April 1, 2019.
 - a) Affordable Residential Apartments: GST rate reduced from 8% to 1% (without ITC). An affordable residential apartment is defined as having a carpet area up to 60 sqm in metropolitan cities or 90 sqm in other areas, with a value not exceeding ₹45 lakh.
 - b) Non-Affordable Residential Apartments: GST rate reduced from 12% to 5% (without ITC).

- c) Commercial Apartments: GST at 18% (with ITC eligibility in certain cases)
- **TDR/FSI and Long-Term Lease**
 - a) TDR or FSI used for affordable residential apartments attracts GST at 1% or 5%, depending on the category. For commercial apartments, the rate is 18%.
 - b) Long-term lease of land (30 years or more) for construction is treated as a supply of service and taxed at 18%.
- **Exemptions:**
 - a) Leasing of land for agricultural purposes or industrial plots for financial business development by government entities with 20% or more ownership is exempt from GST.
 - b) Sale of land or completed buildings is exempt under Schedule III.
- (iv) **Input Tax Credit (ITC) Restrictions (Section 17(5))**

Restriction on ITC: Section 17(5)(c) and (d) of the CGST Act prohibit ITC on goods or services used for the construction of immovable property (other than plant and machinery) for own account or for sale, except where the entire consideration is received after completion.
- (v) **Time Limit and availment of ITC : Sec.16**
 - ITC must be claimed by November 30 of the following financial year or the filing of the annual return, whichever is earlier, as per CGST Rule 36(4).
 - Rule 42 and Rule 43 of the Central Goods and Services Tax (CGST) Rules, 2017, govern the apportionment and reversal of Input Tax Credit (ITC) for inputs, input services, and capital goods used partly for taxable supplies (including zero-rated supplies) and partly for exempt or non-taxable supplies. In the real estate sector, these rules are critical due to the sector's mixed supplies, including taxable supplies (e.g., under-construction properties) and exempt supplies (e.g., completed properties or land sales).
- (vi) **Reverse Charge Mechanism (RCM) (Section 9(3) and 9(4))**
 - Under Section 9(3), certain services in the real estate sector, such as legal services, goods transport agency services, or services from government authorities (e.g., municipalities), are subject to RCM, where the recipient (e.g., developer) pays GST.
 - Under Section 9(4), if a registered person procures goods or services from an unregistered supplier, the registered person must pay GST on RCM. For example, if a developer purchases from an unregistered supplier, GST is payable at 18% (except for cement, taxed at 28%).

(vii) Time of Supply and Valuation (Sections 12, 13, and 15)

- Time of Supply:
For services (e.g., construction), the time of supply is the earliest of:
 - (a) Date of issue of invoice (within 30 days of service provision as per Section 31).
 - (b) Date of receipt of payment.
 - (c) Date of provision of service or entry in the recipient's books if the above do not apply.
- For excess payments up to ₹1,000, the supplier may opt to treat the invoice date as the time of supply.

(viii) Valuation

- The value of supply is the transaction value (price paid or payable) under Section 15, provided the supplier and recipient are not related, and the price is the sole consideration.
- For TDR or FSI transactions, valuation may involve open market value or comparable transactions, as per CGST Rules.

(ix) Registration and Compliance (Sections 22, 25, and CGST Rules)

- Persons with an aggregate turnover exceeding ₹20 lakh (or ₹10 lakh in special category states) must register under Section 22.
- Return Filing:
 - Monthly returns (GSTR-1, GSTR-3B) and annual returns (GSTR-9) are mandatory.
 - Quarterly Return Monthly Payment (QRMP) scheme is available for small taxpayer.

(x) Transitional Provisions (Sections 139 and 140)

- Section 140 allows carry-forward of CENVAT credit from pre-GST regimes (e.g., VAT, service tax) via FORM GST TRAN-1, subject to Rule 117 deadlines.

(xi) Offences and Penalties (Section 122)

- The CGST Act lists 21 offences, including issuing incorrect invoices, availing undue ITC, or suppressing taxable supplies. Penalties are 100% of the tax evaded or ₹10,000, whichever is higher.

12.5 Legal framework

- (i) Below are the applicable Laws, Rules and key Notification, Circulars and Order relating to real estate transactions.

Particulars	Reference
Acts & Rules	• Central Goods and Service Tax Act, 2017 • State Goods and Service Tax Act, 2017 • The Integrated Goods and Service Tax, 2017. • GST Anti Profiteering Rules, 2016 • Central Goods and Service Tax Rules, 2017
Notifications	• NN. 3/2019 – CT (R)- Change in GST rates for Real Estate Sector • NN. 4/2019 – CT (R) - Exemption to TDR, FSI and Long Term lease. • NN. 5/2019 – CT (R)-Reverse charge on TDR, FSI and Long Term lease. • NN. 6/2019 – CT (R)- Time of Payment of tax for supply of JDA & Construction service to landowner. • NN. 7/2019 – CT (R) - Reverse charge in respect of procurement from Unregistered Supplier. • NN. 8/2019 – CT (R)- 18% Tax rate in respect of shortfall of goods procured from Registered Supplier. • NN. 16/2019 – CT - Changes in GST Rules (Rule 42 and Rule 43)
Removal of Difficulty Order	• NN. 4/2019 – Credit attributable to be determined based on carpet area
Circulars	• 206/18/2023 –dt. 31.10.2023 • 228/22/2024- dt.15.07.2024 • 177/09/2022-TRU dtd. 03.08.2022
FAQ	• Part -1 dt. 7th May, 2019 • Part-2 dt. 14th May, 2019
Case laws	• Srinivasa Realcon Pvt Ltd - WP 7135/2024 Bombay HC - Nagpur Bench • Nirmal Lifestyle Developers Pvt Ltd [11011/ 2025 (Bom)] • Prahita Construction Pvt Ltd - [2024 (83) GSTL 129 (Telangana)]

	• Munjaal Manishbhai Bhatt - [RSCA No. 1350 of 2021] • GANNON DUNKERLEY & COMPANY (MADRAS) LTD [1958 AIR 560] • Gujarat Chamber of Commerce and Industry & Others - [11345/2023 - Guj] • Builders Association of Navi Mumbai - [2018 (12) GSTL 3 (Bom.)] • Chief Commissioner Of Central Goods And Service Tax & Ors. Versus M/S Safari Retreats private Ltd. - 2024 (90) GSTL 3 (SC) • Shashi Ranjan Constructions Private Limited vs. Union of India - Order dated 05.05.2025 in Civil Writ Case No.6700 of 2024 Patna HC

- (ii) Below are the lists of Checklists that a developer to take care at the end of financial year, November of the subsequent year, before filing Annul Return every year.

PARTICULARS	CHECKLIST
NOVEMBER RELATED COMPLIANCE	
ITC Reversal	• Monthly reversal – Rule 42(1) • Final reversal – Rule 42(4)
Cancellation by customer	• Credit Note
ANNUAL COMPLIANCE	
Procurements from unregistered persons	• Developer to ensure 80% of the procurements are from registered persons from commencement to completion of the project
PROJECT RELATED COMPLIANCE	
Construction Service	• Developer to pay GST on construction services for the all the JDAs before the Completion date, on the first sale value nearest to the date of JDA.
Transfer of Development Rights GST payable by Developer	Commercial • RCM on or before the completion date on the first sale value nearest to the date of JDA. Residential : • Units sold before completion Date – Exempted • Units sold after completion Date – RCM applicable

1. The following are the indicative list of issues for which the GST Notices are being issued by the GST Department:

S. No	Reference of section	Issues
1	Sec. 67 - Power of inspection, search and seizure.	• Suppression of Sales or Under-Reporting Turnover - Not disclosing full consideration received from buyers, including additional charges like parking or amenities • Comparision of values as per declaration to RERA and GST Returns • Misclassifying non-affordable housing as affordable housing to avail lower GST rates (1% instead of 5%). • Claiming ITC on residential projects where it is not allowed (e.g., projects taxed at 1% or 5% without ITC) • Not paying GST under RCM for procurements from unregistered suppliers (e.g., 28% on cement, 18% on shortfall of 80% procurement rule). • Discrepancies between GSTR-1 (outward supplies), GSTR-2B (ITC reconciliation), and GSTR-3B (tax liability). • JDA entered prior to July 1, 2017 but completed after GST. Authorities demanding GST on construction services from Builder and GST on transfer of development rights from Landowner
2	Sec. 67 read with Sec.71 read with Sec.6 of CGST Act, 2017, Sec.4 of IGST Act, and relevant provisions of GST Compensation Act, 2017.	• Excess claim of ITC in GSTR 3 B in respect of invoices not figuring in GSTR 2A. • Shorter tax declared in GSTR 3B as compared to GSTR 1. • Short / Non-declaration of turnover in the audited financial statement • Mismatch between GSTR 3B and Sales Register

3	Section 70. Power to summon persons to give evidence and produce documents	• Details of GST paid / Payable on transfer of Development Rights (TDR) in respect of the Project. • JDA entered post 1st July 2017 and completed post 1st April 2019. • Allocation and handing over of details of shares of Land owner and Developer relating to the Project
4	Sec.73 of CGST Act, read with Sec.6 of the CGST Act and Sec.20 of IGST Act.,2017	• Interest demand for delayed filing of GSTR 3B • Difference in Turnover declared in GSTR 3B and GSTR 1 • Mismatch of ITC in GSTR 3B and 2A • RCM Liability on approval fees, Royalty and charges paid to various Government authorities. • Tax on certain amount mentioned as Advance • Difference in valuation mechanism followed by the Developer as compared to Department in computing value of TDR in residential complex construction for unsold area. • Brand Name treated as deemed supply under Sch I between group companies. • Non-reversal of ITC on the Credit Notes issued.
5	Sec.74 of the CGST Act,2017	• Difference in Turnover declared in GSTR 1 and GSTR 9 • Sinking fund / Deposit transferred to Association • Availment of ITC on Renovation expenses of Commercial Complex on the ground that these are civil construction services on which credit is blocked. • Non-reversal of credit contained in the unsold/ unbooked flats on grant of Occupation certificate by Government authorities.
6	Sec.50 of CGST Act,2017	• Interest at applicable rate on the availment of blocked ITC • Interest on the tax liability reported between GSTR 1 and 3B.

7	Sec.74(5) , Rule 142(1A) .	• Discrepancy in the percentage of completion with the Report submitted to RERA Authorities, in form 6. • Difference in reversal of ITC as per RERA Report • Difference in Time of supply as compared to the Report submitted to RERA.

12.6 Learning Outcome

This chapter on GST notices equips professionals with foundational skills to analyze notices, address issues, and strategize responses for real estate developers and other stakeholders. It is suggested to deepen their expertise through further study of GST laws, case law, and guidelines. Practical exercises and mentorship will enhance proficiency in handling notices. Continuous learning is vital to ensure compliance, mitigate penalties, and resolve disputes effectively.

12.7 References

- (i) Background Material on GST –Volume I & II -Published by ICAI
- (ii) Background Material on Litigation Management - Published by ICAI
- (iii) Handbook on Show Cause Notice - Approach and Reply under GST – Published by ICAI
- (iv) <https://idtc.icai.org/publications.php>
- (v) <https://taxinformation.cbic.gov.in/>
- (vi) <https://www.gst.gov.in/>

12.8 Self Appraisal

S. No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

A series of horizontal dotted lines for writing.

Accounting for Real Estate Transactions

13.1 Introduction

Accounting for real estate transactions involves recording, reporting, and analysis of financial transactions related to real estate business. Unlike other industries, real estate industry transactions often encompass unique, complex uncertain elements such as property statutory approvals, development, investment arrangements, leasing, sales, and financing arrangements. This chapter aims to provide a understanding of the principles and practices necessary to account /record these transactions in books of accounts for preparation of financial statements.

In an industry where billions of dollars are invested annually, accurate financial reporting and compliance are not merely advantageous, they are imperative. As a result, correct and consistent accounting practices are essential to ensure transparency, facilitate informed decision making and maintain compliance with accounting standards.

By the end of this chapter, readers will gain a foundation in the specific accounting requirements for real estate transactions/activities. This knowledge will help ensure that financial statements accurately reflect the economic realities of real estate transactions, bringing the trust and confidence among stakeholders and supporting the sector's overall financial health.

Following are important aspects to be remembered in the Real Estate Transactions, same will be discussed in the subsequent pages –

1. Transfer of Control, risks
2. Performance of obligation
3. Percentage of completion Method – POCM
4. Complete completion Method - CCM

13.2 Revenue Recognition (Accounting Purposes)

Governed primarily by Indian Accounting Standards (Ind AS) or Accounting Standards (AS), depending on the entity / company's applicability.

A. For Companies applying Ind AS (Indian Accounting Standards):
The governing standard is **Ind AS 115 - Revenue from Contracts with Customers**. This standard introduced a shift towards a principles-based approach focused on the **transfer of 'control'**.

1. **Core Principle:** Revenue is recognized when (or as) the developer satisfies a performance obligation by transferring a promised good or service (the real estate unit) to the customer. The amount recognized is the consideration the developer expects to be entitled to.
2. **The 5-Step Model:**
 - a) **Step 1: Identify the contract(s) with a customer** – i.e., agreement for sale, the builder-buyer agreement
 - b) **Step 2: Identify the performance obligations in the contract** - Usually, the construction and transfer of the specified real estate unit along with the interest in the land is a single performance obligation, potentially bundled with other services like common amenities
 - c) **Step 3: Determine the transaction price** - The agreed upon consideration, sale price, adjusted for financing components, variable consideration if any
 - d) **Step 4: Allocate the transaction price to the performance obligations**- If multiple distinct obligations exist, allocate based on relative standalone selling prices e.g., consideration include towards the apartment and club house usage
 - e) **Step 5: Recognize revenue when (or as) the entity satisfies a performance obligation**- This is the vital step for timing and recognition of revenue in the financial statements
3. **Timing of Recognition - Over Time vs. Point in Time:**
 - a) Revenue Recognized Over Time. Revenue is recognized over the construction period if any one of the following criteria is met -
 - (i) The customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs (Generally not applicable for building construction).
 - (ii) The entity's performance creates or enhances an asset (e.g., the building/unit) that the customer controls as the asset is created or enhanced. This depends heavily on the contract terms. Does the customer have the right to dictate changes, prevent the developer from selling the specific unit to someone else, etc., during construction? If yes, control might exist – eg., Sale and register the Land and enter into construction agreement in a scheme of Villa Development Projects.
 - (iii) The entity's performance does not create an asset with an alternative use to the entity (i.e., the developer cannot readily sell the specific unit promised to Customer A to Customer B due to contractual restrictions or significant customization), and the entity has an enforceable right to payment for

performance completed to date (meaning if the customer cancels, the developer can demand payment for work done so far).

- b) **If criteria (ii) or (iii) are met in real estate:** Revenue is typically recognized using the **Percentage of Completion Method (POCM)**. Progress is measured based on input methods e.g., cost incurred to date as a percentage of total estimated costs or output methods e.g., milestones achieved
- c) **Revenue Recognized at a Point in Time:** If none of the "over time" criteria are met, revenue is recognized only when control of the completed real estate unit is transferred to the customer. This typically occurs upon:
 - (i) Handover of possession.
 - (ii) Transfer of legal title.
 - (iii) Customer having accepted the asset.
 - (iv) Transfer of significant risks and rewards of ownership.
 - (v) Usually coincides with the point where the customer can direct the use of, and obtain substantially all the remaining benefits from, the unit

Eg., in a group housing project, it is mandatory for the developer to obtain the occupancy certificate before handing over the possession and registering the conveyance deed. Accordingly, the customer checks and accept the possession of the apartment etc.

- 4. **Impact:** Ind AS 115 can lead to either POCM or Completed Contract Method (CCM - recognizing revenue only at completion/handover), depending heavily on the specific terms of the builder-buyer agreement and whether the developer retains control/can redirect the unit until completion. Criterion (c) often drives towards 'Over Time' recognition if contracts restrict alternative use and ensure payment rights.

B. For Companies applying AS -Accounting Standards - typically non-Ind AS SMEs:
The primary guidance comes from:

- 1. **AS 7: Construction Contracts**
- 2. **AS 9: Revenue Recognition**
- 3. **Guidance Note on Accounting for Real Estate Transactions (Revised 2012)** issued by the Institute of Chartered Accountants of India (ICAI).
 - a) **Core Principle:** This framework heavily favoured the **Percentage of Completion Method (POCM)**, provided certain conditions were met reliably.

- b) **Conditions for applying POCM (as per Guidance Note):** Revenue recognition using POCM could commence only when all the following conditions were satisfied:
- (i) All critical project approvals e.g., zoning, plan, environmental obtained.
 - (ii) Project commencement is underway.
 - (iii) Stage of completion reaches a reasonable level (often interpreted as $\geq 25\%$ of construction costs incurred).
 - (iv) At least 25% of the saleable area in the project is secured by contracts or agreements with buyers.
 - (v) At least 10% of the total revenue as per the agreements of sale is realized/collected from buyers at the reporting date ie., 31.03.XX
 - (vi) The outcome of the project (total costs, total revenues) can be reliably estimated.
1. **Measurement under POCM:** Similar to Ind AS 115, progress is typically measured based on the proportion of contract costs incurred for work performed to date bears to the estimated total contract costs. Revenue is recognized in the Statement of Profit and Loss in proportion to the stage of completion. Such stage or completion shall be based on the professional assessment and cost incurred as per books of accounts.
2. **If POCM conditions not met:** Revenue recognition was deferred until the conditions were met, or until the project was completed and handed over (effectively, Completed Contract Method).

II. Income Offering for Taxation

Governed by the **Income Tax Act, 1961**, and crucially, the **Income Computation and Disclosure Standards (ICDS)** notified under Section 145(2) of the Act.

1. **Method of Accounting (Section 145):** Income chargeable under "Profits and Gains of Business or Profession" (PGBP) must be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee. Developers invariably use the **Mercantile system**. Importantly, the computation must comply with notified ICDS.
2. **Applicable ICDS:**
- a) **ICDS III: Construction Contracts:** This standard is specifically applicable to developers engaged in real estate projects, as these are treated as construction contracts for tax purposes.
 - b) **ICDS IV: Revenue Recognition:** While ICDS III is more specific, ICDS IV covers general revenue recognition principles.

3. ICDS III - Mandate for POCM:

- a) ICDS III generally **mandates** the use of the **Percentage of Completion Method (POCM)** for recognizing profits from construction contracts (including real estate development), **provided the outcome of the contract can be reliably estimated.**
- b) **Reliable Estimation:** The outcome is considered reliably estimable when: total contract revenue can be measured reliably, it's probable economic benefits will flow to the entity, contract costs to complete and stage of completion can be measured reliably.
- c) **Stage of Completion:** Similar to accounting standards, it's typically determined by the proportion of contract costs incurred to date relative to total estimated contract costs. Other methods (surveys of work performed, physical completion) may be used if they measure the work performed more accurately.
- d) **Recognition:** Contract revenue and contract costs associated with the construction contract should be recognized by reference to the stage of completion at the end of the previous year.
- e) **Expected Losses:** When it is probable that total contract costs will exceed total contract revenue, the expected loss must be recognized as an expense immediately.
- f) **Specific provisions in the Income Tax Act impact real estate transactions and accounting.**
 - (i) **Section 43CA:** Deems sale consideration to be the Stamp Duty Value (SDV) if it exceeds the actual consideration by a certain margin, impacting taxable income.
 - (ii) **Section 50C:** Similar provision for capital gains on land/building transfers.
 - (iii) **Section 80-IBA:** Deductions for affordable housing projects have specific conditions that need careful tracking and compliance.
 - (iv) **TDS:** Complex TDS provisions apply to property purchases (Sec 194-IA), payments to contractors (Sec 194C), rent (Sec 194-I), compulsory acquisition of immovable property (Sec 194 LA) etc.
 - (v) **MAT/AMT:** Book profits (especially under Ind AS which can be volatile due to fair value) vs. taxable profits can lead to Minimum Alternate Tax (MAT) or Alternate Minimum Tax (AMT) issues.

4. **What if Outcome Cannot be Reliably Estimated?** If the conditions for reliable estimation are not met (especially in early stages), revenue is recognized only to the extent of costs incurred for which recovery is probable. Contract costs are recognized

as an expense in the period incurred. No profit is recognized until the outcome can be estimated reliably.

5. **Completed Contract Method (CCM) for Tax:** While ICDS III mandates POCM, there might be very limited circumstances (e.g., contracts of very short duration, less than 90 days, or situations where reliable estimation is genuinely impossible throughout) where CCM could potentially be argued, but this is an exception and POCM is the standard rule under ICDS. Tax authorities generally insist on POCM if feasible.
6. **Key Tax Implication - Potential Mismatch with Ind AS 115:**
 - a) A significant divergence arises if, under **Ind AS 115**, a developer concludes that control transfers only at a 'point in time' (handover/completion) and thus recognizes revenue using CCM for accounting.
 - b) However, for **tax purposes (ICDS III)**, the developer would likely still be required to compute taxable income using **POCM**, provided the outcome is reliably estimable.
 - c) This creates a **Book-Tax Difference**, requiring reconciliation in the tax computation and potentially leading to Deferred Tax implications in the financial statements.

For a real estate developer:

1. **Accounting Revenue Recognition:** Follow Ind AS 115 (if applicable) or the AS 7/ Guidance Note framework. Under Ind AS 115, determine if control transfers 'over time' (leading to POCM) or 'at a point in time' (leading to CCM at handover) based on specific contract terms and control criteria. Under AS/Guidance Note, POCM is used if specific thresholds are met, otherwise recognition is deferred.
2. **Income Offering for Taxation:** Compute taxable income under PGBP using the mercantile system and **mandatorily apply ICDS III**. This generally requires using the **Percentage of Completion Method (POCM)** to recognize revenue and profits progressively over the construction period, provided the project's outcome can be reliably estimated. If not reliably estimable, defer profit recognition (recognize revenue = costs incurred). Be prepared for potential differences between accounting profit (especially under Ind AS 115 'point in time') and taxable profit (under ICDS POCM), leading to deferred tax calculations.

What is the difference between Ind AS 115 and IFRS 15?

Ind AS 115, Revenue from Contracts with Customers, is the Indian Accounting Standard corresponding to IFRS 15, Revenue from Contracts with Customers. The key point is that **Ind AS 115 is converged with IFRS 15**, meaning they are substantially the same.

India adopted Ind AS, which are largely based on IFRS standards, aiming for global comparability. Therefore, Ind AS 115 incorporates the principles and requirements of IFRS 15.

Both standards aim to establish principles for reporting useful information about the nature, amount, timing, and uncertainty of revenue and cash flows arising from an entity's contracts with customers.

The differences are **very minor** and mostly relate to:

1. **Terminology and References:** Ind AS 115 uses terminology consistent with Indian law e.g., referencing the Companies Act, 2013, or other Ind AS, where IFRS 15 refers to other IFRS or general concepts. This doesn't change the accounting principles.
2. **Effective Date:** IFRS 15 was effective for annual reporting periods beginning on or after January 1, 2018. Ind AS 115 became mandatory in India for accounting periods beginning on or after April 1, 2018. This is just a timing difference in adoption.

In Summary:

For all practical purposes regarding the principles and application of revenue recognition, **Ind AS 115 and IFRS 15 are the same**. An entity applying Ind AS 115 follows the same core logic, steps, and requirements as an entity applying IFRS 15.

13.3 Cost of Construction and Cost Allocation

I. Components of Construction Costs in Indian Real Estate -

These are the primary cost heads that need to be monitored and allocated:

1. **Land Cost: Includes:**
 - a) Purchase price of the land.
 - b) Stamp Duty and Registration Charges (significant cost in India).
 - c) Brokerage fees / Commission paid for land acquisition.
 - d) Legal and due diligence fees related to land acquisition.
 - e) Costs related to Land Use Conversion (e.g., agricultural to non-agricultural/residential/commercial).
 - f) Cost of acquiring Development Rights (TDR - Transferable Development Rights, FSI - Floor Space Index purchase).
 - g) Compensation paid for litigation, resettlement or rehabilitation (if applicable).
 - h) Initial site clearing/levelling costs directly related to making the land usable for the intended project.

- i) Interest on loans taken specifically for land acquisition (often capitalized until project development begins, subject to accounting standards).

Note - Allocation in case of multiple projects, phase-wise developments: Land is usually acquired for the entire project. Allocation to phases or units needs a scientific basis.

2. Materials Cost: Includes: Cost of all raw materials and finished goods used in construction.

- a) **Civil works:** Cement, Steel (TMT bars), Sand (M-Sand, River Sand), Aggregates (Gravel), Bricks (Clay, Fly Ash), Concrete Blocks, Ready Mix Concrete (RMC), Water.
- b) **Finishing:** Tiles (Flooring, Wall), Marble, Granite, Paints, Plaster of Paris (POP), Putty.
- c) **MEP (Mechanical, Electrical, Plumbing):** Pipes (PVC, CPVC, GI), Wires & Cables, Switches & Sockets, Conduits, Sanitaryware (WC, Basins), CP Fittings (Taps, Showers), Elevators/Lifts, Pumps, DG Sets (backup power), Firefighting equipment.
- d) **Doors & Windows:** Frames (Wood, Aluminium, UPVC), Shutters, Glass, Hardware (Hinges, Locks).
- e) **Other:** Waterproofing chemicals, Termite treatment chemicals, Landscaping materials (soil, plants), etc.
 - (i) **Includes:** Purchase price + GST (after considering Input Tax Credit - ITC eligibility) + Transportation (Freight-in) + Loading/Unloading + Storage costs (if specific to materials).
 - (ii) **Allocation in case of bulk purchases for multiple projects:** Tracking material consumption to specific activities, phases, or units **can be challenging due to bulk purchases and potential wastage.**

3. Labour Cost: Includes:

- a) **Direct Labour:** Wages paid to skilled and unskilled workers directly involved in construction activities (Masons, Carpenters, Barbenders, Plumbers, Electricians, Helpers, Painters). This includes daily wage labour and piece-rate workers.
- b) **Site Supervision Labour:** Salaries/wages of site engineers, foremen, supervisors who directly manage site execution for that specific project.
- c) **Statutory Contributions:** Employer's contribution to Provident Fund (PF), Employee State Insurance (ESI) for applicable labour.

- d) **Contractor Payments:** Payments made to sub-contractors for specific works (e.g., excavation, structure, plumbing, electrical, finishing) often include their labour, material (sometimes), and profit margin. It's crucial to segregate the labour component, if possible, for detailed analysis, though often booked under the activity head (e.g., "Plumbing Contract Cost").

Note: Allocation Considerations: Tracking labour hours to specific tasks/units. Differentiating direct project labour from general administrative staff. Managing payments to numerous small contractors.

4. **Overheads:** These are costs necessary for the project but not directly traceable to a single unit or sometimes even a single phase easily. They are often categorized:

- a) **Project-Specific (Direct) Overheads:** Costs incurred specifically for a particular project.
- (i) **Site Infrastructure:** Site office setup & rent (if leased), site office utilities (electricity, water), site security services, temporary fencing, site sanitation.
 - (ii) **Project Management Staff:** Salaries of Project Manager, Site Accountants, Storekeepers (if dedicated to the project).
 - (iii) **Approvals & Permits (During Construction):** Fees paid for construction-stage approvals, environmental clearances during construction, No Objection Certificates (NOCs) from various authorities (Fire, Pollution Control Board, Airport Authority etc.) obtained during the construction phase. (Initial approvals might be capitalized as part of land/development rights).
 - (iv) **Taxes & Levies:** Construction Worker Welfare CESS (typically 1% of construction cost in many states), specific project-related municipal taxes during construction.
 - (v) **Technical & Consultancy Fees:** Fees paid to Architects, Structural Engineers, MEP Consultants, Landscape Architects during the construction phase for supervision or design modifications. (Initial design fees might be capitalized differently).
 - (vi) **Insurance:** Contractor's All Risk (CAR) policy, Workmen Compensation Insurance specific to the project site.
 - (vii) **Site Vehicle Costs:** Fuel, maintenance for vehicles used exclusively at the project site.
 - (viii) **Quality Testing:** Costs for material testing (cube tests, steel tests etc.).

- b) **General & Administrative (Indirect) Overheads:** Costs incurred at the corporate level supporting multiple projects.
- (i) Head Office Rent & Utilities.
 - (ii) Salaries of corporate staff (CEO, CFO, Accounts, HR, Legal, Central Design Team, Central Procurement Team).
 - (iii) Corporate Marketing & Sales Expenses (unless directly attributable to one project launch).
 - (iv) General Office Administration Costs.
 - (v) Corporate Legal & Professional Fees.
 - (vi) Software & IT Infrastructure costs (shared ERP, etc.).

Note - Allocation Considerations: Direct overheads are allocated only to the specific project they relate to. Indirect overheads need a justifiable basis (e.g., based on project revenue, project cost, area under construction) to be allocated across multiple projects. Accounting standards (Ind AS 2) guide which overheads can be inventoried.

5. Borrowing Costs (Finance Costs):

- a) **Includes:** Interest and other costs incurred in connection with borrowing funds specifically for the acquisition, construction, or production of a qualifying asset (the real estate project). This includes:
- (i) Interest on Construction Finance loans from Banks/NBFCs.
 - (ii) Loan Processing Fees, Commitment Charges.
 - (iii) Amortization of discounts or premiums related to borrowings.

Note - Allocation Considerations: As per Ind AS 23 (Borrowing Costs), these costs should be capitalized as part of the cost of the asset during the period it takes to get the asset ready for its intended use or sale (i.e., during active construction). Capitalization ceases when the asset (or a distinct phase/part of it) is substantially complete. Identifying the exact period and the amount attributable can be complex, especially if loans are general-purpose.

II. Levels of Cost Allocation

Costs are typically allocated progressively to finer levels:

1. **Total Project Level:** All costs directly incurred for or reasonably allocated to the entire development.
2. **Phase Level:** If the project is developed in distinct phases (e.g., Phase 1, Phase 2), costs are allocated to each phase. This is common for large projects. Land cost might

be allocated based on the area planned for each phase. Infrastructure costs serving multiple phases might be allocated proportionally.

3. **Block/Tower Level:** Within a phase, costs might be allocated to specific buildings or towers. Common infrastructure within the phase (like a clubhouse or internal roads) needs allocation to the blocks it serves.
4. **Individual Unit Level (Apartment/Villa/Shop):** This is the most granular level, essential for pricing and profitability calculation per unit. Costs allocated to a block/tower are further distributed among the individual units.

III. Methods of Cost Allocation in Indian Real Estate

The objective is to allocate costs on a reasonable and consistent basis. Common methods include:

1. Direct Identification/Tracking:

- a) **Applicability:** Ideal for costs directly traceable to a specific unit, phase, or project.
- b) **Examples:** Specific high-end fittings requested by a buyer for their unit, labour working exclusively on one particular block, materials requisitioned specifically for a floor/unit. Contractor bills often specify work done for a particular block or phase.
- c) **How:** Using unique project codes, phase codes, unit numbers in accounting systems or software applications, material requisition slips, time sheets, contractor RA (Running Account) bills.

2. Area-Based Allocation:

- a) **Applicability:** Widely used for allocating common costs, especially land and sometimes construction costs, across units or phases.
- b) **Basis:**
 - (i) **Saleable Area:** Often includes Carpet Area + Balconies + proportionate share of Common Areas (lobbies, stairs, terraces etc.). This is the most common basis for allocating Land Cost, overall construction cost for pricing, and sometimes common overheads. Super Built-Up Area (SBUA) is often used in India.
 - (ii) **Carpet Area:** As defined by RERA (net usable floor area within walls). Sometimes used for allocating specific internal finishing costs.
 - (iii) **Built-Up Area:** Carpet Area + Wall Thickness. Less common for allocation now compared to Saleable Area.

How: Total cost / Total relevant area (e.g., Total Saleable Area) = Cost per sq. ft./sq. m. Then, multiply this rate by the specific area of the phase/unit. (Cost for Unit X = Rate * Saleable Area of Unit X).

3. Percentage of Completion (POC) / Stage-Based Allocation:

- a) **Applicability:** Often used for allocating time-based costs like Overheads and Borrowing Costs across the construction period. Also relevant for revenue recognition under Ind AS 115 (if cost incurred is used as a measure of progress).
- b) **How:** Costs are allocated based on the certified stage of completion of different phases or blocks. For example, if Phase 1 is 50% complete and Phase 2 is 20% complete, time-based overheads or interest might be allocated proportionally to the activity level or cost incurred in each phase during that period.

4. Standard Costing / Consumption Norms:

- a) **Applicability:** Useful for allocating material costs where direct tracking is difficult.
- b) **How:** Predetermined norms for material consumption per unit of work (e.g., kgs of steel per cubic meter of concrete, bags of cement per sq. ft. of plastering, litres of paint per sq. ft. of wall area). Total material consumed (or estimated) for an activity is then allocated based on the quantum of work done in each phase/unit. These norms need regular updating based on actuals and design specifications.

5. Activity-Based Costing (ABC):

- a) **Applicability:** More complex but accurate method for allocating overheads.
- b) **How:** Identify major activities (e.g., procurement, quality control, site supervision, project approvals). Identify cost drivers for each activity (e.g., number of purchase orders, number of quality tests, supervision hours, number of applications filed). Allocate overheads based on the consumption of these activities by different projects/phases/units. Requires sophisticated tracking.

6. Allocation of Specific Costs:

- a) **Land Cost:** Usually allocated based on the ratio of Saleable Area of the phase/unit to the Total Saleable Area of the project.
- b) **Direct Materials & Labour:** Ideally direct tracking. If not, use standard norms or area-based allocation for common elements.
- c) **Project Specific Overheads:** Allocate directly to the project. Further allocation to phases/units can be based on time (duration of phase activity), relative construction cost incurred, or saleable area.
- d) **General & Admin Overheads:** Allocate to projects based on a predetermined, rational basis (e.g., percentage of project cost, percentage of project revenue, estimated management time spent). A portion might remain unallocated as a period cost.
- e) **Borrowing Costs (Capitalized):** Allocate based on the cumulative expenditure incurred on the qualifying asset (project/phase) during the capitalization period. Can be complex;

often simplified by allocating based on overall construction cost ratio or saleable area once capitalization ceases.

IV. Importance of Accurate Allocation

1. **RERA Compliance (Real Estate Regulation and Development Act, 2016):**

- a) **Withdrawal from RERA Separate bank Account:** Section 4(2)(l)(D) mandates that developers can withdraw funds from the particular project RERA Separate Bank Account only in proportion to the percentage of completion of the project.
- b) **Certification:** This percentage completion must be certified by an Engineer, an Architect, and a Chartered Accountant (CA). The CA must certify that the cost incurred matches the withdrawal amount. Accurate cost tracking and allocation are fundamental to this certification.
- c) **Transparency:** RERA emphasizes transparency, and accurate cost data supports disclosures to buyers.

2. **Pricing Strategy:** Knowing the accurate cost per unit (including land, construction, overheads, finance) is essential to set competitive and profitable selling prices.

3. **Profitability Analysis:** Enables developers to understand the profitability of individual projects, phases, or even unit types (e.g., 2BHK vs 3BHK).

4. **Cost Control:** Comparing actual allocated costs against budgeted costs for each phase/activity/unit helps identify cost overruns and areas for improvement.

5. **Inventory Valuation:** As per Ind AS 2 (Inventories), the cost of unsold units (Work-in-Progress or Finished Goods) must include directly attributable costs of purchase, costs of conversion (labour, direct overheads, allocable production overheads), and other costs incurred in bringing the inventories to their present location and condition (like capitalized borrowing costs). Accurate allocation is key for correct financial reporting.

6. **To obtain Finance:** Lenders (banks, NBFCs) require detailed project reports and cost estimates. Accurate tracking and reporting of cost allocation during construction provide confidence to lenders.

7. **Investor Reporting:** Private equity investors or joint venture partners require detailed and transparent reporting on project costs and profitability.

V. Challenges in the Real estate Context

1. **Unorganized Sector:** Dealing with numerous small contractors and suppliers with varying levels of documentation standards can make cost tracking difficult.

2. **Cash Transactions:** While reducing, cash components (especially in labour or small supplier payments) can complicate accurate recording.

3. **Price Volatility:** Fluctuations in material prices (steel, cement) make budgeting and standard costing challenging.
4. **GST Complexity:** Tracking Input Tax Credit (ITC) correctly and ensuring it's factored into the cost allocation adds a layer of complexity.
5. **Regulatory Hurdles:** Delays in approvals can stall projects, impacting the allocation of time-based overheads and borrowing costs.
6. **Documentation:** Maintaining meticulous records (invoices, measurement books, RA bills, labour records, consumption reports) requires strong internal controls and often dedicated software.

VI. Tools & Technology

1. **ERP Systems:** Enterprise Resource Planning software (SAP, Oracle, Microsoft Dynamics, or industry-specific ones like Build Superfast, Highrise ERP) integrate procurement, inventory, project management, and accounting, facilitating better cost tracking and allocation.
2. **Project Management Software:** Tools like Primavera or MS Project help plan and track activities, linking progress to cost incurrence.
3. **BIM (Building Information Modelling):** Can integrate design, quantity estimation, and cost, potentially enabling more accurate real-time cost allocation based on physical progress.

Conclusion

Accurate cost allocation in real estate business is not just an accounting exercise; it's a important business process. Driven by regulatory requirements (RERA), financial reporting standards (Ind AS), and the need for profitability and control in a competitive market, developers must invest in good systems, processes, and potentially technology to track and allocate costs effectively from land acquisition through to project completion and handover, down to the individual unit level. The choice of allocation methods should be rational, consistently applied, and well-documented.

13.4 Inventory Valuation

The primary principles are governed by:

1. **Accounting Standard (AS) 2: Valuation of Inventories** -for companies following AS
2. **Indian Accounting Standard (Ind AS) 2: Inventories** - for companies following Ind AS
3. **Guidance Note on Accounting for Real Estate Transactions (Revised 2012)** issued by the Institute of Chartered Accountants of India (ICAI). This is crucial for specific real estate nuances.

4. **AS 7 (Construction Contracts) / Ind AS 115 (Revenue from Contracts with Customers)** - These are relevant for revenue recognition, often using the Percentage of Completion Method (POCM), which interacts with WIP valuation.
5. **AS 16 (Borrowing Costs) / Ind AS 23 - Borrowing Costs** - Relevant for capitalizing interest costs.

Core Principle - Common to both AS 2 and Ind AS 2:

Inventories (which include both completed stock and WIP) should be valued at the **lower** of:

- a) **Cost**
- b) **Net Realizable Value (NRV)**

Let's apply this to each category:

1. Valuation of Completed but Unsold Stock (Finished Goods)

- (a) Flats, villas, commercial units, plotted land etc., where construction/development is complete, completion/occupancy certificates might have been received (as applicable), and they are ready for sale but remain unsold at the reporting date.

(b) Cost Calculation:

- (i) **Cost:** Includes all costs incurred to bring the inventory to its present location and condition. This typically comprises:
 - (a) **Land Cost:** Acquisition cost, stamp duty, registration, development rights (like TDR, FSI), conversion charges etc., allocated proportionally to the units.
 - (b) **Construction Costs:** Materials consumed, direct labour, direct expenses (architect fees, engineering fees, site supervision).
 - (c) **Overheads:** Construction overheads directly attributable to the project (e.g., site office expenses, depreciation of construction equipment used).
 - (d) **Borrowing Costs:** Interest and other borrowing costs directly attributable to the acquisition, construction, or production of a qualifying asset (the real estate project) capitalized during the construction period as per AS 16 / Ind AS 23. Capitalization ceases when substantially all activities necessary to prepare the qualifying asset for its intended use or sale are complete.
 - (e) **Approval Costs:** Costs incurred for obtaining various permissions and approvals allocated to the project.
- (ii) **Allocation:** Total project costs are allocated to individual units, usually based on a reasonable parameter like saleable area (sq. ft. / sq. mtr.).

(c) Net Realizable Value (NRV) Calculation:

- (i) **NRV:** The estimated selling price in the ordinary course of business less the estimated costs necessary to make the sale.
- (ii) **Estimated Selling Price:** Based on current market prices for similar properties in the location, recent transactions, or reliable assessments.
- (iii) **Estimated Costs to Sell:** Brokerage or commission, marketing expenses directly related to the sale, any minor finishing costs required to make the unit saleable.

(d) Valuation:

- (i) Calculate the cost per unit (or per sq. ft.).
- (ii) Calculate the NRV per unit (or per sq. ft.).
- (iii) Value the completed unsold stock at the **lower** of these two figures. If NRV is lower than cost, a write-down is recognized in the profit and loss account.

2. Valuation of Work-in-Progress (WIP)

- (a)** Projects that are currently under construction at the reporting date. Costs have been incurred, but the units are not yet complete.

(b) Cost Calculation:

- (i) **Cost:** Includes all costs incurred on the project up to the reporting date. This uses the same cost components as completed stock (Land, Construction, Overheads, Borrowing Costs, Approval Costs), but only includes amounts incurred to date.
- (ii) **Allocation:** Costs incurred are accumulated at the project level. If the project involves multiple distinct phases or buildings, costs might be tracked separately.

(c) Net Realizable Value (NRV) Calculation:

- (i) **NRV:** The estimated selling price of the finished unit/project less the estimated costs to complete the construction less the estimated costs necessary to make the sale.
- (ii) **Estimated Selling Price:** Similar to completed stock, based on market assessment for the finished property.
- (iii) **Estimated Costs to Complete:** This requires careful estimation by management/engineers based on the remaining work (materials, labour, overheads, approvals, borrowing costs until completion).
 - **Estimated Costs to Sell:** Brokerage, marketing, etc., for the finished unit.

(d) Valuation:

- (i) Calculate the total cost incurred on the WIP to date.
- (ii) Calculate the NRV (as defined above for WIP).
- (iii) Value the WIP at the **lower** of the cost incurred to date or its NRV. If NRV is lower, a write-down (or provision for foreseeable loss) is recognized.

Interaction with Percentage of Completion Method (POCM):

- (i) The ICAI's Guidance Note generally recommends using POCM for revenue recognition in real estate projects where certain criteria are met (e.g., contracts are enforceable, significant project risks passed to buyer, reasonable certainty of collection).
- (ii) Under POCM, revenue and costs are recognized based on the stage of completion. The cost component recognized in the Profit & Loss account is effectively transferred from WIP.
- (iii) The remaining cost balance in WIP on the Balance Sheet must still adhere to the "lower of cost or NRV" principle (AS 2 / Ind AS 2).
- (iv) Crucially, if the total estimated project cost (incurred + to be incurred) exceeds the total estimated project revenue, then the expected loss on the entire project should be recognized immediately as an expense, regardless of the stage of completion. This often involves creating a provision and effectively reduces the carrying value of WIP, aligning with the NRV principle.

Key Considerations & Nuances:

1. **Cost Allocation:** Methods used for allocating land costs and common project costs should be rational, systematic, and consistently applied.
2. **Borrowing Costs:** Strict adherence to AS 16 / Ind AS 23 for capitalization is required. Capitalization stops when the asset is substantially ready.
3. **Land Held for Future Development:** Land purchased where development activities have not yet commenced is typically treated under AS 10 (Property, Plant and Equipment) / Ind AS 16 (Property, Plant and Equipment) or as inventory depending on the intention and timeframe, but it's not WIP until development starts.
4. **Write-downs:** Any write-down to NRV should be reviewed at each subsequent balance sheet date. If the circumstances causing the write-down no longer exist or NRV increases, the write-down can be reversed (up to the original cost).
5. **Disclosure:** Financial statements should disclose the accounting policies used for valuing inventory, the carrying amount in appropriate classifications (Finished Goods, WIP), and any significant write-downs.

In summary, valuing real estate inventory in India follows the universal accounting principle of **lower of cost or NRV**, but requires careful calculation of costs (including capitalized borrowing costs and appropriate allocations) and NRV (considering completion costs for WIP), all within the framework provided by AS/Ind AS and the specific ICAI Guidance Note for the Real Estate industry.

13.5 Transparency and Unorganized Sector

Historically, the sector faced issues with transparency. While improving due to RERA and GST, a significant portion, especially smaller developers or projects in smaller towns, may still lack sophisticated accounting systems and practices. This can lead to unreliable financial information.

Where transparency is lacking, the consequences include:

- a) **Difficulty in Obtaining Finance:** Lenders are wary of unreliable financials, making it harder for smaller, less transparent developers to secure project funding.
- b) **Higher Risk for Buyers:** Buyers in markets with weaker enforcement or dealing with less organized developers still face risks related to project delays, quality issues, and unclear financial commitments.
- c) **Market Distortion:** Lack of reliable data hinders accurate market analysis, valuation, and investment decisions.
- d) **Reduced Investor Confidence:** Institutional investors prefer markets with high levels of transparency and predictable regulatory environments. Persistent opacity limits potential investment inflows.

The Road Ahead: Building a Truly Transparent Ecosystem

Achieving comprehensive transparency requires a multi-pronged approach:

1. **Strengthening Enforcement:** Consistent and stringent enforcement of RERA and GST regulations across all states and city tiers is crucial.
2. **Technology Adoption:** Promoting and perhaps subsidizing the adoption of standardized accounting software and ERP systems for smaller developers can bridge the digital divide.
3. **Capacity Building:** Workshops and training programs can help smaller developers understand and comply with regulatory requirements and adopt better financial practices.
4. **Data Analytics & Integration:** Leveraging technology for data analytics by RERA authorities can help flag inconsistencies and potential issues proactively. Integrating various databases (land records, RERA, GST) could provide a more holistic view.

5. **Buyer Awareness:** Continued efforts to educate homebuyers about their rights under RERA and the importance of due diligence are essential.

Conclusion

The Indian real estate sector has undoubtedly moved towards greater transparency, driven largely by the implementation of RERA and GST. These reforms have formalized processes, empowered buyers, and enhanced financial discipline. However, the journey is not complete. Addressing the challenges faced by smaller developers and ensuring consistent enforcement in smaller towns are critical next steps. While historical issues with unreliable financial information are receding, the lack of sophisticated accounting systems among some players remains a concern. Building a truly transparent, trustworthy, and efficient real estate ecosystem requires sustained effort from regulators, developers, financial institutions, and buyers alike, ensuring that the shadows of the past are fully dispelled by the light of accountability and clear information.

13.6 Interconnection of Books of Accounts

Interconnection of Books of Accounts along with Finalization of Books of Accounts, Income Tax, GST, Banking Regulations, Companies Act 2013, RERA Act, Audit, Financial control

The Central Hub: Books of Accounts

Everything revolves around the accurate and timely recording of financial transactions in the Books of Accounts. This includes:

1. **Journals:** Initial recording of transactions (sales, purchases, expenses, receipts, payments).
2. **Ledgers:** Classifying and summarizing transactions by account (e.g., Land Purchase A/c, Construction Cost A/c, Customer Advances A/c, Bank A/c, GST Payable/Input A/c).
3. **Subsidiary Books:** Detailed records like Purchase Register, Sales Register, Cash Book, Bank Book.
4. **Trial Balance:** A summary of all ledger balances to check arithmetic accuracy.
5. **Financial Statements (Basis for Finalization):**
 - a) **Profit & Loss Account (Statement of Income & Expenditure):** Shows operational performance over a period.
 - b) **Balance Sheet:** Shows financial position (Assets, Liabilities, Equity) at a specific point in time.
 - c) **Cash Flow Statement:** Tracks movement of cash.

Inter-connections Explained:

Here's how each element connects to the Books of Accounts and to each other in the Indian real estate context:

1. Finalization of Books of Accounts:

- (a) Connection:** This is the process of ensuring all transactions for a period (usually a financial year) are recorded, accounts are reconciled (bank, debtors, creditors), provisions (like doubtful debts) are made, expenses are accrued, incomes are recognized (often using Percentage Completion Method - POCM for projects), depreciation is calculated, and closing entries are passed to arrive at the final Profit and loss account and Balance Sheet.
- (b) Interdependency:** Accurate books are the prerequisite for finalization. Finalized accounts are the source for all regulatory reporting (Tax, ROC, RERA, GST, investors, lenders, Banks).

2. Income Tax Act, 1961:

(a) Recording in the Books of accounts:

- (i) Taxable Income Calculation:** The P&L from finalized books is the starting point. Adjustments are made as per Income Tax Act provisions (e.g., disallowed expenses, different depreciation rates, specific income recognition norms like POCM under ICDS).
 - (ii) TDS/TCS:** Payments recorded in books (e.g., contractor payments, rent, salaries, purchase of goods above threshold) determine TDS liability. Sales considerations recorded determine TCS applicability. TDS/TCS entries must reconcile between books and challans/returns.
 - (iii) Tax Audit (Sec 44AB):** If turnover exceeds prescribed limits, a Tax Audit is required. The auditor verifies figures in the tax return against the audited Books of Accounts.
 - (iv) Advance Tax:** Calculated based on estimated income derived from projected figures, which originate from the books.
 - (v) MAT/AMT:** Minimum Alternate Tax / Alternate Minimum Tax calculations rely on book profits as per finalized accounts.
- (b) Interdependency:** Books provide data for tax computation & audit. Tax payments affect cash flow (recorded in books). Tax provisions are recorded in books.

3. Goods and Services Tax (GST):

(a) Recording in the Books of accounts:

- (i) **Output GST:** Sales invoices (for construction services, sale of completed units post-completion certificate where applicable) recorded in books generate GST liability. Must reconcile with GSTR-1.
- (ii) **Input Tax Credit (ITC):** Purchases of goods (cement, steel) and services (architect fees, labour contracts) recorded in books form the basis for claiming ITC. Must reconcile with GSTR-2A/2B and purchase register.
- (iii) **Reverse Charge Mechanism (RCM):** Certain expenses recorded in books (e.g., GTA services, legal fees from advocates) attract GST under RCM, which the developer must pay.
- (iv) **Reconciliation:** GSTR-3B figures (summary of output tax and ITC) must reconcile with the Books of Accounts. Discrepancies are major red flags.
- (v) **Works Contracts:** Complex GST rules apply, requiring careful accounting of materials and services within the books.

- (b) **Interdependency:** GST transactions must be accurately recorded in books. GST payments/refunds impact cash flow (books). GST compliance is verified during Statutory and RERA audits. ITC claims affect project costing (books).

4. Banking Regulations (RBI Guidelines, Loan Agreements):

(a) Recording in the Books of accounts:

- (i) **Bank Reconciliation:** Essential control; bank statements must reconcile with the Bank Ledger in the books.
- (ii) **Loan Compliance:** Banks require periodic submission of financial data (P&L, Balance Sheet, Cash Flow, Stock Statements, Debtor Aging) derived directly from the Books of Accounts to monitor financial health and compliance with loan covenants (e.g., Debt-Service Coverage Ratio).
- (iii) **Fund Utilization:** Banks (especially project finance lenders) track if funds disbursed are used for the intended project purpose, verified through expenses recorded in the books.
- (iv) **RERA Separate Bank Accounts (often linked to RERA):** Transactions through mandatory RERA Separate Bank Accounts must be meticulously tracked in separate ledgers within the books.

- (b) **Interdependency:** Loan receipts and repayments are recorded in books. Interest expense from banks impacts P&L (books). Bank requirements often drive the timeliness of book finalization.

5. Companies Act, 2013 (for Developers structured as Companies):

(a) Recording in the Books of accounts:

- (i) Maintenance of Books:** Section 128 mandates keeping proper books of accounts at the registered office.
- (ii) Financial Statements:** Section 129 mandates that financial statements give a true and fair view and comply with Accounting Standards (Ind AS or AS). Schedule III prescribes the format. These are prepared from finalized books.
- (iii) Statutory Audit:** Section 139 mandates appointment of auditors who audit the books and financial statements.
- (iv) ROC Filings:** Finalized (and audited) financial statements (Form AOC-4) and Annual Return (MGT-7 containing financial highlights) are filed with the Registrar of Companies based on book data.
- (v) Related Party Transactions (Sec 188), Loans to Directors (Sec 185), Investments (Sec 186):** All require proper recording in books and compliance checks.

- (b) Interdependency:** Books form the basis for all Companies Act financial reporting and compliance. Audit relies on books. Non-compliance identified via books/audit leads to penalties under the Act.

6. Real Estate (Regulation and Development) Act, 2016 (RERA):

(a) Recording in the Books of accounts:

- (i) Project Cost Tracking:** RERA mandates detailed tracking of estimated vs. incurred project costs (Land Cost, Construction Cost). This data comes directly from the project-specific ledgers in the Books of Accounts.
- (ii) 70% RERA Separate Bank Account:** Withdrawals from the separate RERA account are permitted only based on project completion percentage, certified by an Engineer, Architect, and a Chartered Accountant. The CA's certificate relies heavily on verifying incurred costs from the Books of Accounts and supporting documents.
- (iii) Quarterly Updates:** Developers must update project status, including financials (costs incurred, sales collected), on the RERA website, using data from the books.
- (iv) Financial Audit (RERA Audit):** Some states mandate RERA audits focusing on compliance, including proper maintenance of the RERA Separate Bank Account and fund utilization, verified against the books.

- (v) **Allottee Collections:** Advances received from customers must be tracked accurately in the books and deposited into the Separate RERA accounts as required.
- (b) **Interdependency:** Books provide crucial data for RERA compliance certificates and reporting. RERA mandates specific banking (RERA Separate Bank Account) and accounting practices (project-wise accounting) which must be reflected in the books. Non-compliance found during RERA audits (based on books) can lead to heavy penalties or project deregistration.
- 7. **Audit (Statutory, Internal, Tax, RERA):**
 - (a) **Recording in the Books of accounts:** Audits (of all types) fundamentally rely on the Books of Accounts as the primary source of evidence. Auditors examine ledgers, vouchers, reconciliations, and financial statements derived from the books.
 - (b) **Interdependency:** Audits verify the accuracy, completeness, and compliance reflected in the books. Audit findings may necessitate adjustments to the books. Different audits use the same underlying books but focus on different regulatory aspects (Companies Act for Statutory, Income Tax Act for Tax, RERA Act for RERA audit). Internal audit often checks the process of bookkeeping and internal controls.
- 8. **Financial Control:**
 - (a) **Recording in the Books of accounts:** Internal financial controls (e.g., authorization procedures for payments, segregation of duties, regular reconciliations, budgeting & variance analysis) are designed to ensure the accuracy, reliability, and integrity of the transactions recorded in the Books of Accounts.
 - (b) **Interdependency:** Strong controls lead to reliable books. Weak controls undermine the accuracy of books, leading to potential errors in Tax, GST, RERA reporting, and exposing the company to fraud risk. Auditors (Internal and Statutory) evaluate the effectiveness of financial controls, often by testing transactions recorded in the books.

In Summary:

The Books of Accounts in real estate industry / company are the financial bedrock. Every transaction impact multiple regulatory frameworks -

- (a) A single sales transaction needs correct recording for:
 - (i) Revenue recognition (Books, Income Tax, RERA progress)
 - (ii) GST liability (GST returns)
 - (iii) Customer ledger (Books)
 - (iv) Bank entry / RERA Separate Bank Account deposit (Banking, RERA)

- (v) Turnover calculation (Income Tax Audit applicability, Companies Act reporting)
- (b) A single purchase transaction (e.g., cement) needs correct recording for:
 - (i) Expense/Asset booking (Books, Project Costing for RERA/Banks)
 - (ii) GST Input Tax Credit (GST returns)
 - (iii) Vendor Ledger (Books)
 - (iv) Payment & possible TDS (Income Tax)

Therefore, maintaining correct, integrated, and compliant Books of Accounts, followed by careful Finalization, is not just an accounting function but a critical compliance and risk management necessity for survival and success in the Indian real estate sector. Often, robust ERP systems are used to manage these complex interdependencies

13.7 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 14

Legal Documentation

14.1 Introduction

In recent decades, the Indian real estate landscape has evolved rapidly, leading to the introduction of several key laws designed to bring accountability and protect stakeholder interests. Proper documentation is the foundation of legality, transparency, and enforceability in real estate transactions. Various laws govern the creation, validation, and regulation of documents in the real estate sector, each serving a specific purpose in safeguarding the rights of stakeholders and ensuring regulatory compliance.

As a professional or a promoter, it is essential to understand the importance, relevance, and legal implications of each of these documents. These agreements and instruments play a critical role at various stages of the real estate project lifecycle from **inception to completion** and are governed by multiple statutes and regulatory frameworks. Proper documentation ensures legal compliance, financial clarity, and smooth execution of the project while protecting the interests of all stakeholders involved.

Together, these laws and their respective documentation requirements form a structured legal ecosystem that governs every stage of a real estate project. This framework ensures clarity, accountability, and transparency among all stakeholders be it landowners, developers, investors, professionals, homebuyers, or regulatory authorities. Proper documentation aligned with relevant laws such as the Real Estate (Regulation and Development) Act (RERA), the Transfer of Property Act, the Indian Contract Act, local Municipal and Town Planning Acts, and Apartment Ownership Acts provides legal validity to transactions, defines rights and obligations, and protects interests.

By complying with these documentation norms, stakeholders are better positioned to mitigate legal risks, avoid future disputes, and streamline project execution. For example, a clear Joint Development Agreement ensures a mutual understanding between landowners and developers; an accurate Agreement for Sale under RERA builds confidence among buyers; while well-drafted construction contracts ensure timely and quality execution. Additionally, proper registration, disclosures, and consent mechanisms as mandated by law build a high level of transparency, which is important for maintaining trust in the real estate sector.

In essence, this comprehensive legal and documentary ecosystem is not merely a compliance requirement, but a foundation that supports ethical practices, informed decision making, financial discipline, and the overall sustainability of real estate development. **For professionals and promoters alike, having a thorough understanding of these**

documents and the laws that govern them is key to successfully crossing the complexities of modern real estate transactions.

14.2 Objective

The primary objective of this chapter is to provide readers with a clear and structured understanding of the **legal documentation required under major real estate laws** in India. It aims to guide real estate professionals, legal practitioners, developers, and property buyers with the knowledge to:

- (a) Identify key documents mandated under laws such as the **Contract Act, TPA, RERA, Mediation Act, MOFA, and AOA**.
- (b) Understand the **purpose, legal basis, and enforceability** of each document.
- (c) Ensure **compliance** with statutory and regulatory obligations in real estate transactions.

14.3 Practical Impact of Legal Documentation in Real Estate

1. **Empowerment Through Legal Awareness** - By **understanding** the documentation required under key real estate laws, readers—whether buyers, developers, or legal advisors—gain the ability to protect their rights, fulfil obligations, and avoid inadvertent legal violations.
2. **Reduction in Legal Disputes** - **Accurate** and complete documentation is a proven method of preventing real estate conflicts. This chapter equips stakeholders with the tools to draft, verify, and execute documents that stand up to legal scrutiny, thereby minimizing disputes.
3. **Improved Compliance with Statutory Frameworks** - **With** rising regulatory enforcement under laws like **RERA**, this chapter ensures readers understand and comply with all required documentation—helping them avoid penalties, delays, or cancellation of projects.
4. **Enhanced Professional Credibility** - **For** real estate professionals, following correct documentation procedures enhances transparency and builds trust with clients and regulators, thereby improving reputation and business growth.
5. **Efficient Dispute Resolution** - **Understanding** documentation under the **Alternate Dispute Resolution System** helps parties resolve disputes outside court through formal agreements, reducing litigation costs and promoting harmonious settlements.
6. **Strengthening Buyer Protections** - The chapter highlights how documentation such as allotment letters, sale deeds, and possession certificates protect homebuyers against fraud, project delays, and false promises—making them informed participants in the transaction.

Different stages in real estate transaction and relevant statute and documents include –

Sl No	Statute	Stage/Transaction	Documents
1	The Indian Contract Act, 1872 - establishes the legal framework for agreements between parties, forming the base for various transactions they enter into.	Transactions during acquisition of land – Purchase	1. Memorandum of Understanding 2. Sale Agreements 3. Lease Agreements 4. Construction Contracts 5. Triparty agreements
		Joint Development Agreement	6. Power of attorney 7. Development agreements
		Vendor / service providers Transactions – during development of the project	8. Vendor agreements 9. Service provider agreements 10. Non-disclosure agreements
		Borrowing / Lender transactions	11. Lender's agreement – loan agreement 12. Mortgage or Charge Agreement 13. Escrow Account Agreement
2	Transfer of Property Act, 1882 (TPA) -	This Act defines the legal requirements for transferring ownership, lease, mortgage, or gifting of immovable property requiring essential instruments to be executed	1. Sale Deeds 2. Lease Deeds 3. Mortgage Deeds etc.
3	The Real Estate (Regulation and Development) Act, 2016 (RERA) - brings in transparency and accountability by mandating registration, disclosures, and buyer-seller documentation	Between promoter and allottees	1. Booking Forms 2. Allotment Letters 3. Agreement for sale 4. Sale Deeds
		After completion of the project – between promoter and association of allottees	1. Deed of Declaration 2. Conveyance of common areas including project land 3. Handover or possession agreement 4. Defect Liability completion agreement

While preparing any real estate document, be it an agreement for sale, joint development agreement, construction contract, or any regulatory filing, one must go beyond filling templates or replicating precedents. It is essential to thoroughly understand the specific requirements, commercial intent, legal obligations, and risks associated with each transaction.

It is equally important that every document stands the test of legal scrutiny. This means the contents must align with applicable statutes, if dispute arise, these documents are the first line of defence in arbitration or litigation. Therefore, every clause should be drafted with foresight and legal precision, ensuring it can withstand examination by regulatory bodies, tribunals, or courts of law.

Furthermore, with the advent of RERA and digital transparency, many of these documents are now available in the public domain. This further reinforces the need for integrity, clarity, and completeness in documentation, as they are not only reviewed by authorities but also scrutinized by buyers, lenders, auditors, and legal advisors.

A well-drafted legal document must:

1. Reflect the commercial understanding accurately and unambiguously.
2. Include key clauses that protect the transaction as a whole, not just the interests of individual parties.
3. Anticipate and address potential risks, delays, disputes, and defaults.
4. Clearly define obligations, timelines, remedies, termination conditions, indemnities, and dispute resolution mechanisms.

In conclusion, drafting real estate documents is a specialized task that demands both legal acumen and practical understanding. Professionals and promoters must recognize that documentation is not about protecting one party over another, it is about protecting the transaction itself. When done right, it minimizes disputes, builds trust, ensures compliance, and serves as the legal foundation for the smooth and successful execution of real estate projects

14.4 Checklist Items

Law	Key Documents	Checklist Items
1. Indian Contract Act, 1872	1. Agreement for Sale - Sale Deed 2. Joint Development Agreement 3. Vendor / service provider agreements 4. Memorandum of	a) Lawful offer, acceptance, and consideration b) Terms and conditions to be clearly defined c) Parties shall be competent to enter into agreement and agreement shall be

	Understanding 5. Loan Agreements	enforceable d) Execution: signatures, date, witnesses optional notarization
2. Transfer of Property Act, 1882 (TPA)	1. Sale Deed 2. Gift Deed 3. Lease/Mortgage Deed 4. Encumbrance Certificate 5. Power of Attorney	a) Document to be executed and registered b) Clauses related to title transfer and delivery of possession c) Mention of property description & boundaries d) Encumbrance-free title to be proven and applicability of Section 52 of the Act (Lis Pendens) notice
3. Real Estate (Regulation and Development) Act, 2016 (RERA)	1. RERA Registration Certificate 2. Agreement for sale 3. Allotment Letter 4. Sanctioned Plans 5. No objection certificates 6. Sale deed	a) Project registered with RERA b) Agreement for sale to include carpet area, completion timeline, etc. c) Attach sanctioned layout & plans d) Allotment letter with unit details e) Payment schedule and cancellation clauses f) The amenities and facilities provided
4. Mediation Act, 2023	1. Mediation Notice 2. Agreement to Mediate 3. Mediation Settlement Agreement	a) Pre-litigation mediation notice served b) Agreement to mediate signed by parties c) Confidential records maintained d) Final settlement signed by parties and mediator e) Copy filed with authority if required
5.Registration Act, 1908	1. Agreement for Sale 2. Sale Deed	a) The applicable stamp duty rate

	3. Stamp duty and registration fee receipt	b) The applicable registration fee c) The state-specific registration process
6. Indian Stamp Act, 1899	Stamped documents and receipts	a) The nature of the transaction / document, as it determines the rate of stamp duty b) The legal status of the persons entering into the transaction

14.5 Glossary

Subrogation Agreement	A legal document where one party (usually an insurer) assumes the legal rights of the other party to pursue a claim, commonly used in mortgage disputes.
Title Deed	Document for ownership of property.
Attestation	The act of witnessing the signing of a document, often required for certain property transactions.
Lease Agreement	Leases exceeding one year require a written agreement and registration.
Model Agreement	A Model Agreement refers to a standard, pre-drafted legal template used for formalizing various real estate transactions, including sale, lease, or development agreements.
Mother Deed	The original document that traces the ownership of a property back to its origin.
Power of Attorney	A legal document that authorizes one person (the Agent or Attorney-in-Fact) to act on behalf of another (the Principal) in specified matters. This delegation can pertain to financial, legal, property, or personal affairs
Encumbrance Certificate	A legal document that certifies that a property is free from any monetary or legal liabilities, such as a mortgage, loan, lien, lease, court order, or other claims during a specific period.
Memorandum of Understanding	A preliminary agreement between two or more parties that outlines the intentions, roles, and key terms of a future formal contract. It is commonly used before signing a legally binding agreement.

Sanctioned Plan	An officially approved building / layout plan issued by the local municipal or development authority that grants permission to develop on a specific piece of land. It confirms that the proposed construction complies with all zoning laws, building bye-laws, development control regulations, and other applicable norms.

14.6 Self Appraisal – Session Learning Outcomes

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Drafting of Legal Documents, Contracts etc.

1. Drafting may be defined as the synthesis of law and fact in a language form. This is the essence of the process of drafting. All three characteristics rank equally in importance. In other words, legal drafting is the crystallization and expression in definitive form of a legal right, privilege, function, duty, or status. It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.

2. A proper understanding of drafting cannot be realised unless the nexus between the law, the facts, and the language is fully understood and accepted. Drafting of legal documents requires, as a pre-requisite, the skills of a draftsman, the knowledge of facts and law so as to put facts in a systematised sequence to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding or prevalent customs or usages or social norms or business conventions, as the case may be, terms and conditions, breaches and remedies etc. in a self-contained and self-explanatory form without any patent or latent ambiguity or doubtful connotation. To collect, consolidate and co-ordinate the above facts in the form of a document, it requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning, open for judicial interpretation to derive the same sense and intentions of the parties with which and for which it has been prepared, adopted and signed.

3. Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

4. DRAFTING AND CONVEYANCING: DISTINGUISHED

a) Both the terms “drafting and conveyancing” provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas “drafting” gives a general meaning synonymous to preparation of drafting of documents. Document may include documents relating to transfer of property as well as other “documents” in a sense as per definition given in Section 3(18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters, figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc. For a businessman, document would mean something as defined under Section 2(4) of the Indian Sale of Goods Act, 1930 so as to include a document of title to

goods i.e. “Bill of lading, dock-warrant, warehouse-keepers’ certificate, wharfingers’ certificate, railway receipt multi-modal transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.” The Companies Act, 1956 defines vide Section 2(15) the term “document” in still wider concept so as to include “summons, notices, requisitions, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act, or otherwise”. Thus, drafting may cover all types of documents in business usages.

5. In India, the commercial houses, banks and financial institutions have been using the term “documentation” in substitution of the words “drafting and conveyancing”. Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

6. DISTINCTION BETWEEN CONVEYANCE AND CONTRACT

a) Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer. Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may partake both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

7. GENERAL PRINCIPLES OF DRAFTING ALL SORTS OF DEEDS AND CONVEYANCING AND OTHER WRITINGS -

a) As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument. He must also note down with provision any particular directions or stipulations which are to be kept in view and to be incorporated in the instrument. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. With this end in view, he should first form a clear idea of what these intentions are.

b) When the draftsman has digested the facts, he should next consider as to whether those intentions can be given effect to without offending against any provision of law. He must, therefore, read the introductory note, or, if time permits, the literature on the subject of the instrument. A corporate Professional, therefore, must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject. Validity of document in the eye of law cannot be ignored and at the same time the facts which should be disclosed in the document cannot be suppressed. Nothing is to be omitted or admitted at random. Therefore, knowledge of law of the land in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided. For example, in cases where a deed to be executed by a limited Entity, it is necessary to go into the question as to whether the Entity has got power or authority under its memorandum to enter into the transaction. A limited Entity can do only that much which it is authorised by its memorandum. Further, a Entity being a legal entity, must necessarily act through its authorised agents. A deed, therefore, should be executed by a person duly authorised by the directors by their resolution or by their power of attorney.

c) It is also to be ensured that the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen. All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them.

d) Document should be supported by the schedules, enclosures or annexures in case any reference to such material has been made in that

e) A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter. If a particular part is not applicable in a particular case that part is omitted from the document.

8. The usual parts or components or clauses of deeds in general are mentioned as follows:

- a) Description of the Deed Title.
- b) Place and Date of execution of a Deed.
- c) Description of Parties to the Deed.
- d) Recitals.
- e) Testatum.

- f) Consideration.
- g) Receipt Clause.
- h) Operative Clause.
- i) Description of Property.
- j) Parcels Clause.
- k) Exceptions and Reservations.
- l) Premises and Habendum.
- m) Covenants and Undertakings.
- n) Testimonium Clause.
- o) Signature and Attestation.
- p) Endorsements and Supplemental Deeds.
- q) Annexures or Schedules.

List of legal documents generally involved in Real Estate Transactions, categorized as per the lifecycle of the project:

1. Pre-Acquisition Stage

- a) **Letter of Intent (LOI)** / Expression of Interest (EOI)
- b) **Memorandum of Understanding (MOU)** for land acquisition
- c) **Title Search & Legal Opinion Report**
- d) **Non-Disclosure Agreement (NDA)** with stakeholders
- e) **Agreement to Sell / Sale Agreement (for land purchase)**
- f) **Power of Attorney (General / Special)**

2. Land Acquisition & Ownership Transfer

- a) **Sale Deed / Conveyance Deed**
- b) **Gift Deed (if applicable)**
- c) **Partition Deed / Family Settlement Deed** (if multiple owners)
- d) **Lease Deed / License Agreement (if on leasehold land)**
- e) **Mutation Application & Order**

3. Development Stage

- a) **Joint Development Agreement (JDA)** / Collaboration Agreement

- b) **Development Management Agreement (DMA)**
- c) **Power of Attorney (POA) in favor of Developer**
- d) **Construction Agreement / EPC Contract**
- e) **Architect Agreement**
- f) **Consultant / Project Management Consultant Agreement**
- g) **Vendor / Supplier Agreements**
- h) **Loan / Mortgage Documents with Banks or Financial Institutions**
- i) **Escrow Agreement (if applicable)**

4. Approvals & Compliance Stage

- a) **Application Forms for Sanctions (Building Plan, Environmental, Fire, etc.)**
- b) **RERA Registration Application & Affidavit**
- c) **Draft Agreement for Sale (under RERA-compliant format)**
- d) **Declaration / Affidavit by Promoter under RERA**

5. Marketing & Sales Stage

- a) **Allotment Letter to Buyers**
- b) **Builder-Buyer Agreement / Agreement for Sale (RERA Format)**
- c) **Construction-Linked Payment Plan / Schedule**
- d) **CRM and Sales Terms & Conditions (with disclaimers)**

6. Handover & Post-Completion Stage

- a) **Possession Letter / Handover Letter**
- b) **Sale Deed / Conveyance Deed in favor of Allottees**
- c) **Deed of Apartment / Deed of Declaration (under State Apartment Ownership Acts)**
- d) **Formation of Society / RWA Documents (Bye-laws, Registration Papers)**
- e) **Occupancy Certificate (OC) & Completion Certificate (CC)**
- f) **Defect Liability Undertakings / Warranties**

7. Redevelopment / Transfer Stage (if applicable)

- a) **Consent Letters from Allottees (2/3rd consent under RERA)**
- b) **Redevelopment Agreement with RWA / Society**
- c) **Supplementary Development Agreements (if TDR, DRC involved)**

d) **Tripartite Agreements (Owner-Developer-Buyer)**

SI No	Document Name	Description and Contents	Remarks
1	Memorandum of Understanding (MoU)	a) Parties to the MoU - Full details of landowner(s) and developer/promoter (individual/company) and Authority of signatories (Board Resolution, Power of Attorney, etc.). b) Description of the Property - Survey numbers, boundaries, extent, and location details and Annexures with maps, site plans, and ownership documents. c) Purpose & Objective of MoU - To define the intent to acquire/develop the property (purchase, joint development, lease, etc.) and Basis of negotiation (price, revenue share, built-up area, etc.). d) Consideration & Payment Terms - Total consideration value or development model (revenue share / area share), Advance payment, schedule of payments, escrow arrangements and Refund mechanism if the transaction fails. e) Due Diligence & Title Verification - Developer's right to conduct legal, technical, and financial due diligence, Owner's obligation to provide all documents and Consequences of defective title. f) Obligations of the Landowner - Clear title, possession, and cooperation in obtaining approvals, Execution of necessary documents (Sale Deed, GPA, JDA). And Responsibility to clear encumbrances/litigations. g) Obligations of the Developer - Timely payment/consideration, Obtaining statutory approvals. And Development timelines (if	

		development model) h) Representations & Warranties - Owner warrants clear title, no encumbrances, no pending litigation. Developer warrants financial capability and regulatory compliance. i) Approvals & Statutory Compliance j) Responsibility for obtaining approvals post-MoU. k) Term & Validity of the MoU - Duration of the MoU (till execution of definitive agreement or a fixed period) and Conditions for renewal/extension. l) Termination Events leading to termination (default, defective title, non-payment) and Refund/ compensation clauses upon termination. m) Confidentiality Both parties to maintain confidentiality of all information. n) Dispute Resolution - Arbitration clause (Arbitration & Conciliation Act, 1996). o) Jurisdiction of courts p) Indemnity - Landowner indemnifies developer for title defects and Developer indemnifies owner for statutory violations. q) Force Majeure - Events beyond control (natural calamities, government action) excusing performance. r) Costs & Expenses s) Governing Law - Applicable laws (Indian Contract Act, Transfer of Property Act, Registration Act, RERA, etc.). t) Miscellaneous u) Notices & Communication. v) Entire understanding clause (superseding previous communications). w) Execution in counterparts.	

2	Agreement to Sell / Sale Agreement	a) A preliminary agreement executed between landowner and purchaser before execution of the final sale deed. b) It records the terms of sale such as offer, acceptance, consideration, timelines, possession, breach, specific performance and default clauses. c) Protects the buyer by ensuring the seller cannot sell to another party during the validity period. d) Essential for obtaining loans and as evidence in case of disputes. e) Must be registered if possession is handed over, under Section 17 of the Registration Act, 1908. f) Stamping required as per Indian Stamp Act, 1899. g) Falls under Transfer of Property Act, 1882 (Section 54). h) In real estate projects, RERA mandates this to be in prescribed format (Section 13, RERA Act 2016). i) Often includes dispute resolution clauses (Arbitration under Arbitration & Conciliation Act, 1996). j) Once conditions are met, converted into Sale Deed.	
3	Sale Deed / Conveyance Deed	a) Legal document transferring ownership rights from seller to buyer. b) Must be executed and registered under Section 17 of Registration Act, 1908. c) Confers absolute title to the buyer under Transfer of Property Act, 1882 (Section 54). d) Non-registration renders it invalid in courts. e) Must include complete property	

		description, consideration paid, and flow of title. f) Place of execution, buyer, seller, Offer, acceptance, consideration etc is mandatory clauses g) Clear schedule of the property, extent of land, description of property, surrounding property details h) Stamped adequately as per Indian Stamp Act, 1899 and state laws. i) Essential for mutation in land records under Land Revenue Codes of States. j) Without a valid Sale Deed, buyer has no legal ownership rights. k) Provides legal remedies for breach through Specific Relief Act, 1963. l) In RERA projects, executed only after OC/CC (Occupancy/Completion Certificates).	
4	Joint Development Agreement (JDA)	a) Executed between landowner and developer for development of land/property - Agreement between landowner and developer to develop a property without transferring ownership. b) Defines project scope, sets out profit-sharing, area-sharing, legal title, construction responsibilities, and timelines. c) Clearly mentions the roles and responsibilities of the parties to the JDA. d) Delay compensation, specific performance, breach of agreement, responsibility of resolving the legal title litigation if any etc are part of the document e) Must be registered and stamped as per Registration Act, 1908 and Stamp Act. f) Title remains with landowner until completion; developer gets development rights.	

		g) Income tax implications under Income Tax Act, 1961 (Section 45(5A)). h) GST applicable on development rights transfer (CGST Act, 2017). i) Often coupled with Power of Attorney in favor of developer. j) Must comply with RERA Act, 2016 (Registration of Project by Developer). k) Disputes resolved via Arbitration & Conciliation Act, 1996. l) Critical for financing and bank approvals of the project.	
5	Builder-Buyer Agreement / Agreement for Sale (RERA Format)	a) Mandatory under Section 13 of RERA Act, 2016. b) Contents and clauses in the agreement shall comply with the provisions of the RERA Act 2016. c) Executed between promoter and allottee for sale of apartment/plot. d) Must include timelines, specifications, penalty clauses, and separate bank account details. e) Cannot include unfair terms (Section 18 – refund/compensation to buyer). f) Must be registered and stamped under Registration Act, 1908. g) Ensures transparency and accountability in construction milestones. h) Acts as evidence in RERA complaints and consumer forums. i) Protects buyers against arbitrary cancellation by builder. j) In case of delay, entitles buyer to interest/refund under RERA. k) Overrides any conflicting terms in brochures or advertisements.	
6	Power of Attorney (POA)	l) Grants authority by owner to another person (developer, relative) to act on their	

		behalf. m) Common in JDAs and for NRI owners. n) Must be registered if it confers rights to transfer immovable property (Registration Act, 1908, Sec 17). o) Governed by Power of Attorney Act, 1882. p) Can be revoked unless irrevocable with consideration. q) Misuse can lead to fraud; hence limited, specific POAs preferred. r) Not a substitute for a Sale Deed as per Suraj Lamp Case (SC Judgment). s) Used for signing applications, agreements, and registrations. t) Notarization recommended even if registration not mandatory. u) POA Ends on death/incapacity of principal unless irrevocable.	
7	Construction Agreement / Contractor Agreement	a) Agreement between developer and contractor for execution of construction works. b) Specifies work scope, quality standards, milestones, payment terms, and penalties. c) Must comply with Indian Contract Act, 1872 for validity - offer, acceptance, consideration, breach, termination etc d) Important for dispute resolution under Arbitration & Conciliation Act, 1996. e) Ensures timely completion and protects against substandard work. f) Often includes performance guarantees and retention clauses. g) Non-compliance with specifications can lead to contractual penalties. h) Many a time key for lenders to ensure project execution reliability. i) Forms a part of project cost for financial reporting and auditing.	

		j) Contractors' details shall be mentioned as part of RERA Registration of the real estate project	
8	RERA Separate Bank - Agreement	a) Parties include promoter and bank to open the Separate Bank account as per the Rera Regulations. b) Executed to safeguard funds, especially under RERA Act, 2016 (Section 4(2)(I)(D)). c) Ensures 70% of project funds are utilized only for construction and land costs. d) Provides transparency and trust for allottees and financiers. e) Includes conditions for withdrawal, audit, and reporting. f) Governed by Contract Act, 1872 and RERA guidelines g) Prevents fund diversion to other projects, helps in timely completion by ensuring funds availability. h) Often mandated by financial institutions as a precondition to lending. i) Crucial in building confidence in allottees.	
9	Possession Letter / Handover Document	a) Issued by the developer to the allottee upon project completion. b) Confirms readiness of property for occupation by the allottee c) Can consider for RERA Act, 2016 (Sections 17 & 19 – possession timelines). d) Should include details of unit, date of possession, fixtures, facilities etc e) Often linked with issuance of Occupancy Certificate (OC). f) Acts as proof of delivery in case of differences or disputes. g) Allottee can refuse possession if incomplete as per sanctioned plans / agreement of sale etc., h) Forms basis for starting maintenance and association / society formation process.	

10	Relinquishment Deed	a) A release or relinquishment deed is an instrument whereby a person renounces a claim upon another or against any specified property which he is or may be entitled to enforce. It may be deed poll or as a deed to which both the releaser as well as the person in whose favour the release is made are made parties. b) A release is sometimes called relinquishment. When considered from the point of view of the person in whose favour the transaction operates, it is “release” as it releases him or his property from an obligation or liability. When considered from the point of view of the releaser, it may be said to be a “relinquishment” as the releaser relinquishes a certain right which he has, or may be entitled to enforce. c) A release must be in writing signed by all the releasers. It can be drafted as a deed poll or as a deed. If it is drafted as a deed then all releasers and all persons having an interest in the claim or property should be made parties. If the release is of a claim under an instrument then it would require attestation, if the instrument required attestation. If the release is required to be registered it should be attested by at least two witnesses. In other cases it may be attested by one witness. d) If the subject matter of the release is an immovable property the amount of value of which exceeds Rs.100, it is compulsorily registrable. The release deed should contain the recitals regarding the origin of the claim, acknowledgement of the releaser about the claim and words and expressions sufficiently clear to convey the intention of the releaser to discharge the claim.	

		e) Under Article 55, Schedule I of the Indian Stamp Act, 1899 a simple release deed is chargeable to stamp duty. The duty is the same as bond (Article 15) for such amount or value as set forth in the release. A release or discharge of an instrument mentioned in Section 23A(1) of the Stamp Act is chargeable to the same stamp duty as the instrument. Such an instrument is chargeable to duty as an agreement or memorandum of agreement under article 5(c) of the Stamp Act. f) In case of layout or plotted development or Development Plan in case of Group Housing project, the promoter shall relinquish road widening area, parks, open spaces, roads etc as per Development Control Regulations	

Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Insolvency & Bankruptcy Code, 2016 and Real Estate Sector

16.1 Introduction and Legislative Background

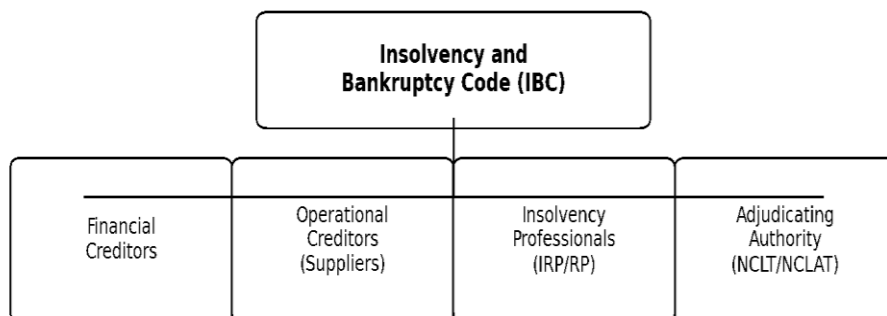
16.1.1 Overview of the Insolvency and Bankruptcy Code (IBC), 2016

The Insolvency and Bankruptcy Code, 2016 (IBC) was introduced as a landmark legislation to create a consolidated legal framework for resolving insolvency and bankruptcy across various categories of debtors, including companies, limited liability partnerships, partnership firms, and individuals. The primary objective of the Code is to provide a streamlined and time-bound process—ranging from 180 to a maximum of 330 days—for the resolution of financial distress, thereby ensuring minimal erosion of asset value.

Beyond procedural efficiency, the IBC aims to achieve broader economic goals: it focuses on **maximization of the value of assets**, thereby benefiting creditors, employees, and other stakeholders; it **promotes entrepreneurship** by enabling distressed business owners to exit unviable ventures in an orderly manner and re-enter the economic mainstream without prolonged legal entanglements; and it **improves access to credit** by enhancing lenders' confidence in a fair and predictable recovery framework. The Code also emphasizes **equitable treatment of all stakeholders**, ensuring that resolution proceeds are distributed in accordance with a defined waterfall mechanism, respecting the rights and priorities of different classes of creditors.

Through its structured institutional ecosystem—comprising the Insolvency and Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT), and licensed Insolvency Professionals—the IBC fosters transparency, accountability, and professional conduct. As a result, it plays a pivotal role in reinforcing India's financial discipline, improving the health of the credit market, and enhancing the overall ease of doing business.

16.1.2 IBC Ecosystem Stakeholders



16.1.3 Legislative Journey

Year	Milestone
2016	IBC Enacted
2017	NCLT & NCLAT begins functioning as adjudicating authority
2018	Homebuyers recognized as Financial Creditors, after several judicial pronouncement (Chitra Sharma case)
2020	Threshold introduced: 100 homebuyers or 10% of allottees (whichever is less)
2022	Reverse CIRP concept evolved by Courts for project wise Resolution
2024-2025	Reforms for project-wise insolvency introduced through amendment in regulations

16.2 Key Objectives of the Code

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted with the objective of consolidating and streamlining the fragmented framework governing insolvency and bankruptcy in India. It sought to integrate multiple legislations, including the Companies Act, the Sick Industrial Companies (Special Provisions) Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), into a single, comprehensive and time-bound resolution mechanism for stressed assets.

One of the most significant policy shifts introduced by the Code was the transition from a **debtor-in-possession** model to a **creditor-in-control** regime. Upon admission of a Corporate Insolvency Resolution Process (CIRP), the management of the corporate debtor is vested with a Committee of Creditors (CoC), which functions under the active oversight of a licensed Insolvency Professional (IP). This ensures professional and objective management of the insolvency proceedings, insulating the process from promoter interference.

The CIRP is further subject to institutional supervision by the **Insolvency and Bankruptcy Board of India (IBBI)** and adjudicatory oversight by the **National Company Law Tribunal (NCLT)**, ensuring transparency, accountability, and legal robustness. By promoting swift resolution of insolvency cases and maximising the value of distressed assets, the Code plays a vital role in strengthening creditor rights and enhancing India's overall ease of doing business.

16.3 Real Estate Sector under IBC Context

When the Insolvency and Bankruptcy Code, 2016 (IBC) was enacted, the real estate sector was not distinctly recognized under the insolvency framework. The nature of real estate

transactions—characterized by project-based development, multi-party contracts, and high individual investments—did not align neatly with traditional corporate debt structures.

Between 2016 and 2018, courts witnessed conflicting interpretations regarding the status of homebuyers. Some tribunals classified them as **Operational Creditors** owing to the nature of the agreement (e.g., service contracts), while others disputed their classification altogether.

This confusion led to litigation across multiple forums until the **IBC (Second Amendment) Act, 2018**, which brought critical clarity by:

- Recognizing Homebuyers as Financial Creditors under Section 5(8)(f) by treating their advances as having the “commercial effect of borrowing”.
- Enabling Homebuyers to be part of the Committee of Creditors (CoC).
- Introducing Resolution Class of Creditors (RCC), enabling collective representation of homebuyers through an Authorized Representative (AR).

Despite legal recognition, the real estate sector presents several **unique challenges** under the IBC framework:

16.3.1 Multiplicity and Diversity of Homebuyer Claims

A single real estate project often involves hundreds or thousands of homebuyers, each at different stages of payment and possession. **There are** discrepancies in contractual terms, promised deliverables, and payment schedules complicate claim collation and assessment.

16.3.2 Conflict and Overlap with RERA

The Real Estate (Regulation and Development) Act, 2016 (RERA) grants specific protections and adjudicatory powers to homebuyers. Conflicts arise over jurisdiction (RERA vs. NCLT), priority of claims, and enforceability of RERA orders during moratorium under Section 14 of IBC. There is ongoing legal debate regarding whether RERA rights should survive or yield to IBC's waterfall and moratorium provisions

16.3.3 Multiple Projects Under One Legal Entity

Developers frequently undertake several independent real estate projects through the same corporate entity. **As such** when one or more projects default, the entire entity is admitted into CIRP, affecting even solvent and progressing projects. This creates complications in ring-fencing cash flows, asset valuation, and project specific resolution planning.

16.3.4 Partial Defaults

Defaults may occur only in a subset of projects, while others remain functional or near-completion. **As such** a blanket insolvency admission for the entity leads to disruption in functioning projects, undermining value and creating discontent among unaffected stakeholders.

16.3.5 Limited Awareness and Participation by Homebuyers

Homebuyers are often unaware of their rights and obligations under the IBC, particularly regarding Claim filing procedure (Form CA), Role and voting rights in CoC, Participation via Authorized Representative (AR). Further many do not engage proactively in CIRP, leaving critical decisions to a few vocal participants or the AR.

16.3.6 Project Delays and Liquidity Shortage

Many projects are already stalled due to cash flow constraints, litigation, or lack of regulatory clearances. Resolution Applicants often hesitate to take on such projects unless accompanied by a funding package or government incentives. **Coupled with** the lack of interim finance or buyer confidence impedes revival efforts, pushing many cases toward liquidation.

16.3.7 Assessment of Resolution Plan Viability

For homebuyer-led CoCs, value maximization is often synonymous with **completion of the project and possession**, not just recovery of financial value. However, resolution applicants may propose financial restructuring, partial development, or asset sales—leading to a mismatch in expectations. Assessing whether the plan offers better returns than liquidation, especially for allottees, is a complex and often contentious task.

16.3.8 Valuation and Information Asymmetry

The valuation of incomplete projects, partly constructed inventory, unsold units, and land parcels requires specialized real estate valuation skills. **With** absence of clear demarcation of project-wise assets and liabilities results in information asymmetry and challenges for forensic audits or asset monetization.

16.3.9 Judicial Delays and Extended Timelines

Though IBC prescribes a 180 to 330-day timeline, real estate insolvency cases are frequently delayed due to Multiple appeals, Project-level complexity, Stakeholder litigations in parallel forums (RERA, consumer courts, civil courts), Non-cooperation from promoters or government agencies.

16.4 How to read & understand

Understand the Legal Foundations: Familiarize yourself with the core legal framework and how it applies uniquely to real estate. Create a reference sheet or flashcards of key sections and regulations.

Essential Laws & Provisions:

Law / Source	Key Focus Areas
IBC, 2016	Sections 5(8)(f), 7, 14, 18, 21, 25A, 30, 31, 33, 65, 238 Sec. 5(8)(f) – homebuyers as financial creditors; Sec. 7 (initiation); Sec.

	14 (moratorium); Sec. 18, 21, 25A (claims & AR); Sec. 30–31 (plans); Sec. 33 (liquidation); Sec. 65 (fraudulent intent); Sec. 238 (overriding effect).
IBBI CIRP Regulations	Regulation 4D (Separate A/c), 8A (Form CA), 16A (AR), 30C, 36, 36A, 36B, 39
RERA Act, 2016	Definitions of allottee, real estate project; RERA orders often form claim evidence
Judgments	<i>Pioneer Urban, Umang Realtech, Victory Iron, Vishal Chelani</i>

Grasp the Real Estate Specific Concepts Real estate insolvency differs from regular CIRPs due to: • Multiple stakeholders (hundreds/thousands of homebuyers) • Project-level default vs. entity-wide default • Overlap with RERA & consumer laws • Reverse CIRP model • Possession vs. refund confusion	Focus Topics to Master: • Homebuyers as Financial Creditors [Sec 5(8)(f)] • Threshold for filing [Sec 7 Proviso] • Authorized Representative mechanism • Separate project accounts [Reg. 4D] • Real estate asset valuation • Completion-based resolution plans • Project wise Insolvency
Follow a Practical Step-by-Step Approach (SOP) Use a SOP (Standard Operating Procedure) to guide your actions as an IP or lawyer: Example Approach: 1. Study Form CA & how to file buyer claims 2. Learn to draft and evaluate Information Memorandum (IM) – project-wise 3. Understand AR appointment process & role 4. Practice timeline management (180–330 days) 5. Know when Reverse CIRP is applicable 6. Learn resolution plan evaluation – feasibility, fairness, possession	Practice Through Templates, Forms, and Checklists Suggested Tools: • Claim Filing Checklist (Form CA) • Project IM template • SOP with timelines • CoC voting flow (with AR) • Summary chart of PUF transactions • Template: Resolution Plan Evaluation Matrix Simulate real estate cases through mock CIRPs or internships with IRPs.

How to Stay Updated - Follow IBBI & NCLT websites - Read IBBI Discussion Papers & Publications on real estate - Subscribe to legal platforms - Join IP associations / forums (e.g., ICSI IIP, IPA ICAI)	Use Case Laws to Deepen Application Knowledge Case laws explain how provisions are interpreted. Start with, maintain a judgment tracker with facts, ruling, and principles.

16.5 Applicable Act, Rules, Regulations.

16.5.1 Applicable Acts, Rules & Regulations – Real Estate Insolvency

Summary of the Legal Framework, Authorities, Acts, Rules, and Regulations applicable to Real Estate Insolvency under IBC for reference by Insolvency Professionals, legal practitioners, and trainees:

Sl. No.	Legislation / Regulation	Authority Enacted By	Purpose / Applicability
1	Insolvency and Bankruptcy Code, 2016 (IBC)	Parliament of India	Governs Corporate Insolvency Resolution Process (CIRP), liquidation, rights of financial creditors including homebuyers.
2	IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Insolvency and Bankruptcy Board of India (IBBI)	Regulates procedural aspects of CIRP including AR mechanism, claim verification, resolution plan, PUFE transactions, timelines.
3	IBBI (Liquidation Process) Regulations, 2016	IBBI	Regulates liquidation process, valuation, sale of assets including project-wise sales, distribution waterfall.
4	Real Estate (Regulation and Development) Act, 2016 (RERA)	Ministry of Housing and Urban Affairs	Governs registration and transparency of real estate projects; defines 'allottee'; RERA orders may be used in CIRP claims.
5	Consumer Protection Act, 2019	Ministry of Consumer Affairs	Provides alternate remedy for homebuyers for delay/deficiency in service; proceedings stayed during CIRP (Sec. 14 IBC).

6	Companies Act, 2013	Ministry of Corporate Affairs	Ongoing compliance of corporate debtor during CIRP (financials, directors, meetings, disclosures).
7	SARFAESI Act, 2002	Ministry of Finance	Governs enforcement of security interest by banks and financial institutions; actions barred during moratorium (Sec. 14 IBC).
8	Transfer of Property Act, 1882	Parliament of India	Governs leasehold rights, transfer of immovable property, JDAs; important for asset control during CIRP.
9	Indian Contract Act, 1872	Parliament of India	Governs enforcement and breach of contracts (e.g., sale agreements, JDAs); relevant in resolution plan drafting.
10	Income Tax Act, 1961 & GST Laws	CBDT / GST Council	For tax compliance of the corporate debtor during CIRP; claim filing by tax authorities.
11	NCLT & NCLAT Rules, 2016	MCA / Tribunals	Prescribe procedure for filing insolvency applications, appeals, pleadings, service of notices.
12	IBBI Model Timelines & Circulars	IBBI	Operational guidance for RPs, resolution applicants, valuation, forensic audits, Form G, Form H.
13	IBC (Application to Adjudicating Authority) Rules, 2016	MCA	Rules for filing CIRP initiation applications under Sections 7, 9, and 10.
14	RERA Rules & Regulations (State-wise)	State Governments	Implement central RERA Act; useful for claim substantiation and land approvals.
15	Urban Development / Municipal Acts	State / Local Authorities	Approval and transfer of real estate project assets during CIRP/resolution/liquidation.

16.5.2 Regulatory and Adjudicatory Authorities

Authority	Role / Jurisdiction	Key Functions in Real Estate Insolvency
IBBI	Regulator of insolvency ecosystem	Monitors IPs, CIRP regulations, disciplinary actions
NCLT	Adjudicating Authority under IBC	Admission of CIRP, appointment of IRP/RP, approval of resolution plans
NCLAT	Appellate forum	Hears appeals from NCLT orders (e.g., plan rejection, CoC disputes)
RERA Authorities	Sector regulator under RERA Act	Enforces project registration, order compliance; coordination with RP
Resolution Professional (IRP/RP)	Executor of CIRP	Manages debtor, verifies claims, invites resolution plans, interfaces with CoC
Authorized Representative (AR)	Represents class like creditors homebuyers	Gathers voting instructions, votes in CoC, ensures buyer communication
Committee of Creditors (CoC)	Decision-making body in CIRP	Approves resolution plan, votes on liquidation, monitors RP
Facilitators	Appointed for >1000 homebuyers	Assists ARs in communication, support, and coordination
High Court	State wise	For any writ petitions
Supreme Court of India	Constitutional and final appellate authority	Constitutional validity, interpretation of laws (e.g., Pioneer case)

16.5.3 Role of Regulatory Bodies

16.5.3.1 Insolvency and Bankruptcy Board of India (IBBI)

The IBBI is the principal regulatory authority under the Insolvency and Bankruptcy Code, 2016. It is responsible for formulating and enforcing regulations governing the Corporate Insolvency Resolution Process (CIRP), liquidation, voluntary liquidation, and valuation. It regulates and monitors the conduct of Insolvency Professionals (IPs), Insolvency Professional Agencies (IPAs), and Information Utilities (IUs), ensuring adherence to ethical and procedural standards. IBBI also develops model timelines, process guidelines, and maintains oversight over systemic implementation of the Code.

16.5.3.2 National Company Law Tribunal (NCLT)

The NCLT is the adjudicating authority for corporate insolvency cases under the IBC. It has the power to admit or reject applications for initiating CIRP filed by financial creditors, operational creditors, or the corporate debtor itself. Upon admission, the NCLT appoints the Interim Resolution Professional (IRP), imposes moratorium under Section 14, and oversees the insolvency process. It also approves or rejects resolution plans under Section 31 and adjudicates matters related to avoidance transactions, fraudulent trading, and promoter misconduct.

16.5.3.3 National Company Law Appellate Tribunal (NCLAT)

NCLAT serves as the appellate forum to hear appeals against the orders of NCLT, including those relating to admission or rejection of insolvency applications, resolution plan approvals, or liquidation decisions. It also hears appeals from the IBBI and the Competition Commission of India (CCI) in IBC matters. Its role is crucial in interpreting legal issues, resolving jurisdictional conflicts, and laying down important precedents affecting real estate insolvency jurisprudence.

16.5.3.4 Real Estate Regulatory Authority (RERA)

RERA, established under the Real Estate (Regulation and Development) Act, 2016, regulates the real estate sector by ensuring project registration, enforcing transparency in sales, and protecting the interests of homebuyers. While RERA safeguards buyer rights and can order refunds or penalties, its provisions often overlap with IBC, leading to jurisdictional conflicts—particularly during the moratorium period. However, RERA orders and complaints may be relevant for establishing default or substantiating claims in insolvency proceedings.

16.5.3.5 Insolvency Professionals (IPs) and Authorized Representatives (ARs)

Insolvency Professionals (IRPs/RPs), licensed and regulated by IBBI, play a pivotal role in managing the debtor company during the CIRP. They handle claim verification, CoC formation, asset preservation, and resolution plan coordination. In cases involving large classes of creditors like homebuyers, Authorized Representatives (ARs) are appointed to represent them in the CoC. ARs communicate developments, seek instructions, and vote on behalf of the creditor class, ensuring informed participation by fragmented or unorganised groups such as allottees.

16.5.3.6 Committee of Creditors (CoC)

The CoC is the primary commercial decision-making body in CIRP, comprising all financial creditors, including homebuyers (post-2018 amendment). It holds the power to approve or reject resolution plans, decide on liquidation, and authorise key actions by the Resolution Professional. All critical decisions require a minimum of 66% voting approval. The CoC is instrumental in balancing creditor interests and plays a decisive role in determining the fate of the corporate debtor.

16.5.3.7 Supreme Court and High Courts

Though IBC is a self-contained code, constitutional courts have a vital role in interpreting its provisions, resolving statutory conflicts, and upholding the rights of stakeholders. The Supreme Court, through appeals under Article 136, and High Courts under writ jurisdiction (Article 226/227), have delivered landmark judgments—such as upholding the constitutional validity of recognizing homebuyers as financial creditors (*Pioneer Urban Land & Infrastructure Ltd. v. Union of India*). These courts also provide redress where IBC remedies are inadequate or unclear.

16.5.4 IBC Framework – Provisions, Regulations, Checklist, SOP, Case Laws

16.5.4.1 Definitions – IBC Section 3 and Section 5

16.5.4.1.1 Claim (Sec 3(6)) means – (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

16.5.4.1.2 Corporate Debtor (Sec 3(8)): means a corporate person who owes a debt to any person;

16.5.4.1.3 Class of creditors (CIRP regulation 2(aa): means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, “creditors in a class” shall be construed accordingly.

16.5.4.1.4 Debt (Sec 3(11)): means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

16.5.4.1.5 Default (Sec 3(12)): means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;

16.5.4.1.6 Financial Creditor (Sec 5(7)): means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

16.5.4.1.7 Financial Debt (Sec 5(8)): means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes– any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation. -For the purposes of this sub-clause, -

- (i) 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; and

- (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

16.5.4.2 Inclusion of Homebuyers (Section 5(8)(f))

“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.”

With this amendment homebuyers not only became part of the Committee of Creditors (CoC) but also gained the right to initiate insolvency under Section 7. Homebuyers alongwith other Financial Creditor empowered to decide on the Resolution of the Company, with developers not only becoming liable to respond to homebuyer claims under IBC but also accountable for failure and fraudulent transactions.

16.5.4.3 Threshold for Initiation (Section 7)

As per the Original Provision (2016–March 2020)

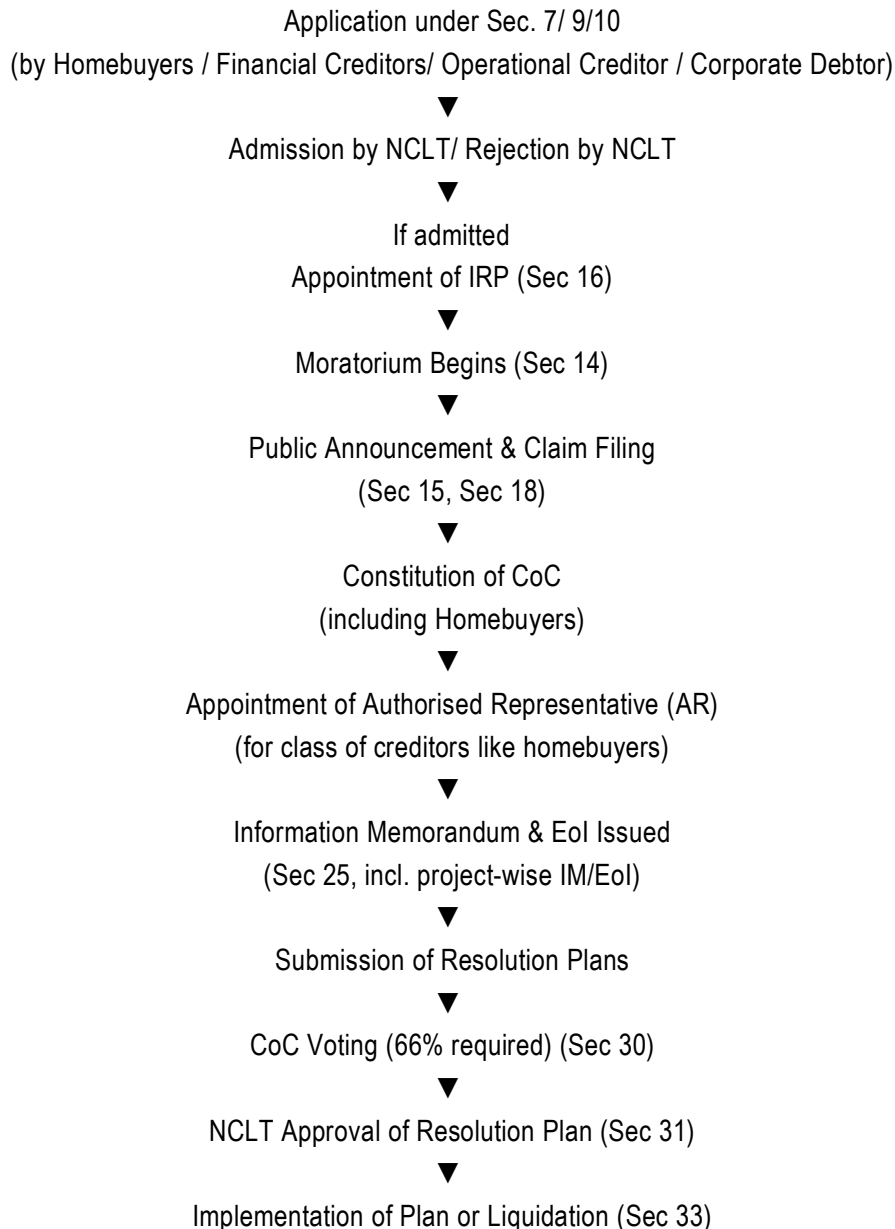
- Threshold: INR 1 lakh (Rs. 1,00,000) or more
- Applicable to all financial creditors, including banks, NBFCs, bondholders, and even homebuyers (post 2018 amendment).
- Section 4 of IBC read with Section 7.

Post the 2020 amendment, Insolvency against real estate developers/ Com can be filed by 100 allottees or 10% of total allottees, whichever is less. However, for all other Financial Creditor Insolvency can be filed if the outstanding amount is more than Rs.1 Crore.

Current Position (as of 2025)

Applicant	Minimum Threshold (Default Amount)	Additional Condition
Financial Creditor	Rs. 1 crore	None
Allottees (Real Estate)	Not monetary – numerical threshold	Minimum 100 or 10% of allottees in the project
Joint Financial Creditors	Rs. 1 crore (collectively)	Joint application permitted

16.5.4.4 Process Flow in Real Estate CIRP



16.5.4.5 Section-wise Application to Real Estate

Section	Relevance to Real Estate	Practical Consideration
5(8)(f)	Defines homebuyers as financial creditors	Eligibility for CoC
7	Allows them to initiate CIRP	Threshold must be met

14	Freezes all suits and enforcement	Buyer suits in RERA/consumer forums halted
17, 18, 20	IRP takes control of project finances, manage the Company as the Going concern	Recovery of unsold inventory data
25	RP must invite resolution plans	Tailored to real estate assets
29A	Prevents defaulting promoters from bidding	Promoter-led resolution plans may be barred
30, 31	Resolution plan approval mechanism	Buyers' consent key
33	If plan fails, liquidation ensues	Risk of incomplete projects
65	Penal provision for misuse	Used when filings are for refund, not resolution
238	Overriding Effect of the Code	resolving conflicts between IBC and other statutes
240A	MSME	Exemption to MSME – Section 29A

16.5.4.6 Section 7 – Initiation of CIRP by Financial Creditors

Homebuyers are classified as *financial creditors* under the explanation added to Section 5(8)(f) by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018. Hence, allottees of real estate projects (i.e., individual homebuyers or groups of them) can initiate CIRP under Section 7 being at least 100 allottees or 10% of total allottees, whichever is lower, in the *same project* may jointly file the application to initiate CIRP. The mechanism for joint application by the allottees prevents misuse by a single allottee and ensures that only genuine, collective grievances result in insolvency proceedings of a real estate Company thereby protecting the interest of the majority of homebuyers while deterring frivolous litigation.

Key Case: Pioneer Urban Land & Infrastructure Ltd. v. Union of India (SC, 2019) – upheld constitutional validity of treating homebuyers as financial creditors

16.5.4.7 Section 14 – Moratorium

Once CIRP is initiated, Adjudicating Authority declares **moratorium** prohibiting:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) The supply of essential goods or services to the corporate debtor (like electricity/water for the project or any supply of any other goods & services critical to protect and preserve the value) shall not be terminated or suspended or interrupted during moratorium period.

The moratorium protects the assets of the real estate project from being siphoned off or sold during CIRP and provides peace period for timebound resolution. The moratorium shall have the effect of protecting the CD from any suspension or termination on the grounds of insolvency, (notwithstanding anything contained in any other law for the time being in force) a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, subject to the condition that there is no default for current due during the CIRP period. However, in projects where homebuyers have already taken possession, there's debate whether they can continue RERA cases during moratorium – courts have varied on this.

Key Case: Flat Buyers Assn. v. Umang Realtech Pvt. Ltd. (NCLAT, 2019) – clarified moratorium's effect in real estate CIRP

16.5.4.8 Section 17 – Management of the Corporate Debtor on CIRP

Upon commencement of the Corporate Insolvency Resolution Process (CIRP), the management of the affairs of the corporate debtor shall vest in the Interim Resolution Professional (IRP). The powers of the Board of Directors or partners are suspended and exercised by the IRP, who takes control of all assets, records, and operations of the corporate debtor. The IRP acts on behalf of the corporate debtor, can operate its bank accounts, and is empowered to perform necessary functions to keep the company as a going concern. Additionally, the personnel of the corporate debtor, including former management, are required to cooperate with the IRP to ensure effective conduct of the resolution process.

16.5.4.9 Section 18 – Duties of Interim Resolution Professional (IRP)

IRP must Collect and verify claims from homebuyers (many of whom may not have formal agreements or possession). He is further required to take control of the assets of the real estate company, including unsold inventory and project receivables. Manage records and books, which are often disorganized in real estate companies. Complexities arise due to

segregation of assets and liabilities across multiple projects. As such IRP must carefully determine whether CIRP is for the developer or a specific project.

16.5.4.10 Section 20 – Managing the Company as Going Concern

The Interim Resolution Professional (IRP) or Resolution Professional (RP) to take all necessary steps to preserve and protect the value of the real estate project and ensure it continues as a going concern during the CIRP. This includes safeguarding incomplete construction assets, maintaining project approvals and licenses, engaging vendors and contractors, managing ongoing site work, and arranging interim finance to resume or sustain construction activity. The RP may also renegotiate or enter into contracts essential for project continuity, ensuring that the interests of homebuyers and other stakeholders are protected while maximizing the value of the real estate asset.

16.5.4.11 Section 25 – Duties of Resolution Professional (RP)

In real estate insolvency cases, Section 25 mandates that the Resolution Professional (RP) must preserve and protect the assets of the real estate project and manage it as a going concern. The RP is responsible for verifying claims, forming and convening the Committee of Creditors (CoC), and conducting the CIRP in a fair and transparent manner. Specifically, the RP must invite and evaluate resolution plans, ensure compliance with the Code, and present only those plans to the CoC that meet eligibility and feasibility criteria. In real estate, this often involves complex coordination with homebuyers, contractors, regulatory authorities (e.g., RERA), and service providers to assess whether a project-specific or entity-wide resolution plan is viable. The RP must also provide access to relevant information to resolution applicants and take necessary action to protect the interest of homebuyers, who form a significant part of the financial creditor class in such cases.

The RP must protect homebuyers' interest while balancing financial creditors' claims. Ensuring project completion becomes a key goal, unlike in regular CIRPs where asset monetization is preferred.

16.5.4.12 Section 29A – Persons Not Eligible to be Resolution Applicants

Section 29A plays a critical role by disqualifying certain persons—particularly **defaulting promoters and related parties**—from submitting a resolution plan for the revival of the corporate debtor. This includes promoters who have been willful defaulters, whose accounts are classified as non-performing assets (NPAs) for over a year, or who have been convicted of certain offenses. For real estate companies, this ensures that errant developers who have failed to deliver projects or have misused buyer funds cannot regain control of the company through the CIRP. The provision thereby protects the interest of homebuyers and other stakeholders by encouraging fresh, credible resolution applicants and preventing abuse of the insolvency process.

The Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018) held that Section 29A is to be interpreted purposively to prevent “backdoor entry” of ineligible promoters.

16.5.4.13 Section 65 – Fraudulent or Malicious Initiation of Proceedings

Section 65 serves as a safeguard against the misuse of the insolvency process by penalizing any person who initiates CIRP with a fraudulent or malicious intent, for purposes other than genuine insolvency resolution. For example, a homebuyer or developer may be penalized if they file an application not to resolve actual financial distress, but to harass the other party, gain unfair advantage, or derail ongoing project execution or developers trying to escape RERA liabilities or completion of the projects. The section empowers the Adjudicating Authority (NCLT) to impose fines if it is satisfied that the insolvency process was initiated with mala fide intentions. This is particularly relevant in real estate where disputes often arise over possession delays, and insolvency may be wrongfully invoked as a pressure tactic rather than a genuine financial resolution tool.

Courts have emphasized that IBC cannot be used as a “recovery mechanism” (*Mobilox Innovations v. Kirusa Software*, 2017). Similarly, the NCLT has repeatedly cautioned that mala fide applications will attract penalties under Section 65.

16.5.4.14 Section 60 – Adjudicating Authority

National Company Law Tribunal (NCLT) is designated as the Adjudicating Authority for all insolvency and liquidation matters involving corporate persons, including real estate companies. It also empowers the NCLT to deal with personal guarantor insolvency cases and related party transactions connected to the corporate debtor. In real estate cases, the NCLT plays a central role in admitting CIRP applications, approving resolution plans, and adjudicating disputes involving homebuyers, developers, and regulatory authorities such as RERA, especially when overlapping claims or moratorium issues arise.

16.5.4.15 Section 238 – Overriding Effect of the Code

The provisions of the IBC shall override any other law that is inconsistent with the Code. In the real estate context, this section is pivotal in resolving conflicts between IBC and other statutes, especially **RERA**, **Consumer Protection Act**, and **contractual agreements**. It ensures that once a company is under CIRP, the moratorium under Section 14 and the decisions of the CoC take precedence, thereby providing a uniform and binding insolvency resolution framework, even when there are conflicting directions from other forums or regulators.

16.5.4.16 Section 240A - MSME

Provides relaxations to Micro, Small, and Medium Enterprises (MSMEs) from certain disqualifications under Section 29A, particularly allowing defaulting promoters of MSMEs to submit resolution plans for their own companies. This special provision recognizes the unique

nature and dependency of MSMEs on their promoters, where excluding them could hinder effective resolution. While Section 29A generally bars wilful defaulters and related parties from bidding for their own firms, Section 240A exempts MSMEs from clauses (c) and (h) of 29A, thereby enabling their promoters to revive the business, subject to safeguards. This aims to ensure continuity, preserve employment, and facilitate revival of viable MSME units.

16.5.5 Legal Framework – IBC, RERA, and Consumer Protection Act

16.5.5.1 Interplay of IBC and RERA

Aspect	IBC	RERA
Objective	Resolution of insolvency	Regulation and promotion of real estate
Adjudicator	NCLT	RERA Authority/Adjudicating Officer
Remedies	Collective resolution	Individual buyer redressal
Jurisdiction	Financial Creditor-based	Buyer-centric

Supreme Court in *Pioneer Urban*: “Remedies under RERA and Consumer Act are concurrent with IBC, but once CIRP is initiated, IBC prevails due to Section 238 overriding clause.”

16.5.5.2 Legal Validity of Homebuyers as Financial Creditors

Case: *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019)

- SC upheld Section 5(8)(f).
- Stated that treating homebuyers as FCs is not arbitrary or discriminatory.

16.5.5.3 The IBC and the RERA

The interplay between the Insolvency and Bankruptcy Code (IBC) and the Real Estate (Regulation and Development) Act (RERA) presents a complex legal and regulatory overlap, particularly in the resolution of distressed real estate projects. While **RERA** was enacted to protect the interests of homebuyers by ensuring transparency, timely delivery, and accountability of developers, **IBC** provides a time-bound insolvency resolution framework in case of financial default. A key point of conflict arises when a developer is admitted into Corporate Insolvency Resolution Process (CIRP) under IBC—the **moratorium under Section 14** halts all proceedings, including those before RERA authorities, which can stall individual homebuyer claims and refund orders. However, the **Supreme Court in the Pioneer Urban case (2019)** upheld the constitutional validity of treating homebuyers as financial creditors under IBC, while clarifying that the two statutes operate in distinct fields: RERA safeguards individual consumer rights, whereas IBC addresses collective creditor interests and resolution of the entity as a whole. Further, **Section 238 of IBC**, which gives it overriding effect in case of inconsistency, ensures that the IBC prevails in insolvency situations. However, RERA's records and project specific details often assist in verifying homebuyer claims and assessing developer defaults. Thus, while the two laws may appear conflicting, they are increasingly

viewed as complementary—RERA addresses pre-default conduct and consumer protection, while IBC ensures post-default collective recovery and project revival through a structured process.

16.5.5.4 IBC, 2016 and the Consumer Protection Act, 2019

The interplay between the Insolvency and Bankruptcy Code (IBC) and the Consumer Protection Act, 2019 becomes particularly relevant in the context of real estate insolvency, where homebuyers are both *consumers* and *financial creditors*. Under the Consumer Protection Act, aggrieved homebuyers have the right to file complaints before Consumer Commissions for deficiency in service, delay in possession, or refund with compensation. However, when the real estate developer is admitted into Corporate Insolvency Resolution Process (CIRP) under the IBC, the moratorium under Section 14 bars the continuation or initiation of all proceedings, including those under the Consumer Protection Act. This has led to conflicts, where consumers face hurdles in pursuing individual remedies during CIRP.

Nevertheless, courts have clarified that filing a complaint under the Consumer Protection Act does not bar the consumer from initiating insolvency proceedings under IBC if a default is established. Once CIRP begins, however, all pending consumer cases are stayed, and homebuyers are required to submit their claims through the IBC process. While the Consumer Act focuses on *individual grievances* and redressal, the IBC addresses *collective insolvency resolution*. The Supreme Court in Pioneer Urban Land case emphasized that these statutes are not in conflict but serve complementary purposes—Consumer Protection Act offers pre-default remedies, while IBC provides a post-default resolution framework. However, the overriding effect of IBC under Section 238 ensures that during insolvency proceedings, IBC will prevail over any conflicting consumer forum orders.

16.5.6 Homebuyer Claims and Committee of Creditors (CoC)

16.5.6.1 Filing of Claims

Regulation 8A of CIRP Regulations – Claims by Creditors in Class

Regulation 8A provides the process for submission of claims by **creditors in a class**, such as **homebuyers**, who are now recognized as **financial creditors** under the Insolvency and Bankruptcy Code (IBC). This regulation ensures a simplified and uniform mechanism for large groups of similarly situated creditors to submit their claims during the Corporate Insolvency Resolution Process (CIRP). It simplifies the claim process, ensures their representation through an AR, and guarantees that their interests are duly reflected in the CoC's decisions on resolution plans and other matters.

Applicability: Applies to creditors belonging to a class, as specified by the interim resolution professional (IRP) — most commonly, *homebuyers* in real estate insolvency, deposit holders, debenture holders

Form and Timeline: Creditors in a class must submit their claims in **Form CA** of Schedule I to the IRP within the stipulated time (usually 14 days from the public announcement).

Claim should be filed alongwith with the copy Allotment letter / agreement, Bank statements / receipts, RERA or any other orders (if any) or such other document, evidencing existence of debt, based on which the IRP verifies and admits based on project ledger.

Authorized Representative (AR): Based on the number of claims received, the IRP/RP facilitates the appointment of an **Authorized Representative** to represent the entire class in the **Committee of Creditors (CoC)**.

16.5.6.2 Submission and Verification of proof of Claims

Regulation 12 of the IBBI (CIRP) Regulations, 2016 provides that a creditor must submit their claim with proof on or before the last date specified in the public announcement. However, if a creditor fails to do so within that period, they may still submit their claim with proof to the Interim Resolution Professional (IRP) or Resolution Professional (RP) up to the later of:

- (i) the date of issue of the request for resolution plans (RFRP) under Regulation 36B, or
- (ii) ninety days from the insolvency commencement date.

If the claim is submitted beyond ninety days, the creditor must also provide reasons for the delay.

As provided under regulation 13, if claims are received after the issue of RFRP but up to seven days before the meeting of creditors for voting on the resolution plan or initiation of liquidation, the Interim Resolution Professional (IRP) or Resolution Professional (RP) must verify and classify such claims as either acceptable or non-acceptable for collation. Within seven days of this classification, the RP must inform the creditor of the decision, providing reasons in case of rejection. Claims deemed acceptable are to be placed before the Committee of Creditors (CoC) in the next meeting for its recommendation on inclusion in the list of creditors and treatment in the resolution plan and must also be submitted before the Adjudicating Authority (NCLT) for condonation of delay and adjudication, wherever applicable.

16.5.6.3 Role & Power of Authorized Representative (AR)

The Authorized Representative (AR) under IBC ensures that homebuyers, as a dispersed and numerous groups of financial creditors, are given a fair and structured voice in the insolvency process. It bridges the gap between procedural complexity and the right to participate in decision-making. AR are appointed when class exceeds 10 members, chosen by majority vote or NCLT appointment and represents homebuyers in CoC for participating in voting, plan approval.

16.5.6.4 Legal Basis for Appointment of Authorized Representative

Section 21(6A): Where a financial debt is owed to a class of creditors exceeding (e.g., homebuyers) a specified number, the interim resolution professional shall make an application

to the Adjudicating Authority (NCLT) for the appointment of an authorized representative to act on their behalf in the CoC.

Section 21(6B): The authorized representative appointed by the NCLT shall be paid remuneration as specified and which shall form part of the CIRP cost.

16.5.6.5 Section 25A – Right & Duties of Authorised representative (AR)

Section 25A is crucial as it governs the participation of **homebuyers**, who are classified as a **class of financial creditors**. Given their large numbers and fragmented nature, an **Authorized Representative (AR)** is appointed by the Adjudicating Authority (NCLT) to represent them in the CoC. Section 25A empowers the AR to attend meetings, vote on key matters, and communicate effectively with the homebuyer group, including circulation of agenda & minutes of the meeting. The AR must cast votes in accordance with instructions received from the individual creditors he represents, based on a prior voting process. This ensures that the voice of homebuyers—though represented collectively—is exercised democratically, and their interests are adequately considered in the commercial decisions of the CoC, including the approval of resolution plans and liquidation proposals.

16.5.6.6 Section 25A(3A) Collective Voting by AR

Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote.

16.5.6.7 Regulation 4A – Choice of Authorized Representative (AR)

Applicable when a class of creditors (such as homebuyers) exceeds the specified number (currently 10 or more creditors). IRP must identify three Insolvency Professionals (IPs) from the same state as the corporate debtor and put up their names for voting by the class creditors, after obtaining their consent. The IRP shall apply to NCLT for appointment of the IP who gets the most votes as the Authorized Representative.

This process ensures that the AR is chosen **transparently and democratically**, reflecting the collective preference of the creditors.

"The IRP shall identify three IPs who are eligible and willing, and propose them to the creditors in the class for their choice."

16.5.6.8 Regulation 16A of CIRP Regulations – Representation in CoC

1. Selection and Appointment of AR: The Interim Resolution Professional (IRP) selects an insolvency professional (IP) as the Authorized Representative based on the highest number of preferences received in Form CA from financial creditors in a class (e.g., homebuyers). Only those Form CAs received within the timeline specified in the public announcement are

considered valid. Within two days of verifying claims, the IRP must apply to the Adjudicating Authority (NCLT) for appointment of the selected IP as the AR. Pending NCLT approval, the selected professional acts as an interim AR, attending CoC meetings with the same rights and duties as a formally appointed AR.

2. Replacement of AR: If at least 10% of financial creditors in the class (by voting share) request a change, the IRP/RP must initiate a replacement process. The RP must offer a choice of at least three IPs, including the existing AR and those suggested by the creditors, and open a voting window for a minimum of 24 hours. The IP receiving the highest voting share is proposed for appointment as the new AR before the Adjudicating Authority.

3. Communication and Transparency: The IRP/RP must provide electronic means of communication between the AR and the creditors in the class. An updated list of creditors in each class must be provided to the AR initially and as and when updated. The AR has no role in claim verification—they are strictly representatives, not claim processors.

4. Voting and Meeting Participation: The AR votes in the CoC on behalf of the class based on instructions received from individual creditors. Voting rights of each creditor are proportional to the admitted claim amount (including 8% annual interest unless otherwise agreed). Before CoC meetings, the AR must circulate the agenda and may seek preliminary views from creditors with a minimum 12-hour window to respond and opening 24 hours after the AR shares the agenda. However these preliminary views are not binding voting instructions but help the AR prepare for meetings.

5. Duties and Responsibilities of the AR: The AR acts as a vital communication and decision-making link between the creditors in a class (e.g., homebuyers) and the CIRP process. Key responsibilities include:

- a) Assist creditors in understanding CoC discussions and decisions.
- b) Review and comment on the CoC meeting minutes.
- c) Support in marketing strategy for corporate debtor's assets under Regulation 36C.
- d) Collaborate with creditors in marketing efforts to attract better resolution applicants.
- e) Help evaluate resolution plans, provide suggestions for modification, and ensure access to necessary documents.
- f) Keep creditors informed of CIRP progress and developments.
- g) Record minutes of meetings with the creditors he represents.
- h) Represent the class before NCLT, NCLAT, and regulatory bodies.

Creditors in a class may assign **additional responsibilities** to the AR related to their representation in the CoC.

16.5.6.9 Fees for the AR (Part of CIRP Cost)

Fee for attending CoC Meetings

Number of Creditors	Fee per CoC Meeting (Rs.)
10–100	30,000
101–1,000	40,000
More than 1,000	50,000

Fee for Meetings with Creditors in Class

Number of Creditors	Fee per Class Meeting (Rs.)
10–100	10,000
101–1,000	12,000
More than 1,000	15,000

These fees are part of the **insolvency resolution process costs**, with two class meetings per CoC meeting covered automatically; additional meetings require CoC approval. Let me know if you want a visual version of this as well.

16.5.6.10 Practical Importance in Real Estate Insolvency

- In real estate projects, hundreds or thousands of homebuyers may be involved.
- Without the AR mechanism, individual homebuyers would find it impossible to participate effectively.
- The AR ensures:
 - Structured representation of homebuyers' collective interests.
 - Compliance with timelines and procedures under the IBC.
 - Continuity of voting and decision-making in resolution planning.

16.5.6.11 Timeline for Appointment of AR

Step	Description
Within 3 days of CIRP commencement	IRP identifies 3 IPs and issues notice to creditors in class
Next 7 days	Creditors respond with their choice
Within 2 days of receipt	IRP files application with NCLT
NCLT appoints AR	AR selected continues to perform his duties till appointed by NCLT

16.5.6.12 Facilitators under Real Estate Insolvency:

In large housing projects involving thousands of homebuyers, where the Authorized Representative alone may not be sufficient to ensure effective communication and representation. Facilitators help decentralize and streamline communication with different groups of allottees, improving trust and participation in the CIRP.

16.5.6.13 Regulation 16C – Appointment of Facilitators

Regulation 16C allows the Committee of Creditors (CoC) to direct the IRP or RP to appoint facilitators when the number of creditors in a class (such as homebuyers) exceeds 1,000. A facilitator can be appointed for a sub-class of at least 100 creditors, based on a request placed after the first CoC meeting. The facilitator must be independent of the IRP, RP, and Authorized Representative, and a maximum of five facilitators can be appointed. Each facilitator is entitled to 20% of the fee payable to the Authorized Representative, which is treated as part of the insolvency resolution process cost. Facilitators may also be replaced by a majority decision of the sub-class they represent.

16.5.6.14 Regulation 16D – Roles and Responsibilities of Facilitators

Regulation 16D outlines the duties of facilitators appointed under Regulation 16C, primarily aimed at enhancing communication and representation for large classes of creditors. Facilitators act as a link between the Authorized Representative (AR) and the sub-class of creditors, attend CoC meetings as observers, provide information and clarifications about the insolvency process under the AR's guidance, and carry out any additional tasks assigned by the CoC to improve the effectiveness of stakeholder engagement during CIRP.

16.5.6.15 Regulation 18(4): Meeting of Committee

Where the corporate debtor has any real estate project, the committee may direct the resolution professional to invite the 'competent authority' as defined in clause (p) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) related to such project to attend such meeting(s) of the committee, as the committee may decide, without voting rights, for providing inputs on matters associated with the development of such project.

16.5.6.16 Constitution and Voting in Committee of Creditors (CoC)

The Resolution Professional (RP) shall constitute the Committee of Creditors (CoC) comprising all **financial creditors**, including **homebuyers**, who were recognized as financial creditors through the 2018 amendment. Each homebuyer, as an allottee, has voting rights in proportion to their admitted debt. However, due to their large numbers, homebuyers are treated as a **class of creditors** and represented in the CoC through an **Authorized Representative (AR)** appointed by the Adjudicating Authority (NCLT). The CoC is responsible for making all major commercial decisions regarding the Corporate Insolvency Resolution Process (CIRP), including the approval or rejection of resolution plans. In the real estate

context, this setup ensures that the collective voice of homebuyers is considered in the decision-making process, while maintaining efficiency through representation.

Stakeholder	Weight in CoC	Voting Requirement
Financial creditors	Proportional to debt	66% for resolution plan
Homebuyers	Treated as one class	Represented by AR as above

16.5.7 Resolution in Real Estate CIRP

16.5.7.1 CIRP Regulations (2016) – Project-Specific Considerations

- **Regulation 36:** Information Memorandum must include project-wise inventory
- **Regulation 36A:** Invitation for EOI – tailored to real estate bidders
- **Regulation 39(1A):** CoC can vote on feasibility & viability before considering plan

Key Practical Issues:

- Accounting treatment of unsold flats
- Segregation of project bank accounts
- Separate valuation for each project asset

16.5.7.2 Appointment and Duties of IRP/RP

In the Corporate Insolvency Resolution Process (CIRP) of a real estate project, the Adjudicating Authority (NCLT), upon admission of the insolvency application, appoints an Interim Resolution Professional (IRP) who takes over the management of the corporate debtor under Section 16 of the IBC. The IRP makes public announcement in Form A, ensure control & custody of site/units, verifies claims, constitutes the Committee of Creditors (CoC), and convenes its first meeting, where the CoC may either confirm the IRP as the Resolution Professional (RP) or appoint a new one under Section 22. The RP's duties, particularly in real estate cases, include managing the company as a going concern, protecting and preserving project assets, coordinating with regulatory authorities (like RERA), collecting homebuyer claims (as financial creditors), facilitating the appointment of an Authorized Representative (AR) under Regulation 16A, preparing a report on development rights and approvals (as per Regulation 30C), inviting and evaluating resolution plans, and ensuring that the interests of homebuyers are addressed fairly in the plan. The RP also collaborates with stakeholders to ensure the project's viability and maximization of value for all creditors.

16.5.7.3 Regulation 4D - Operating separate bank account for each real estate project.

Where the corporate debtor has any real estate project, the interim resolution professional or the resolution professional shall operate a separate bank account for each real estate project to ensure transparency and accountability

16.5.7.4 Regulation 4E - Handing over the possession.

After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional shall hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement.

16.5.7.5 Information Memorandum (IM) – Section 29 read with regulation 36

In real estate insolvency, Regulation 36 requires the Resolution Professional (RP) to prepare and share an **Information Memorandum (IM)** in electronic form with the Committee of Creditors (CoC) by the **95th day** from the insolvency commencement date. The IM must comprehensively capture the status and value of real estate project assets—such as land parcels, under-construction units, unsold inventory, approvals, and statutory permissions (also aligned with Regulation 30C). It includes a detailed description of **assets and liabilities**, financial statements (audited and provisional), list of creditors (including homebuyers), admitted claims, security interests, and details of related party transactions and guarantees. For ongoing projects, the IM should highlight **development rights**, litigation status (including RERA or consumer cases), employee obligations (like site engineers or contractors), and **project wise business viability**. In addition, it must provide insight into the developer's business model, customer advances received, GST input credits, key vendor and utility connections, and other factors that impact completion as a going concern. For developers with over ₹100 crore in asset value, an industry overview and market growth prospects must be added. The **fair value** of the assets is also included unless the CoC decides otherwise. Access to the IM is strictly conditional upon signing a **confidentiality undertaking**, as mandated under Section 29(2) of the IBC.

16.5.7.6 Virtual Data Room (VDR) Management

A secured platform for prospective resolution applicants to access project:

- Title deeds
- Project approvals
- Homebuyer lists and receivables
- Construction progress and costs
- Encumbrances

Typical Documents in Real Estate VDR

Category	Documents
Legal	Land title, RERA registration, approvals

Financial	Receivables from allottees, project cost sheet
Construction	Architect's certificate, completion schedules
Disputes	Consumer complaints, NCLT orders, injunctions

16.5.7.7 Regulation 36A – Invitation for Expression of Interest (EOI)

Regulation 36A mandates the Resolution Professional (RP) to publish an invitation for Expression of Interest (EOI) in Form G, within 60 days from the insolvency commencement date, inviting eligible and interested resolution applicants to submit resolution plans. The EOI must be published in English and regional newspapers, on the corporate debtor's and IBBI's websites, and in any other manner decided by the CoC. For real estate companies, the CoC may choose to invite separate resolution plans for each project or group of projects, enabling project-wise resolution. The detailed invitation must state eligibility criteria (approved by CoC), ineligibility under Section 29A, and basic corporate debtor information, and must not require any fee or non-refundable deposit. If the resolution plan is to be submitted by an association of homebuyers representing at least 10% or 100 allottees (whichever is lower), the CoC may relax eligibility and deposit requirements. Prospective applicants must submit unconditional EOIs with undertakings confirming eligibility, no disqualification under Section 29A, truthfulness of information, and confidentiality compliance under Section 29(2). The RP must conduct due diligence, issue a provisional list of eligible applicants within 10 days, invite objections, and then issue a final list within the next 10 days. Modifications to the EOI may be made only once and through the same publication process as the original invitation.

16.5.7.8 Regulation 36B – Request for Resolution Plans (RFRP)

Regulation 36B requires the Resolution Professional (RP) to issue the Request for Resolution Plans (RFRP), along with the Information Memorandum and Evaluation Matrix, to all resolution applicants in the final list within five days of its issuance under Regulation 36A. The RFRP must detail the steps of the plan submission process, interaction protocols, and timelines, allowing a minimum of 30 days for submission. It must not require any non-refundable deposit, and if the resolution plan is approved under Section 30(4), it must mandate submission of a performance security to ensure implementation—failing which, the security may be forfeited. However, in real estate insolvency, the CoC may relax the performance security requirement for a resolution applicant that is an association or group of homebuyers representing at least 10% or 100 allottees, whichever is lower. The performance security terms (amount, type, duration) are to be defined in the RFRP with CoC approval. Any modification in the RFRP or evaluation matrix is treated as a fresh issue (but may only be made once), and the RP, with CoC's approval, may extend the submission deadline or re-issue the RFRP if plans received are unsatisfactory. In cases of no resolution plan received, the RP may also invite asset sale-based resolution plans for individual assets of the corporate debtor, again with CoC approval.

16.5.7.9 Resolution Plan Requirements & Approval

Section 30 & Regulations 37, 38 – Submission and Content of Resolution Plan (Real Estate Context)

Under Section 30, a resolution applicant may submit a resolution plan to the Resolution Professional (RP), who must examine it for compliance with the Code, including the ineligibility criteria under Section 29A and the mandatory content requirements under Regulation 38. The RP presents all eligible plans to the Committee of Creditors (CoC) for evaluation and approval. Regulation 37 specifies the types of restructuring permitted in a resolution plan, such as sale or transfer of assets, merger, change in capital structure, or assignment of debts—all of which are particularly applicable in real estate insolvency where project-wise resolution or transfer to a third-party developer is often proposed. Regulation 38 mandates that the plan must prioritize payment of insolvency resolution process costs, provide for operational creditors in a manner not less than liquidation value, and include effective implementation and supervision mechanisms. In real estate cases, it must also ensure fair treatment of homebuyers (as financial creditors), protect their possession rights, outline project completion schedules, and comply with applicable laws such as RERA. The plan must demonstrate feasibility, viability, and fairness, and upon CoC approval (66% vote), it proceeds to NCLT for sanction under Section 31.

Section 30 requires that the plan must provide for payment of CIRP cost and the amount proposed to the operational creditors not being less than the liquidation value to be in priority, before any payments are made to the Financial Creditors.

16.5.7.10 Section 31 (IBC) & Regulation 39 – Approval and Binding Nature of Resolution Plan (Real Estate Context)

Section 31 of the IBC provides that once a resolution plan is approved by the Committee of Creditors (CoC) with at least 66% voting share, it is submitted by the Resolution Professional (RP) to the Adjudicating Authority (NCLT) for final approval. If the NCLT is satisfied that the plan meets the requirements of Section 30(2) and other provisions of the Code, it shall approve the plan, which then becomes binding on the corporate debtor, its employees, members, creditors (including homebuyers), guarantors, and government authorities. Regulation 39 complements this by prescribing that the RP must submit the approved plan along with a compliance certificate (Form H) confirming adherence to statutory requirements, due process, and feasibility. In real estate insolvency, this approval has significant implications for homebuyers, who often prioritize possession over monetary recovery. The resolution plan must clearly address project completion timelines, treatment of unsold inventory, statutory dues (e.g., RERA, GST), and protection of homebuyer interests. Once approved by NCLT, the resolution plan overrides conflicting contractual terms, RERA directions, or consumer forum orders, ensuring a uniform, court-enforced mechanism for project revival and stakeholder recovery.

16.5.7.11 Regulation 30C – Report on Development Rights and Permissions in Real Estate Projects

Regulation 30C mandates that where the corporate debtor is involved in real estate development, the Resolution Professional must prepare a report outlining the current status of development rights, approvals, and statutory permissions necessary for the project's continuation. This report is to be submitted to the CoC for its comments, and subsequently filed before the Adjudicating Authority (NCLT) along with the CoC's observations, within **60 days** from the insolvency commencement date. This regulation ensures transparency and enables informed decision-making regarding project viability and resolution strategies. □ .

16.5.7.12 Valuation

1. Definitions (Regulation 2)

Fair Value: Estimated realizable value of assets if exchanged on the valuation date between a willing buyer and a willing seller in an arm's length transaction.

Liquidation Value: Estimated realizable value of assets if the corporate debtor were to be liquidated on the insolvency commencement date.

2. Section 18(f): Duties of Interim Resolution Professional

The IRP shall collect information relating to the assets, finances and operations of the corporate debtor (CD) for determining its financial position, including information relating to the valuation of assets.

3. Regulation 27 – Appointment of Registered Valuers

"The resolution professional shall within seven days of his appointment, but not later than the forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the **fair value** and the **liquidation value** of the corporate debtor."

IRP/RP must appoint at least two IBBI-registered valuers for each class of assets being Land & Building, Plant & Machinery and Financial Assets. Valuer so appointed provide independent reports which are used for assessing viability of resolution plans and guiding CoC decision-making. Average of the two values is taken for both Fair and Liquidation value, if there's significant deviation, a third valuer may be appointed.

These values are shared only with CoC and not with resolution applicants, however fair value arrived may be shared with the prospective resolution applicant if the CoC so decides. (Reg. 35).

16.5.7.13 Regulation 30B – Audit of Corporate Debtor

Regulation 30B empowers any member of the Committee of Creditors (CoC) to propose an audit of the corporate debtor, specifying its objectives, scope, estimated cost, timeline, and the name(s) of proposed auditors. Such a proposal must be approved by the CoC as per

Regulation 18(3). The audit must be conducted by a qualified Insolvency Professional, and the resulting report—detailing key findings—is to be presented to the CoC along with the comments of the IRP/RP. The expenses incurred for such audits are treated as part of the insolvency resolution process cost (IRPC), enabling better financial and operational assessment of the corporate debtor during CIRP.

16.5.7.14 Forensic Audit under IBC

No explicit mention in IBC, required under Section 18 and Section 25. A forensic audit helps the RP gather evidence of such transactions. Usually conducted by independent forensic audit firms or CAs with forensic background. Helps IRP/RP in Identification of Related party siphoning of funds, Round-tripping of loans, Fictitious assets or liabilities etc.

16.5.7.15 PUF Transactions – Sections 43, 45, 50 & 66 of IBC

IRP/RP must protect and preserve the value of the property of the CD and manage operations. The Insolvency and Bankruptcy Code empowers the Resolution Professional or Liquidator to scrutinize and report certain past transactions of the corporate debtor that may have unjustly depleted its assets before insolvency. **Section 43 (Preferential Transactions)** covers instances where the corporate debtor, during the look-back period (2 years for related parties, 1 year for others), transferred assets or payments to a creditor or guarantor to place them in a better position than others in the event of liquidation. **Section 45 (Undervalued Transactions)** deals with transactions where the corporate debtor sold or transferred assets for significantly less than their real value, with the intent to defraud or without receiving commensurate consideration. **Section 50 (Extortionate Credit Transactions)** targets unfair or excessive credit arrangements (e.g., extremely high interest rates or unconscionable terms) made within two years before the insolvency commencement. **Section 66 (Fraudulent Trading or Wrongful Trading)** allows the Adjudicating Authority to hold directors or connected persons personally liable if they knowingly carried on business with intent to defraud creditors or for fraudulent purposes. In **real estate CIRPs**, these provisions are crucial to identify diversion of homebuyer funds, land transfers at undervalue, preferential allotments, or fraud by promoters, and enable claw-back for equitable asset distribution or project revival.

16.5.7.16 Regulation 35A – Identification of PUF Transactions

Regulation 35A mandates that the Resolution Professional (RP) must form an opinion on whether the corporate debtor has been involved in any preferential, undervalued, extortionate, or fraudulent transactions under Sections 43, 45, 50, or 66 of the IBC within 75 days from the insolvency commencement date. Based on this, the RP must make a determination within the next 15 days (i.e., by Day 90) and file an application with the Adjudicating Authority (NCLT) for appropriate relief within 135 days of the commencement date. These timelines ensure early identification and reversal of wrongful transactions that may have depleted the value of the corporate debtor's assets. In real estate insolvency, this regulation plays a vital role in uncovering fraudulent land deals, diversion of homebuyer funds, or preferential treatment to

related parties by the developer, and helps to claw back such value into the insolvency estate for equitable treatment of creditors, especially homebuyers.

16.5.7.17 Regulation 31A – Regulatory Fee

Regulation 31A mandates the payment of a regulatory fee to the Insolvency and Bankruptcy Board of India (IBBI) under two scenarios. First, where a resolution plan approved under Section 31 of the IBC results in a realisable value to creditors higher than the liquidation value, a fee of 0.25% of the realisable value is payable—applicable to resolution plans approved on or after 1st October 2022. However, this fee is not applicable if the approved resolution plan pertains to a real estate project where the resolution applicant is an association or group of allottees (i.e., homebuyers). Second, a 1% regulatory fee is applicable on the cost of hiring any professional or service provider by the IRP or RP during CIRP, and this fee must be paid in accordance with the manner prescribed under the IBBI (Insolvency Professionals) Regulations, 2016. These provisions ensure accountability and contribute to the Board's regulatory oversight of the insolvency ecosystem.

16.5.7.18 Differentiation Among Homebuyers

In insolvency proceedings under the **Insolvency and Bankruptcy Code, 2016**, homebuyers are recognized as **financial creditors**, but they are not a homogenous group. Differentiation among homebuyers becomes necessary due to their **varying legal, financial, and contractual positions**, especially in large real estate projects. However as per various legal precedent it has been established that no Discrimination Within Class is allowed under IBC. All homebuyers (as financial creditors) must be treated equitably, but not necessarily equally. Any differentiation must be based on objective and fair criteria.

Case: Vishal Chelani v. Debashis Nanda (2023)

- RERA-decreed refund claimants ≠ distinct class
- All homebuyers treated equally under IBC
- Resolution must balance equity and feasibility

16.5.6 Liquidation in Real Estate

16.5.6.1 Liquidation Regulations in Real Estate

Key Provision	Application
Regulation 32	Sale as going concern allowed (useful for completed projects)
Regulation 34	Asset memorandum must include real estate data
Regulation 35	Liquidator to appoint registered valuers

Challenge: Liquidation may lead to extreme haircut for homebuyers

16.5.6.2 Section 33 – Initiation of Liquidation

If the CoC rejects the resolution plan, no plan is received within the CIRP period, or the approved plan is later contravened. In such cases, the Adjudicating Authority shall order liquidation of the corporate debtor. In real estate insolvency, liquidation is usually a last resort as it severely diminishes recovery for homebuyers and disrupts ongoing projects. Upon liquidation, homebuyers rank as unsecured financial creditors in the distribution waterfall under Section 53, often receiving minimal value unless unsold inventory or land assets are monetized effectively.

16.5.6.3 Implication of Liquidation

When a **real estate company** undergoing Corporate Insolvency Resolution Process (CIRP) fails to get an approved resolution plan—due to CoC rejection, absence of viable bids, expiry of CIRP timeline, or plan failure post-approval—the **Adjudicating Authority (NCLT)** may order **liquidation** under **Section 33** of the Insolvency and Bankruptcy Code, 2016. Liquidation of a real estate company poses unique challenges and implications due to the **fragmented creditor structure, project-based operations, and homebuyer interests**.

16.5.6.4 Appointment of Liquidator

The Resolution Professional usually continues as the Liquidator, unless replaced by the NCLT. He assumes control over all assets of the corporate debtor across various projects.

16.5.6.5 Homebuyers in Liquidation

Homebuyers, being unsecured financial creditors, are placed below secured creditors and workmen in the liquidation waterfall (Section 53). Their recovery is often negligible unless their units can be completed or sold as going concerns.

16.5.6.6 Project-wise Segregation

Courts and tribunals have encouraged project-wise asset ring-fencing in certain cases (e.g., *Flat Buyers Association v. Umang Realtech*), allowing resolution or sale of individual projects separately, further during CIRP Form G may be issued with respect to separate project. This approach is increasingly followed even during liquidation, though not codified in law.

16.5.6.7 Sale of Assets

Liquidator may sell land, under-construction inventory, or completed flats through private sale, public auction, or slump sale, as per Regulation 32 of the Liquidation Regulations. Sale as a going concern (Reg. 32A) is encouraged to maximize value—especially relevant for partially completed projects.

16.5.6.8 Claims and Distribution

Creditors including homebuyers must file claims with the Liquidator under Section 38 and read with regulation of Liquidation Regulations. Stakeholder consultation committee (SCC) is formed, but homebuyers often have little control over decisions.

16.5.6.9 Regulatory Overlap with RERA

Liquidation may conflict with ongoing **RERA orders**, especially where refunds or possession were directed. However, as per **Section 238 of IBC**, IBC provisions override conflicting laws.

16.5.6.10 Challenges

Difficult to monetize incomplete projects and lack of buyer interest due to pending approvals or legal issues. Protection of allottees' rights becomes increasingly challenging as process is aimed towards maximizing value for financial creditors. Further determining value of undivided share in land vis-à-vis constructed structure, poses huge challenge.

16.5.7 Joint Development Agreement & Reverse CIRP

16.5.7.1 Reverse CIRP

Reverse CIRP is a judicially evolved mechanism primarily applicable to real estate insolvency where the focus shifts from resolving the corporate debtor (entire company) to resolving the specific real estate project under distress. It allows the promoter to remain involved, under supervision, to complete the project without inviting third-party bids, prioritizing possession to homebuyers over monetary recovery.

a) Features of Reverse CIRP, based on Judicial Precedent:

1. **Promoter as Lender or Financier :** The promoter is treated like a financial contributor (not a resolution applicant), committing funds for project completion.
2. **Project-Specific Resolution:** It is confined to the defaulting project alone and not the entire corporate debtor.
3. **No Third-Party Bidding:** Unlike traditional CIRP, no outside resolution applicants are invited.
4. **IRP/RP Oversight:** The project is supervised by an IRP/RP who monitors fund utilization and project progress.
5. **Cost Bearer:** The promoter bears CIRP costs, including the IRP/RP fee.
6. **Homebuyers' Interest Prioritized:** They are not subjected to haircuts or price escalations.
7. **Sale of Unsold Inventory:** Allowed to support project completion, through IRP-monitored tripartite agreements.

8. Judicial Endorsement: Recognized and developed by courts in landmark cases (*Umang Realtech, Soni Infratech, Rajesh Goyal*).

b) Key Judicial Guidelines (Flat Buyers Assn. v. Umang Realtech)

1. Promoter submits a time-bound project completion plan.
2. Funds infused or collected are routed through a controlled account.
3. Payments must be signed by the CD and counter-signed by the IRP.
4. IRP may sell unsold flats to fund construction.
5. Common areas and handover rights are clarified for RWAs.
6. Promoter cannot misuse funds and must maintain full transparency.

c) Judicial Endorsement in Key Cases

1. **Flat Buyers Assn. v. Umang Realtech (2020, NCLAT):** First case recognizing Reverse CIRP; detailed monitoring framework laid out.
2. **Anand Murti v. Soni Infratech (2022, SC):** Supreme Court upheld Reverse CIRP and emphasized that allowing full CIRP would burden homebuyers.
3. **Rajesh Goyal v. Babita Gupta (2020, NCLAT):** Promoter allowed to fund project; IRP empowered to manage refunds and sales of inventory.

d) Advantages: Reverse CIRP may ensures timely project completion with minimized litigation. It may one hand provide certainty to homebuyers and also empower promoters to correct past failures under supervision, by unclogging stalled projects effectively.

e) Shortcomings & Concerns: Reverse CIRP is not codified in law and relies entirely on judicial precedents. It has the potential for promoter misuse if not closely monitored. Lack of separation of project accounts (RERA's 70% rule not enforced) with ambiguity in fund flow monitoring and legal authority.

f) Policy Developments & Need for Reform: To formalize this, the IBC amendment aims to introduce project-wise insolvency resolution, allowing CIRP to be restricted to a defaulting project while protecting other solvent projects, with clear provisions for asset ring-fencing, homebuyer protection, and structured resolution, thus enhancing predictability and fairness in real estate insolvency. However with proper reforms, it can evolve into a balanced and efficient resolution tool for India's distressed real estate ecosystem.

g) Flowchart: Reverse CIRP Process

Allottees trigger CIRP → NCLT admission → IRP appointed



Only defaulting project is ringfenced



CoC formed → Plan submitted → Resolution or liquidation

16.5.7.2 Joint Development Agreement (JDA) and Leased Land

The treatment of Joint Development Agreements (JDAs) and land leased by statutory authorities under the Corporate Insolvency Resolution Process (CIRP) in real estate insolvency involves complex legal issues around ownership, possession, contractual obligations, and public interest.

a) Joint Development Agreements (JDAs) in CIRP

A Joint Development Agreement (JDA) is typically executed between a landowner (or lessor) and a developer (real estate company/corporate debtor). Under a JDA, the developer is granted development rights, usually in return for a share of the constructed area (revenue-sharing), or a fixed consideration (area-sharing or hybrid model).

Numerous judgments provide clarity on the treatment of development rights and third-party agreements during CIRP, emphasizing the RP's role in asset management and the importance of respecting existing contractual rights within the insolvency framework.

b) Treatment under CIRP:

- (i) **JDA as an Executory Contract:** JDAs may be classified as executory contracts, i.e., contracts where mutual obligations are pending. As per Section 20 of the IBC, the corporate debtor (through the IRP/RP) must preserve and continue contracts necessary for business.
- (ii) **Ownership Remains with Landowner:** The title of the land remains with the landowner unless transferred via registered conveyance. If the corporate debtor only holds development rights, those rights (not the land) may be included in the insolvency estate.
- (iii) **Rejection or Continuation of JDAs:** If the developer (corporate debtor) has failed in performance, the landowner may terminate the JDA or challenge the continuation of the JDA in CIRP. Conversely, the RP or CoC may choose to continue or novate the agreement with a new resolution applicant.
- (iv) **Development Right:** Asset of CD and is required to be included in assets memorandum.

c) Land Leased by Statutory Authorities to Promoters

Leases by authorities like Development Authorities (e.g., Noida, HUDA, DDA) are governed by lease deeds and public law principles. Such land often contains re-entry clauses, cancellation rights, and requires approval for transfer.

d) Treatment in CIRP:

- (i) **Land is not an Asset of CD:** The land leased remains the property of the statutory authority; only leasehold rights form part of the CD's estate.
- (ii) **Consent Needed for Transfer:** Transfer of leasehold rights under a resolution plan requires prior consent of the lessor authority.
- (iii) **Statutory Dues:** Authorities often claim unpaid lease premiums, dues, or penalties as operational debts, and challenge haircuts under the plan.

e) Important Case Law:

(i) Indiabulls Asset Reconstruction Co. Ltd. v. Ram Kishore Arora & Ors., (SC 2023)

In the Supertech Ltd. insolvency case, a critical issue was whether insolvency proceedings could be restricted to a single real estate project rather than the entire company. The NCLAT, and later the Supreme Court, recognized the principle of project-wise insolvency, especially in large real estate companies undertaking multiple independent projects.

This approach was based on the rationale that each project has its own set of homebuyers, assets, and approvals, and resolution or liquidation of one should not affect others. It reinforced the evolving doctrine of "reverse CIRP" and ring-fencing of viable projects.

(ii) Embassy Property Developments Pvt. Ltd. v. State of Karnataka (2019, SC)

- Though this case primarily dealt with leasehold land and state approvals, the Supreme Court ruled that:
 - Public land leased by statutory authorities cannot be dealt with by NCLT without state government consent.
 - Matters requiring public law elements or state policy discretion are outside the scope of NCLT's jurisdiction.

(iii) NOIDA v. Anand Sonbhadra (NCLAT, 2020)

- NOIDA was held as an operational creditor, not a secured creditor, for dues under the lease.
- However, its re-entry rights and statutory protections were upheld—resolution plans cannot override public lease conditions.

(iv) Greater Noida Industrial Development Authority v. R.P. of Granite Gate Properties (NCLAT, 2021)

- NCLAT held that the authority's permission is mandatory before any leasehold land can be transferred or assigned under the plan.
- Lease can be cancelled for default, even during CIRP, if public interest is affected.

(v) Victory Iron Works Ltd. v. Jitendra Lohia, RP Avani Towers Pvt. Ltd. (SC, 2021)

The Resolution Professional (RP) sought to include the development rights under the JDA in the CIRP, leading to disputes over the extent of assets and rights involved. The Supreme Court upheld the decisions of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT), affirming that:

- The development rights held by Avani Towers Pvt. Ltd. under the JDA constitute "property" under Section 3(27) of the IBC and, therefore, qualify as "assets" under Sections 18(f) and 25(2)(a).
- The RP is entitled to include such development rights in the Information Memorandum and take necessary actions to preserve and realize these assets for the benefit of the creditors.
- The NCLT and NCLAT appropriately recognized Victory Iron Works Ltd.'s rights under the Leave and License Agreement for the specified portion of the land but did not acknowledge claims over the entire property.

16.5.8 Landmark Case Laws

16.5.8.1 Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019)

- **Facts:** The constitutional validity of the IBC (Second Amendment) Act, 2018, which classified homebuyers as financial creditors, was challenged.
- **Judgment:** The Supreme Court upheld the amendment, recognizing homebuyers as financial creditors under Section 5(8)(f) of the IBC.
- **Significance:** Empowered homebuyers to initiate insolvency proceedings and participate in the CoC.

16.5.8.2 Flat Buyers Association Winter Hills v. Umang Realtech Pvt. Ltd. (2020)

- **Facts:** Homebuyers sought insolvency resolution for a specific project without affecting other projects of the developer.
- **Judgment:** The NCLAT introduced the concept of "Reverse CIRP," confining insolvency proceedings to the specific project.
- **Significance:** Protected the interests of homebuyers in other projects and ensured project completion.

16.5.8.3 Wave Megacity Centre Pvt. Ltd. v. Rakesh Taneja & Ors. (2023)

- **Facts:** The developer filed for insolvency under Section 10, allegedly with fraudulent intent.
- **Judgment:** The NCLAT dismissed the application, citing misuse of the insolvency process.
- **Significance:** Emphasized the need for genuine intent in initiating insolvency proceedings.

16.5.8.4 Vishal Chelani & Ors. v. Debashis Nanda (2023)

- **Facts:** Homebuyers who had obtained decrees under RERA were treated differently in the resolution plan.
- **Judgment:** The Supreme Court held that all homebuyers, regardless of RERA decrees, should be treated equally under the IBC.
- **Significance:** Ensured equitable treatment of all homebuyers in insolvency proceedings.

16.5.8.5 Manish Kumar v. Union of India (2021)

- **Issue:** Validity of minimum 100 allottees threshold **Judgment:** Upheld – prevents blackmail litigation **Impact:** Balanced homebuyer rights with safeguards.

16.5.9 Coordination with Authorities & Regulatory Compliance

During the CIRP of a real estate company, the IRP/RP must interface with multiple regulatory bodies to ensure smooth conduct of the process. Coordination with RERA is essential for accessing project registration data, reconciling homebuyer claims, and obtaining necessary approvals, despite IBC's overriding effect under Section 238. Municipal and utility authorities must be approached to regularize approvals, revalidate permits, and ensure continuity of essential services, supported by documents like the IRP appointment order and moratorium notice. Tax compliance under GST and Income Tax laws must be maintained, including registration, return filing, and TDS deductions, while assessments are generally stayed under the moratorium. All pending litigations, including those before RERA, consumer forums, and arbitration tribunals, are stayed under Section 14, and recovery notices must be managed cautiously. Parallel proceedings must be reviewed to prevent duplication or conflict with CIRP. Additionally, compliance under the Companies Act, 2013 must continue for ROC filings, maintenance of statutory registers, documentation of key decisions, and coordination with auditors and secretarial professionals, ensuring legal and procedural integrity throughout the resolution process.

16.5.9.1 Interface with RERA Authorities

Although the Insolvency and Bankruptcy Code (IBC) overrides the Real Estate (Regulation and Development) Act, 2016 (RERA) due to the non-obstante clause under Section 238 of the IBC, active coordination with RERA authorities remains essential during the CIRP of a real estate company. The IRP/RP must liaise with RERA for accessing project registration data, reconciling the list of homebuyers, and ensuring compliance with approvals such as construction or occupancy certificates. As a best practice, the IRP/RP should file an intimation with the respective RERA Authority immediately after the commencement of CIRP.

16.5.9.2 Municipal Bodies & Utility Providers

The IRP/RP is required to interface with municipal corporations and utility service providers to regularize pending construction-related approvals, revalidate lapsed building and development permits, and ensure the continuity of essential services like electricity, water, and sewerage for ongoing real estate projects. Typical documents required in such cases include the IRP's appointment order, the public announcement or moratorium notice under Section 14 of the IBC, and specific project-related requests tailored to the concerned authority.

16.5.9.3 Income Tax and GST Obligations

During CIRP, the Resolution Professional must ensure that the corporate debtor complies with indirect tax obligations such as GST registration and timely filing of returns, particularly in cases where advances are received or sales are booked. In addition, Tax Deducted at Source (TDS) requirements apply to payments made to professionals, consultants, and legal retainers. While assessments pending under income tax or GST are generally stayed due to the moratorium under Section 14 of the IBC, the RP should maintain communication and compliance records for post-CIRP or resumed assessments.

16.5.9.4 Handling of Pending Litigations

All ongoing legal proceedings before RERA authorities, consumer forums, arbitration tribunals, or civil courts are stayed by virtue of the moratorium under Section 14 of the IBC. This includes any recovery actions or execution proceedings. The IRP must keep a record of such proceedings and bring any pending or new legal notices to the attention of the Committee of Creditors (CoC) and the Adjudicating Authority, if necessary, for further directions or protection.

16.5.9.5 Compliance Relating to Companies Act, 2013

During CIRP, the IRP/RP must ensure compliance with the Companies Act, 2013 to the extent it is not inconsistent with the IBC. This includes timely filings with the Registrar of Companies (ROC), such as annual returns and financial statements (e.g., MGT-7, AOC-4), maintaining statutory registers and records under Sections 88 and 189, and ensuring documentation of decisions in lieu of board meetings since the powers of the Board stand suspended. The IRP/RP must also coordinate with statutory auditors for preparation of financials as required.

under IBC and ensure secretarial compliances continue as applicable. After NCLT approval of the resolution plan, necessary filings such as INC-28 and MGT-14 must be made to reflect changes in management, capital structure, or other corporate matters, thereby maintaining statutory and procedural compliance under the Companies Act.

16.5.9.6 Parallel Proceedings Management

A comparative view of the legal stance before and during CIRP is as follows:

- **RERA Complaints:** Proceedings pending before RERA are stayed under Section 14 after CIRP initiation.
- **Consumer Forums:** Consumer disputes or refund claims are also subject to moratorium and cannot proceed during CIRP on the Company.
- **GST Notices:** While fresh coercive actions are barred, the IRP may respond with the moratorium notice and seek deferment of proceedings.
- **Municipal Dues:** Any outstanding municipal dues or taxes should be submitted as part of claims under CIRP and cannot be enforced outside the process.

16.5.10 Checklist: Claim Filing by Homebuyers (Allottees) under Real Estate Insolvency (CIRP)

S. No.	Checklist Item	Details / Remarks
1	Claim Form	Use Form CA as per Regulation 8A of the IBBI (CIRP) Regulations, 2016.
2	Deadline for Submission	Within 14 days from the date of Public Announcement by the IRP. Late claims may be allowed with justification up to 90 days or RFRP issue date.
3	Mode of Submission	Submit via email or physical copy to the IRP/RP's official contact provided in the Public Announcement.
4	Proof of Identity	Copy of PAN Card, Aadhaar, or Passport.
5	Proof of Allotment	Allotment Letter / Agreement for Sale / Builder-Buyer Agreement (must clearly mention the project, unit number, and consideration).
6	Payment Proofs	Bank Statements / Receipts / RTGS/NEFT records evidencing payments made to the developer.
7	Claim Calculation	Total principal paid + interest (if applicable) + any compensation awarded by court/RERA (if available).

8	Legal Documents (if any)	Copy of RERA Orders / Consumer Forum Orders / Court Judgments (if applicable).
9	Communication Details	Valid email ID and phone number for receiving updates from the IRP/RP or AR.
10	Nomination of AR (Optional)	Vote for one of the 3 ARs proposed by IRP (mentioned in the Form CA instructions).
11	Signature & Declaration	Form CA must be signed by the claimant (or legal representative) with a declaration affirming accuracy and completeness.
12	Supporting Affidavit (if needed)	In cases of missing documents or ongoing legal claims, provide an affidavit explaining the claim basis.
13	Joint Ownership Claims	All co-allottees must jointly sign the Form CA or provide a power of attorney for authorized filing.
14	Multiple Units / Projects	May file separate claim forms for each unit/project, clearly identifying each claim.
15	Request for Acknowledgement	Seek an acknowledgment from the IRP/RP for receipt of the claim.
16	Claim Update Request (if late)	Provide a written explanation for delayed submission if after the standard claim window.
17	Track Acknowledgment Status	Keep a record of submission and track the claim status on the IRP's portal (if available).

16.5.11 Checklist for Real Estate Insolvency Practice and CIRP Process:

S. No.	Action Item / Stage	Key Steps & Documentation	Applicable Section / Regulation
1	Admission of Application	Verify whether application is under Sec. 7, 9, or 10; Check threshold (100 or 10% homebuyers) if applicant is allottee	Section 7, Rule 4 of AA Rules
2	Public Announcement	Within 3 days of IRP appointment; publish in two newspapers and IBBI website	Sec. 15, Reg. 6

3	Claim Filing by Stakeholders	Invite and receive claims in Form CA (homebuyers), Form C (FCs), Form B (OCs)	Sec. 18(b), Reg. 8, 8A, 9
4	Verification of Claims	Verify with books, ledgers, RERA database, bank statements, allotment letters, etc.	Reg. 12, 13
5	Appointment of Authorized Representative (AR)	If class creditors >10; send consent forms, conduct preference vote, apply to NCLT for appointment	Sec. 21(6A), Reg. 4A, 16A
6	Maintain Separate Project Accounts	Open & maintain a separate bank account for each real estate project	Reg. 4D (CIRP Regulations)
7	Asset Taking Over & Site Control	Take physical & digital control of site, documents, unsold units, approvals	Sec. 18(f), Reg. 36
8	Constitution of CoC	Based on admitted claims, including homebuyers with proportionate voting rights	Sec. 21
9	Information Memorandum (IM)	Project-wise IM with inventory, land title, buyer receivables, approvals	Sec. 29 read with Reg. 36
10	Development Rights Report	Submit report on approvals, licenses, compliance under Regulation 30C	Reg. 30C
11	Valuation & Appointment of Valuers	Appoint 2 valuers for land, buildings, financials; determine fair & liquidation value	Reg. 27, Sec. 18(f)
12	Expression of Interest (EOI)	Invite EOIs (Form G); customize criteria if homebuyers bid collectively	Reg. 36A
13	Issue RFRP	Share evaluation matrix, RFRP & IM to all eligible resolution applicants	Reg. 36B
14	Evaluation of Plans	Ensure compliance with Reg. 37 & 38; consider project completion plans	Sec. 30, Reg. 39
15	CoC Voting	Obtain 66% CoC approval for resolution plan; AR votes as per majority direction from allottees	Sec. 30(4), Sec. 25A
16	Compliance Certificate	Submit Form H to NCLT with AR's summary, feasibility report, stakeholder treatment	Reg. 39(4)

17	NCLT Approval of Plan	NCLT must verify Sec. 30(2) compliance; plan becomes binding on all stakeholders	Sec. 31
18	Implementation & Monitoring	Follow timelines, release possession (Reg. 4E), set up monitoring committee	Reg. 38(4a), Reg. 39
19	Handling Reverse CIRP	If ordered by NCLT: ring-fence project, allow promoter to infuse funds under RP control	Judicial Precedent (Umang Realtech)
20	Avoidance Transactions	Identify and file for reversal of PUF transactions	Sec. 43–66, Reg. 35A
21	Audit (if required)	Initiate forensic or special audit based on CoC directions	Reg. 30B
22	Coordination with Authorities	Coordinate with RERA, local authorities, GST, tax authorities for approvals and dues	Sec. 20, Reg. 7
23	Communication with Stakeholders	Set up platform or email updates to homebuyers; conduct meetings with AR & facilitators	Reg. 16D
24	If No Plan Approved – Liquidation	File for liquidation with CoC approval; carry over unsold inventory and land parcels	Sec. 33, Reg. 32
25	RERA and Consumer Forum Status	Review pending complaints, file intimation about moratorium under Sec. 14	Sec. 238 override clause

16.5.12 Standard Operating Procedure (SOP) with Timelines – Real Estate Insolvency (CIRP):, structured phase-wise and tailored for Insolvency Professionals (IRP/RP), ARs, legal teams, and CoC members.

PHASE 1: PRE-CIRP INITIATION

Step	Action	Responsibility	Reference	Indicative Timeline
1.1	Verify default, collect project info	Homebuyers / Creditors	Sec. 7 IBC	Before filing

1.2	Check threshold (100 or 10% allottees)	Homebuyers	Sec. 7(1) Proviso	Before filing
1.3	Draft & file application (Form 1)	Applicant's Lawyer	Rule 4 of AA Rules	Filing trigger
1.4	Compile evidence: agreements, RERA orders, payment proof	Applicant	Practice	Before filing

PHASE 2: POST-ADMISSION & IRP STAGE

Step	Action	Responsibility	Reference	Timeline
2.1	Admission of CIRP & IRP appointment	NCLT	Sec. 7(5)	Day 0
2.2	Public Announcement (Form A)	IRP	Reg. 6	Within 3 days of appointment
2.3	Open separate CIRP & project bank accounts	IRP	Reg. 4D	Within 7 days
2.4	Take custody of project site & records	IRP	Sec. 18(f)	Immediate (Day 0–7)
2.5	Notify RERA, municipal & utility authorities	IRP	Best Practice	Within 7 days
2.6	Invite and receive claims (Form CA, etc.)	IRP	Sec. 15, Reg. 8A	Up to Day 14
2.7	Verify and admit claims	IRP	Reg. 12, 13	Day 14–Day 90
2.8	AR selection (if class creditors >10)	IRP	Sec. 21(6A), Reg. 16A	Days 14–20
2.9	Apply to NCLT for AR appointment	IRP	Reg. 16A(3)	Within 2 days of selection
2.10	Appoint valuers	IRP	Reg. 27	By Day 47
2.11	Constitute CoC & convene 1st meeting	IRP	Sec. 21	By Day 30

PHASE 3: RP STAGE & RESOLUTION PROCESS

Step	Action	Responsibility	Reference	Timeline
3.1	Confirm or replace RP	CoC	Sec. 22	Within 7 days of 1st CoC
3.2	Prepare project-wise IM	RP	Reg. 36	By Day 95
3.3	Submit Development Rights Report	RP	Reg. 30C	By Day 60
3.4	Publish EOI (Form G)	RP	Reg. 36A	By Day 75
3.5	Provisional & Final list of RA	RP	Reg. 36A(10)	By Day 105
3.6	Issue RFRP & Evaluation Matrix	RP	Reg. 36B	Within 5 days of final RA list
3.7	Receive resolution plans	RA / RP	Reg. 39	Minimum 30 days post RFRP
3.8	Present plan to CoC, seek 66% vote	RP / CoC / AR	Sec. 30(4)	Before Day 165
3.9	Submit Compliance Certificate (Form H)	RP	Reg. 39(4)	Before Day 180
3.10	NCLT reviews and approves plan	NCLT	Sec. 31	Before Day 330 (including extensions)

PHASE 4: PLAN IMPLEMENTATION / MONITORING

Step	Action	Responsibility	Reference	Timeline
4.1	Form Monitoring Committee	RP / CoC	As per approved Plan	Immediate post-approval
4.2	Execute plan milestones	RP / Monitoring Committee	As per Plan	Within Plan timeline
4.3	Handover possession to allottees	RP	Reg. 4E	Based on Plan or CoC resolution
4.4	Register flats with authorities	RP / Allottee / Legal	Reg. 4E	As per project status

PHASE 5: REVERSE CIRP (IF JUDICIALLY ORDERED)

Step	Action	Responsibility	Reference	Timeline
5.1	Apply for project-specific CIRP	RP / CoC	Umang Realtech Case	Post NCLT admission
5.2	Collect promoter contribution plan	Promoter / RP	Judicial Precedent	Within 15–30 days
5.3	Ring-fence cash flows & sales	RP	Supervised	Project duration
5.4	Report construction and possession progress	RP	Court direction	Periodic updates to NCLT

PHASE 6: LIQUIDATION (IF RESOLUTION FAILS)

Step	Action	Responsibility	Reference	Timeline
6.1	CoC votes for liquidation	CoC	Sec. 33(2)	After Day 180 or failure
6.2	File liquidation application	RP / Legal	Sec. 33(3)	Immediately
6.3	Appoint Liquidator	NCLT	Sec. 34	With liquidation order
6.4	Public notice for claims	Liquidator	Reg. 12 (Liquidation Regs)	Within 5 days of order
6.5	Sale of assets / projects	Liquidator	Reg. 32	Timelines as per mode of sale
6.6	Final report & dissolution	Liquidator	Sec. 54	Post-asset distribution

16.6 FAQs

A. FAQs for Homebuyers / Allottees

Q1. I booked a flat but haven't received possession. Can I still file a claim under IBC?

A. Yes. Even if you don't have a registered agreement, as long as there is evidence of payment and allotment, you can file a claim as a financial creditor.

Q2. Do I need to hire a professional to submit my claim in CIRP?

A. Not necessarily. Claim forms (Form CA) are simple and can be submitted directly to the IRP/RP. However, help may be useful in complex cases.

Q3. Will interest and compensation awarded under RERA be part of my claim?

- A. Yes, you can include unpaid interest, compensation, or penalties awarded by RERA or a court as part of your claim amount.

Q4. What happens to EMIs I am paying to the bank if the project is under CIRP?

- A. You remain liable to the bank unless a restructuring is allowed. However, you may negotiate with the bank citing CIRP status and seek relief.

Q5. What if I have taken possession but registry is pending? Will I still be a claimant?

- A. Yes. Until full ownership & possession is transferred legally, you are eligible to file a claim and be treated as a stakeholder.

Q6. How do I know the status of my claim or the CIRP?

- A. The IRP/RP must publish public announcements and claim updates on the project/ Company website (if created) or the IBBI website. You may also contact the AR.

Q7. Can homebuyers initiate CIRP against the builder?

- A. Yes. If at least 100 allottees or 10% of allottees in a project (whichever is lower) come together, they can file a joint application under Section 7.

Q8. How do homebuyers vote on a resolution plan?

- A. Homebuyers vote through an Authorized Representative (AR) appointed to represent their class. The AR seeks instructions from the allottees and casts the vote in the CoC in proportion to the total voting share.

Q9. How are voting instructions collected by the AR?

- A. The AR may collect voting preferences through email, online polls, or physical forms, depending on the communication mechanism allowed. In many cases, a secured voting link is shared with allottees to express their choice (Yes/No/Abstain).

Q10. What is the minimum percentage required to approve a resolution plan?

- A. As per Section 30(4) of the IBC, a resolution plan must be approved by 66% of the CoC voting share (including homebuyers and other financial creditors).

Q11. What happens if I do not cast my vote or do not respond?

- A. If you do not vote, your share is treated as “abstained” and does not count as a vote in favor or against. However, it reduces the effective voting base, so your participation is critical.

Q12. Will I be informed of the contents of the resolution plan before voting?

- A. Yes. The AR is required to share a summary of the resolution plan in simple language with allottees. You may also request the full version, subject to submission of confidentiality undertaking.

Q13. Can I change my vote after submitting it?

- A. No. Once a vote is submitted, it is treated as final and cannot be changed. Hence, review all relevant documents carefully before voting.

Q14. What if the resolution plan is not approved by the CoC?

- A. If the required 66% threshold is not met, the resolution plan fails. The company may go into liquidation, which may reduce recovery prospects for all stakeholders, including homebuyers.

Q15. Are allottees bound by the AR's vote?

- A. Yes. Once the AR votes based on majority instructions from allottees, the outcome binds the entire class. Individual dissenting homebuyers are not treated separately unless specific relief is provided in the plan.

Q16. Can I raise objections if I am unhappy with the plan approved?

- A. You may raise objections before the Adjudicating Authority (NCLT) at the time of plan approval, but the scope may be limited if the plan is already approved by the CoC with required majority.

Q17. Is voting on the resolution plan the only decision homebuyers participate in?

- A. Primarily, yes. The key voting right of homebuyers through the AR is to accept or reject the resolution plan. However, in certain cases, they may be consulted on other major decisions like liquidation, approvals, extension of CIRP, etc.

Q18. Can my claim include payments for amenities or club fees?

- A. Yes, if supported by invoices or receipts.

Q19. Are homebuyers with RERA orders treated differently?

- A. No. All homebuyers must be treated equally under IBC (Vishal Chelani v. Debashis Nanda, 2023).

B. FAQs for Developers / Promoters

Q20. What are the consequences of CIRP on ongoing construction work?

- A. Once CIRP begins, the management vests with the IRP/RP, and all major decisions including construction require CoC approval.

Q21. Can the promoter resume control of the company post-CIRP?

- A. Only if the promoter is eligible under Section 29A and their resolution plan is approved by the CoC and NCLT.

Q22. Can I apply under Section 10 of IBC to resolve only one project?

- A. Currently, Section 10 covers the company as a whole. However, courts have allowed project-wise CIRP in certain cases through judicial interpretation.

Q23. Are promoter guarantees enforceable during CIRP?

- A. Yes. Personal guarantees of promoters can be invoked separately and are not protected under Section 14 moratorium.

Q24. Can promoters continue marketing or sales during CIRP?

- A. No, all rights and management vest with RP/IRP.

Q25. Can a developer negotiate with homebuyers during CIRP?

- A. Only through RP/CoC

C. FAQs for Financial Institutions / Banks**Q26. How is a secured creditor treated in CIRP of a real estate company?**

- A. Secured creditors participate in the CoC and vote on resolution plans. If liquidation follows, they have rights to enforce security under Section 52 of IBC.

Q27. Will a bank's mortgage override homebuyer claims?

- A. No. Homebuyers are now classified as financial creditors and enjoy significant rights. Courts have ruled on balancing rights between banks and buyers.

Q28. What if the land was mortgaged, but flats were sold before CIRP?

- A. It becomes a complex issue. Both mortgage rights and buyer rights are examined during CIRP, and resolution plan must balance both.

D. FAQs for Resolution Professionals / IRPs / CoC Members**Q29. Do homebuyers have voting rights in the CoC?**

- A. Yes. Through their AR, they collectively exercise voting rights in proportion to admitted claims.

Q30. How is voting direction by homebuyers determined?

- A. The AR may conduct e-voting or seek instructions based on a majority value of claims. Absence of instructions is considered abstention.

Q31. Is project-wise CIRP permitted under the Code?

- A. Yes, the resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor. Prior to this amendment courts (e.g., *Flat Buyers Association v. Umang Realtech*) have allowed project-wise resolution in the interest of justice.

Q32. Can claims be revised or updated after submission?

- A. Yes. Regulation 12A allows claimant to revise claims based on verification. Additional documents can be submitted. RP may also update or revise claim, when he comes across additional information warranting such revision.

Q33. Can claims be filed after the last date of public announcement?

- A. Yes, belated claims may be accepted with reasons, and such delay may affect CoC formation.

E. FAQs for Authorized Representatives (ARs)

Q34. How is the AR appointed for a class of creditors?

- A. IRP invites consent from eligible insolvency professionals and selects one based on majority choice of allottees.

Q35. What is the role of AR in CoC?

- A. AR attends CoC meetings, participates in discussions, and votes as per instructions from the homebuyers they represent.

Q36. Does the AR have fiduciary responsibility?

- A. Yes. The AR must act in the best interest of the class, maintain neutrality, and update allottees regularly.

Q37. What if AR fails to represent homebuyers properly?

- A. Homebuyers can approach NCLT for removal or replacement.

F. Miscellaneous FAQs

Q38. What is the status of RERA registration during CIRP?

- A. It remains valid. However, the RP must coordinate with RERA authorities for compliance and certification, where necessary.

Q39. Can a third party buy and complete the project during CIRP?

- A. Yes. A resolution applicant (developer, consortium, fund) can submit a resolution plan which, if approved, leads to project takeover.

Q40. What are the tax implications for buyers in case of delayed possession or cancellation during CIRP?

- A.** Taxation depends on refunds, compensation, or restructured allotment. It is advised to consult a tax expert for case-specific advice.

Q41. Can a buyer withdraw from the project during CIRP and get a refund?

- A.** Refunds are not automatic. Buyers can file claims for the amount paid. Actual recovery depends on the resolution plan or liquidation proceeds.

16.7 Glossary / Abbreviations – Real Estate Insolvency

Term / Abbreviation	Meaning / Explanation
IBC	Insolvency and Bankruptcy Code, 2016
ICD	Insolvency Commencement Date
CIRP	Corporate Insolvency Resolution Process – The process initiated under IBC for resolution of a defaulting corporate debtor.
CoC	Committee of Creditors – The primary decision-making body in CIRP composed of financial creditors.
CD	Corporate Debtor – Refers to the Company
RP / IRP	Resolution Professional / Interim Resolution Professional – An insolvency professional appointed to conduct CIRP.
AR	Authorized Representative – A professional appointed to represent homebuyers or other classes of creditors in the CoC.
Form CA	Claim form used by creditors in a class (like homebuyers) to submit their claims during CIRP.
Homebuyer / Allottee	An individual who has booked a flat/unit in a real estate project and is considered a financial creditor under IBC.
RERA	Real Estate (Regulation and Development) Act, 2016 – The sectoral regulator for real estate projects.
NCLT / NCLAT	National Company Law Tribunal / Appellate Tribunal – Adjudicating and appellate authorities under IBC.
Information Memorandum (IM)	A detailed report prepared by RP containing financial, legal and operational details of the corporate debtor.
EOI	Expression of Interest – Invitation to potential resolution applicants to submit resolution plans.

RFRP	Request for Resolution Plan – Document issued to invite final resolution plans after EOI stage.
Resolution Plan	A proposal submitted by a resolution applicant for revival of the corporate debtor.
Section 14	Section of IBC that provides for moratorium (stay on legal proceedings and asset transfer) during CIRP.
Section 29A	Disqualifies certain persons (e.g., defaulting promoters) from being resolution applicants.
Section 238	Gives overriding effect to IBC over any inconsistent laws.
Section 5(8)(f)	Deems homebuyer advances as financial debt, treating them as financial creditors.
Class of Creditors	Defined under Regulation 2(aa) – Creditors having similar rights and represented by an AR.
PUFE Transactions	Preferential, Undervalued, Fraudulent and Extortionate Transactions under Sections 43–66 of IBC.
Reverse CIRP	A court-evolved mechanism focusing on project-specific insolvency where the promoter completes the project under RP supervision.
Going Concern Sale	A mode of sale under liquidation or resolution where the business is sold as an operating entity.
Liquidation Value	Value realizable if the company were to be liquidated. Determined by registered valuers.
Fair Value	Value of assets if exchanged on an arm's length basis on the insolvency commencement date.
JDA	Joint Development Agreement – A contract between landowner and developer to jointly execute a real estate project.
Leave and License Agreement	Contractual right to occupy premises without ownership; relevant in real estate CIRP disputes.
Form G	Prescribed format for public invitation of Expression of Interest (EOI).
Regulation 36, 36A, 36B	Regulations governing IM, EOI, and RFRP respectively.
Regulation 30C	Regulation requiring RP to submit report on development rights and project approvals.

Form H	Compliance certificate submitted by RP to NCLT while seeking approval of the resolution plan.
Facilitators (Reg 16C, 16D)	Persons appointed to assist ARs in communicating with large numbers of creditors (e.g., >1000 homebuyers).
Valuation Date	The date as on which fair and liquidation value are determined by valuers (as per Reg. 27).
Moratorium	Legal stay on actions against the debtor and its assets (Sec. 14 of IBC).
Interim Finance	Short-term finance raised during CIRP to keep the corporate debtor as a going concern.
Liquidation	Process initiated if CIRP fails; assets are sold and proceeds distributed
SCC	Stakeholder Consultation Committee – Formed in liquidation to advise the liquidator.
Confidentiality Undertaking	Agreement signed by resolution applicants to access sensitive data in the Virtual Data Room (VDR).
Virtual Data Room (VDR)	A secure digital space where financial and legal information is made available to resolution applicants.
Section 240A	Exemption for MSMEs from 29A restrictions

16.8 End of this chapter – Outcome

With this focused understanding of real estate insolvency, participants are now equipped to:

- Comprehend the **application of IBC to real estate projects**, especially under Sections 5(8)(f), 7, 25A, and 240A
- Understand the **distinct treatment of homebuyers** as financial creditors and the role of authorized representatives (ARs)
- Navigate the **project-wise insolvency approach**, interface with RERA, and coordinate with municipal authorities
- Appreciate complexities such as **joint development agreements (JDAs)**, leasehold lands, and incomplete/stalled projects

Next Steps for Participants

- **Read further:** IBBI discussion papers & publications, landmark real estate rulings (e.g., *Pioneer Urban, Flat Buyers Association*)

- **Refer project-specific regulations:** Model timelines, claim filing forms, CoC voting protocols for homebuyers
- **Engage with stakeholders:** Builders, ARs, allottees, statutory bodies, and real estate experts
- **Build expertise:** Drafting resolution plans with land-bank monetization, phased construction, buyer payouts, advising RP/homebuyers/promoters and AR voting management.

16.9 Reference Material

- IIPI Publications on Real Estate Insolvency: <https://www.iiipicai.in/>
- **Study Group Report: Improving Real Estate Resolutions under IBC and Coordination with RERA**
- **IIPI e-Journal – April 2024 Edition:** This edition of the e-Journal includes insightful articles on real estate insolvency
- Insolvency and Bankruptcy Board of India (IBBI)
 - www.ibbi.gov.in – Notifications, case laws, FAQs, Act, regulations
 - Discussion Paper on issues related to Real Estate
 - Public Announcement, EOI and about CIRP
- Ministry of Corporate Affairs (MCA) – www.mca.gov.in
- NCLT/NCLAT Orders – nclt.gov.in | nclat.nic.in

16.10 Self-Appraisal – Session Learning Outcomes

SL	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Internal Audit in the Real Estate Sector (India)

Real estate is one of India's largest industries, contributing around 7.3% of India's GDP as of 2024. This sector encompasses landowners, developers, real estate agents, contractors, and a vast network of stakeholders. Projects involve huge financial investments, complex regulations, and long timelines, making transparency and oversight critical. Internal audit plays a pivotal role here – it is defined as an independent, objective assurance and consulting activity designed to add value and improve operations. In the context of real estate, internal audit helps organisations accomplish objectives by systematically evaluating and improving the effectiveness of risk management, control, and governance processes in projects.

Internal audit in real estate goes beyond basic financial checks. It delves into project progress monitoring, contract management, periodical checking of budget and actuals, compliance with laws, and the safeguarding of all stakeholders of the industry. By independently reviewing internal audit protects stakeholders' interests and helps maintain trust in the sector.

The real estate sector's past challenges – such as project delays, cost overruns, title disputes, and even fraud underline the need for robust internal audits. High-profile cases have shown the fallout of poor governance. For example, in the Amrapali case, a Supreme Court directed forensic audit revealed that over ₹3,000 crore of homebuyers' money was illegally diverted, leading to the collapse of the group and leaving thousands of buyers, lenders, vendors stranded. The Supreme Court observed that internal auditors overlooked “shady transactions” and termed it a “deliberate fraud” for not flagging diversion of funds. Internal audit functions as an early warning system identifying red flags in fund management, project delays, legal disputes, or compliance gaps so that management can take corrective action before issues escalate.

Internal audit in real estate involves scrutinising every stage of a project's lifecycle from land acquisition and development agreements to construction, sales, and handover. Each stakeholder has unique interests and risks: landowners need assurance that land titles and joint development agreements are in order; developers require oversight on regulatory compliance (like RERA registrations and approvals), financial prudence, and project progress; real estate agents must adhere to licensing and anti-fraud norms; contractors must be monitored for quality, timeline, and billing accuracy. By conducting impartial reviews of these areas, internal auditors help strengthen governance, ensure legal compliance, prevent revenue leakage, and improve operational efficiency in the real estate sector.

Importantly, since the enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA), and other reforms, internal audit also steps compliance shoes. It verifies that projects are registered and funds are managed as per law, that customer advances are within legal limits, that construction milestones are being met, and that documentation is complete. In summary, internal audit in the real estate sector serves as a watchdog and advisor, helping ensure that complex projects are executed efficiently, revenues are appropriately, costs are controlled, and all activities comply with applicable laws and standards.

17.1 Objective and Importance

The objective of internal audit in the real estate sector is to provide **independent assurance** that a real estate company's risk management, governance, and internal control processes are operating effectively. In simpler terms, internal auditors ask: ***Are we doing what we are supposed to do, in the way we are supposed to do it?*** Given the huge capital outlays and long project cycles in real estate, small control lapses can lead to significant financial loss or compliance violations. Internal audit helps identify such lapses early and recommends corrective actions. By the end of this chapter, readers should appreciate the critical role of internal audit as a value driver in real estate organisations. Internal audit is not just about finding errors; it is about adding value through improved controls, risk mitigation, and performance insights. In a sector known for its capital intensity and regulatory scrutiny, a well-executed internal audit can significantly enhance governance and stakeholder confidence.

- a) **Importance for Regulatory Compliance:** Real estate is governed by myriad laws (RERA, local land laws, building codes, tax laws, etc.), and non-compliance can halt projects or invite penalties. Internal audit acts as a watchdog to ensure statutory compliance. By reviewing project records, internal auditors verify such compliance points and flag deviations. This is crucial not only to avoid legal penalties but also to maintain the trust of homebuyers and financiers.
- b) **Importance of Financial Control:** Real estate projects often run over multiple years with large budgets. Without proper controls, there are risks of cost overruns, revenue leakage, or fraud (e.g. diversion of project funds to other uses). Internal audit provides oversight on financial reporting and internal controls. It evaluates whether proper budgeting and accounting practices are followed – for example, revenue recognition as per applicable standards (Ind AS 115 for revenue from contracts, in Ind-AS compliant entities), accurate cost allocation to projects, and robust controls over payments. Internal auditors also perform fraud risk assessments to detect or prevent issues like fake bookings, bribes in approvals, kickbacks in procurement, or money laundering through property transactions. With real estate now under stricter anti-money laundering (AML) scrutiny (real estate agents with turnover ≥ ₹20 lakhs are classified as reporting entities under PMLA), internal audit helps ensure required KYC and reporting processes are in place, guarding the sector's integrity.

- c) **Importance for Operational Efficiency and Project Delivery:** A key focus of internal audit is to examine operational processes and controls. In a real estate development company, this means reviewing processes such as land acquisition due diligence, approval and permits management, project planning and monitoring, sales and customer onboarding, and handover processes. By auditing these, the internal auditor can highlight inefficiencies or control gaps – for example, if there is a lack of a checklist for site inspections, or weak monitoring of contractor performance against milestones. Internal audit often produces recommendations to improve SOPs (Standard Operating Procedures) perhaps instituting better documentation of land records or improving the inventory management of construction materials to reduce wastage. These insights can significantly improve project execution and timeliness. An effective internal audit thus becomes a value-adding function, not only ensuring compliance but also advising management on how to optimise processes, reduce costs, and achieve project timelines.
- d) **Multi-Stakeholder Assurance: In real estate, different stakeholders have different concerns:**
- (i) For landowners (especially those in joint ventures or development agreements), internal audit assures that agreements are adhered to, land titles are clear, and they receive their entitled revenue share on time. Audit checks documentation like development agreements, power of attorney, and revenue-sharing calculations.
 - (ii) For developers (builders), internal audit is a tool for self-governance, ensuring their teams (sales, legal, finance, construction) follow policies. It verifies that sales are booked with proper agreements, customer monies are handled as per law, project progress reports are accurate, and contractual obligations (to customers and vendors) are being met. This helps avoid disputes and enhances the developer's reputation for reliability. - For real estate agents, internal audits (or periodic compliance audits) ensure that they are registered with the state RERA authority, do not deal in unregistered projects, maintain proper books & records, and comply with ethical practices (no misrepresentation or false promises). Given that agents are now under the PMLA regime, audits also verify that they have robust customers due diligence (KYC) processes and record-keeping for transactions.
 - (iii) For contractors and project contractors, internal audit can involve reviewing work orders, billing, and site execution. By auditing contractor bills against work certified, the internal auditor helps ensure the company only pays for verified work (preventing over-billing). Audits of construction quality and safety records ensure that the contractor is meeting the quality standards and regulatory

requirements (like building codes, safety laws). This not only safeguards project quality but also reduces the risk of future liabilities or rework costs.

- (iv) For customers, internal audits can involve reviewing milestone invoicing done in line with the Contractual arrangement between the parties. By auditing the financial flow, internal audit can give reasonable assurance that the money is utilized for development.
 - (v) For Lenders and Investors, an internal audit can assist in reviewing whether financial covenants are duly adhered to. The internal auditor can assure fund utilisation and provide valuable information about project development through comparative analysis based on projections and actuals.
- e) In summary, internal audit is crucial in real estate because it strengthens governance and trust in a sector historically marred by opacity. It provides management and stakeholders with assurance that projects are on track, compliant, and free of major irregularities. In a regulated environment post-RERA, and with the growing scale of real estate businesses, internal audit is not just important – it is indispensable for sustainable success.
- f) This chapter emphasizes the importance of internal audit across key areas of real estate operations: from validating revenue recognition policies to auditing project cost controls, from reviewing customer account reconciliations and collection processes to checking vendor procurement and contract management. Special focus is given to areas prone to risk or fraud – e.g. fund diversion between projects, related-party transactions (land deals), litigation management, and compliance lapses (such as missing RERA filings or taxes). By studying these areas, participants will understand where to concentrate audit efforts for maximum impact. This is crucial because real estate businesses often have thin margins of error; mistakes or non-compliance can result in heavy financial penalties or project stoppages. An internal auditor's independent review helps assure senior management and boards that these risk areas are under control, and if not, highlights what corrective actions are needed.
- g) Another objective is to align with Indian auditing standards and guidance. The chapter stresses adherence to Indian Standards on Auditing and ICAI's guidance specific to real estate. The content is designed to show how standard audit principles (like risk assessment, internal control evaluation, evidence gathering, and reporting) are applied in the specialized environment of real estate. For instance, internal auditors must plan engagements considering the project lifecycle – audit procedures for a land acquisition stage will differ from those for the construction stage or sales stage. This chapter underscores such nuances, thereby preparing the reader to approach real estate audits in a structured, standards-compliant manner.

In essence, the importance of this chapter lies in motivating emerging professionals to develop expertise in real estate internal audits. The sector offers vast opportunities for audit and advisory roles as it professionalizes and expands. Through real examples, checklists, and references, this chapter aims to inspire readers to delve further, to not only use internal audit as a tool for compliance but also as a means to drive operational excellence, ethical practices, and stakeholder value in the real estate domain. Mastery of these topics will enable professionals to contribute meaningfully to organisations and society, ensuring that development in this sector is sustainable, transparent, and in the public interest.

17.2 How to Read and Understand the Chapter

- a) This chapter is structured to guide readers through internal audit in the Indian real estate sector. It is organised in a logical sequence, starting from foundational concepts and moving towards specific applications and tools. To make the most of this chapter, readers should approach it as both a *reference guide* and a *practical manual*. Begin by reading the Introduction and Objective sections carefully – they set the context and underscore why internal audit matters for real estate. As you progress, take note of the legal and regulatory frameworks discussed; these form the backbone of compliance requirements.
- b) In the section on Applicable Acts, Rules, and Standards, laws and standards are listed with brief explanations. Readers should ensure they understand how each law connects to real estate auditing (for instance, how RERA impacts internal checks, or how ICAI's auditing standards provide a methodology). The chapter also includes tables for provisions, forms, checklists, and case laws – these are designed for easy scanning, so use them to quickly recap the specific requirements or examples given. When you encounter the FAQs, try reading each question and formulating your answer before reading the provided answer – it addresses common queries and clarifies typical doubts that professionals have. These FAQs are written in a conversational Q&A style to reinforce learning; reading them can be like having a mentor answer your questions. If something isn't immediately clear (for example, how revenue recognition under Ind AS 115 differs from the old guidance), the FAQs and cross-references in the chapter will likely clarify it. Remember that the Applicable Acts and Provisions section (section 4 and 5) contains a lot of factual detail – you might treat it as a reference library. Don't worry about memorising every section number; focus on understanding which laws/standards apply and in what situations. You can always refer to the exact provision when needed.
- c) As you study, engage actively with the content. Try to visualize scenarios: imagine you are the internal auditor of a real estate company – how would you apply a given checklist, or what findings might emerge from a given case? When reading about, say, *vendor management audit*, think of a construction site and the flow of materials, the contracts with suppliers – this will help you internalise the checkpoints provided. It's

also beneficial to periodically pause and reflect after a section, ask yourself, “What are the key takeaways here? Could I explain this to someone else?”. Teaching or summarising the content in your own words is a great way to ensure you truly understand it. Furthermore, this chapter encourages further exploration – see the Reference Material (section 9) for a list of resources. If a particular topic intrigues you (say, RERA compliance or forensic audits in real estate), use the references or QR code provided to find more in-depth material. Learning is an ongoing process: this chapter gives you a strong foundation, but staying updated (e.g., with new circulars, notifications or revised standards) is equally important. As highlighted by ICAI’s guidance, an internal auditor must constantly update themselves with amendments and new regulations to remain effective

17.3 Acts, Rules, Regulations – relevant to Real Estate Projects

We have observed that the lifecycle of a real estate project involves multiple distinct stages starting from land acquisition, planning and approvals, construction, marketing, sales, and finally handover to the allottees and to Resident Welfare Associations (RWAs). At each of these stages, there are specific legal compliances, regulatory approvals, and statutory requirements that must be regularly followed. These compliances are not limited to a single law but span across various statutes such as the Real Estate (Regulation and Development) Act (RERA), Transfer of Property Act, Indian Contract Act, Stamp Act, Income Tax Act, GST Law, and numerous local municipal and planning authority regulations. Given the diversity, complexity, and interconnection of these laws, the involvement of experienced professionals such as Chartered Accountants, Legal Advisors, Architects, and Engineers becomes inevitable. Their advice is important to ensure that developers and stakeholders remain compliant at every step, thereby avoiding legal disputes, penalties, project delays, and financial risks. Moreover, professional guidance helps align the project execution with regulatory expectations, financial prudence, and good governance practices, ultimately contributing to the project's success and credibility

- a. Real Estate (Regulation and Development) Act, 2016 (RERA):
- b. Companies Act, 2013 and Corporate Regulations:
- c. Real Estate and Land Laws (Pan-India & Local): Real estate operations must comply with a patchwork of central and state laws relating to cost of land and construction:
- d. Transfer of Property Act, 1882 & Registration Act, 1908
- e. Land Revenue Codes and Local Land Laws
- f. Building Regulations and Development Control Rules
- g. Rent Control and Tenancy Laws
- h. Taxation Laws – Income tax and GST

- i. The Benami Transactions (Prohibition) Act and Prevention of Money Laundering Act (PMLA)
- j. Labour laws and notifications
- k. Environmental Acts and Safety Regulations
- l. Standards on internal audit (SIA)
- m. Accounting Standards and Guidance Notes

In essence, a real estate internal auditor must be conversant with multiple disciplines: law, finance, engineering basics, and audit techniques. They need to maintain a library of updated laws, rules, and standards as above.

1. Areas to be covered and Scope of work / opportunity for the professionals in the Real Estate Organisations.

Unlike other industries where businesses typically have ongoing operations, recurring products, or services with a defined life cycle, real estate projects are inherently unique in nature. Each project whether residential, commercial, or mixed use comes with its own set of challenges, such as land characteristics, local regulations, market expectations, design requirements, financial structures, and timelines. Unlike manufacturing or retail businesses where a product can be reproduced at scale, in real estate, a builder cannot simply replicate one project for another. Every project demands fresh planning, tailored approvals, new vendor relationships, and bespoke strategies for sales and marketing. This uniqueness makes real estate a dynamic and highly challenging sector, requiring adaptability, continuous learning, and professional expertise to ensure successful delivery from inception to completion

Further the real estate sector functions through complex structures that require a high level of coordination between various departments such as procurement, liaison, finance, legal, taxation, compliance, project management, and customer relations. This creates a natural space for professionals to contribute by bringing in their specialized knowledge. Opportunities exist in areas like financial modelling for new projects, structuring joint ventures, assisting with project financing, monitoring project cash flows, conducting internal audits, and ensuring proper reporting to management and investors. Professionals can also help in strengthening internal controls, improving operational efficiencies, advising on project risk assessments, and guiding on sustainability and ESG (Environmental, Social, and Governance) reporting, which is becoming increasingly important in the real estate industry, following could be the different department / areas in the real estate, one can consider for the internal audit / review –

- a)** Audit of existence, deployment, effectiveness, continuity of internal controls in all departments in the organisation.

- b) Traditional Audit** – audit of financial transactions, taxation, labour compliances, RERA and finance functions with more emphasis to real estate project – following may be the Areas of interest to the promoters as it involves Revenue or Savings -
- (i) Verification of interest rate application – verify the sanction letter or loan agreements - as most of the real estate projects are developed using borrowed funds. The slightest difference in rate of interest may lead to considerable savings / profits
 - (ii) Indent to procurement to purchase to payment – As mentioned in the introduction, real estate projects are unique, and there is a continuous change in procurement requirements and vendors based on factors such as location, geography, and product mix. Therefore, auditing the entire process from indenting to procurement is crucial, as it not only ensures compliance and transparency but can also help identify opportunities for cost savings.
 - (iii) Delay in payment of instalment by the Allottees in the project - As part of the internal audit, it is important to check if allottees are paying their instalments on time. The audit should review the billing schedule, payment records, and how the company is following up with customers for timely and delayed payments. It should also verify whether interest or penalties on late payments are correctly charged as per the agreement and properly recorded in the books. Further it is important that the audit can help identify reasons for delays, such as poor communication or weak collection systems, and suggest ways to improve the recovery process to protect the project's financial capabilities.
 - (iv) As part of the audit, procurement records should be verified and compared across different projects and locations to ensure consistency and fairness in pricing, quality, and payment terms. This helps identify any irregularities, price variations, or inefficiencies in the procurement process. Comparing project wise and location wise procurement also ensures transparency and helps control costs by highlighting opportunities for better negotiation or bulk purchasing.
- c) Land Acquisition and Title Verification**
- (i) On acquisition and regular periodicity to ensure no disputes or litigations are created – require property laws and legal knowledge
- d) Approvals and Regulatory Compliance –**
- (i) Project-wise – inception to completion – time to time – compliances tracker to be maintained

e) Project Execution and Construction Monitoring –

- (i) As part of the audit process, it is essential to verify the physical progress of the project against the approved plan milestones to ensure the project is advancing as per the sanctioned timelines and scope. The progress should be supported by certifications from the architect, engineer, and project management consultants (PMC), confirming the quality and stage of completion. Additionally, the audit should review the quality control procedures and the usage of materials to ensure that construction standards are maintained and that materials meet the required specifications. Proper checks on inventory management for key materials like cement, steel, and other critical items are necessary to avoid pilferage, wastage, or overstocking. Lastly, the accuracy of Work-in-Progress (WIP) valuation and reporting must be reviewed to ensure that financial records fairly reflect the actual progress and cost of construction, thereby supporting proper project monitoring and financial reporting.

f) Handover, Completion & Closure –

- (i) The promoter shall complete all formalities related to the closure of the project and ensure a smooth handover to the allottees. Over time, it has been observed that allottees are becoming increasingly demanding and expect higher standards of service and accountability. Therefore, it is recommended that the promoter adopt good practices during the handover process upon completion of the project, ensuring transparency and professionalism, and without retaining any attachment or control over the project post-handover.

2. Key Forms and Documentation (India Real Estate Sector) Important Orders/Notifications/Circulars

Order/ Notification	Issuing Body & Impact	Details for Internal Audit
PMLA Notification of Nov 2022 (G.S.R. 855(E))	Ministry of Finance (Dept. of Revenue) – Notified real estate agents with turnover ≥ ₹20 lakhs as “persons carrying on Separate business or profession” under PMLA.	Means such agents are “Reporting Entities” under PMLA. Audit must ensure compliance with AML guidelines: appointment of Principal Officer, client KYC records for each transaction, STR (Suspicious Transaction Reports) filing procedures. In 2023, detailed AML guidelines for real estate were issued (on CDD, record-keeping) – verify the agent/firm has implemented them (e.g., KYC forms, risk assessment of clients).
State RERA	E.g., MahaRERA	These often clarify how to implement RERA.

Authority Circulars	Circular on Interest Calculation (2017), UP RERA orders on model sale agreement, etc.	If Maharashtra project: check that interest paid to customers for delays is exactly as per circular (compounded or simple, etc.). If any state mandated format for AFS or brochure disclosures, see that company complies.
SBI and Other Banks – No Loan without RERA	State Bank of India (May 2017 circular) – instructed that housing loans be sanctioned only to RERA-registered projects	Not a law, but important external check: If a project isn't RERA-registered, buyers can't get loans easily. Internal audit should flag any unregistered projects (if any exist) as a major non-compliance, since it also affects salability. Use this as an argument to management for compliance.
Benami Transactions Act Enforcements	IT Department – In recent years, increased enforcement on benami properties (property not held in real owner's name).	Not directly internal audit scope, but ensure the company isn't holding properties in strange names. If the company facilitates sales, ensure compliance with PAN card requirements for transactions, etc. Typically, audit will ensure no dummy booking entries (to park unsold flats in an employee's name, for example).
GST Rate Changes for Real Estate (2019)	GST Council – reduced GST on affordable housing to 1% (no ITC) and other housing to 5% (no ITC) from Apr 2019.	Audit must ensure the company shifted to the correct scheme. If no ITC is allowed, check that input GST credits are not wrongly availed in books (it should hit cost). Also confirm that customers were charged the correct GST rate and that proper filings were made.
COVID-19 Regulatory Reliefs (2020)	Government and RERA Authorities – extensions of project registration by 6-9 months, etc.	Check if the company availed timeline extensions for projects and if so, that they filed the necessary paperwork (many authorities required an application to avail automatic extension). Also verify if Force Majeure clauses were invoked in customer agreements and communicated properly.

3. Internal Audit Checklists & SOP Highlights

(Below are representative items from an internal audit checklist for a real estate company. These ensure systematic coverage of critical areas. Auditors typically prepare such checklists tailored to each engagement.)

- a) Land Acquisition & Approvals Checklist: Does the company have *approved drawings and letters* for all required sanctions (building permit, environmental clearance)? Are original land ownership documents kept in safe custody and verified? Was due diligence done (title search report, no encumbrance certificate) before purchase or joint venture? Verification tip: Cross-check land area and FSI in purchase deed vs. what is used in project plans, to ensure no excess construction beyond rights.
- b) Financial Management Checklist: Are separate project accounts maintained to track project- specific inflows and outflows? Is the 70:30 RERA fund rule adhered to⁴ each quarter ? Does the company reconcile sales proceeds with bank deposits (to catch any diversion or cash dealing)? Are there cost reports prepared periodically comparing budget vs. actual cost for each project? Check if contingency budgets are properly approved when utilized.
- c) Sales and Marketing Checklist: Verify that all advertisements and brochures carry the RERA registration details and are factual (RERA prohibits misleading claims). Is there a system to ensure no sale/booking is done without required approvals (e.g., some companies have a policy “sales start only after RERA registration and CC Stage 1”)? Ensure booking forms capture all necessary customer details (including KYC due to PMLA) and that money is received only by cheque/bank transfer (no cash beyond permitted limits).
- d) Project Execution & Contractor Management Checklist: Is there a project schedule (work program) and is progress measured against it (e.g., via MS Project or Primavera)? Are weekly site meetings held and minutes documented, highlighting delays or issues? Check the contractor bill certification process – e.g., site engineer measures work, Project Manager approves, Finance checks arithmetic and compliance, etc. Look for evidence of competitive bidding in awarding major contracts (tenders or at least 3 quotations) as per best governance practices; if not, flag concentration of work to related parties or one contractor without justification.
- e) Quality/Safety Audit Points: Does the company maintain a snag list at project completion and ensure all defects are rectified before handover? Are critical testing reports (cube test results, pile load tests, etc.) available and show passing results? Has the project obtained necessary third-party certifications, if any (like IGBC green building certification, if it was targeted)? For safety, check if any accidents occurred – were they reported and addressed, and what is the safety record (e.g., “X man-daysman-days without Lost Time Injury”)?
- f) Legal & Compliance Checklist: Are all insurances in place? (Construction All-Risk insurance, Workmen Compensation, fire insurance after completion, etc.) – verify policies and validity. Check compliance with labor laws – e.g., does the contractor submit PF/ESI challans for their workers (as proof labor dues are paid)? Does the company adhere to Section 197 of Companies Act (if applicable) regarding corporate

social responsibility (CSR) in real estate townships? Confirm that property tax or land lease rent (if land is on lease from govt) is paid up to date (no accumulated dues that could result in penalties).

- g) Information Technology (IT) Controls: Many large developers use ERP systems (like SAP or Oracle) to integrate project accounts, procurement, sales, etc. An internal audit should review IT controls – who has access to alter bookings or financial entries? Are there proper approvals configured in the system (e.g., PO approval hierarchy)? Also, check for a reliable backup of data (to protect vital project and customer data). If an online portal is used for customer payments or updates, test its reliability and data security (especially protection of customer personal data under data privacy principles).
- h) Risk Management & Reporting: Does the company have a Risk Register for its projects? For example, identifying risks like “Approval delays”, “Cost overrun”, “Market demand slowdown”, “Litigation by local residents” etc., and mitigation plans for each. Internal audit can evaluate if this risk assessment is comprehensive and whether management reviews it periodically. Also, verify internal reporting: does internal audit report findings directly to an Audit Committee or top management to ensure independence? Are previous audit findings tracked (via an “Action Taken Report” in subsequent audits or continuous monitoring?

4. Notable Case Laws and Enforcement Actions

Case / Order Summary & Outcome Learning for internal audit [Comment: Corrected capitalization of 'Internal Audit' mid-sentence.]

Amrapali Group Scam (Supreme Court, 2019)	In Bikram Chatterji & Ors. vs. Union of India & Ors., the Supreme Court found Amrapali’s promoters guilty of diverting homebuyers’ funds to unrelated projects and personal accounts. The Court appointed forensic auditors who uncovered a web of 200+ shell companies where money was siphoned. The internal auditors and CFO were pulled up for failing to report these diversions; the Court termed their omission a “<i>deliberate fraud</i>” and took action, including directing seizure of documents from the audit firms.	Internal Audit Takeaway: This case underscores the duty of internal (and statutory) auditors to detect and report fund diversions and fraud red flags. It highlights the importance of robust fund tracking, related-party transaction scrutiny, and whistle-blower mechanisms in real estate companies. Auditors must maintain independence and professional skepticism, especially if they suspect management override of controls. The fallout also prompted regulators to consider stricter auditor accountability.

Unitech Ltd. – SFIO Investigation (2021)	Unitech, once a large developer, faced multiple complaints of project delays and fund mismanagement. The Serious Fraud Investigation Office (SFIO) investigation reportedly found that funds collected for projects were diverted to offshore accounts and other businesses of promoters. Several arrests were made of the promoters.	Internal Audit Takeaway: Large-scale diversion usually leaves trails – e.g., unusually large advances to subsidiaries, loans to related entities, or project funds “invested” in unrelated assets. Internal auditors should be vigilant about related party transactions and the end use of project funds. Ensuring a robust treasury control (funds can’t leave the project without proper justification) is key. If something seems beyond the mandate of the project (say, money invested in a unrelated land parcel), it should be questioned.
DLF Ltd. – Penalty by Competition Commission (2011)	DLF was fined by India’s Competition Commission for abusing its dominant position by imposing unfair conditions on buyers (in a Gurgaon project) – e.g., one-sided apartment buyer agreements. While not an audit issue per se, it led to more scrutiny of builder-buyer agreements.	Internal Audit Takeaway: The fairness and legality of terms in customer contracts are vital. Internal audit should ensure that contracts with buyers are not only RERA-compliant but also don’t violate other consumer protection laws. This includes checking that penalty/interest clauses are reciprocal (RERA has made this mandatory), that promised amenities are delivered, etc. Keeping contracts fair is not just ethical but also reduces litigation risk.

Case / Order Summary & Outcome Learning for internal audit [Comment: Corrected capitalization of 'Internal Audit' mid-sentence.]

RERA Appellate Tribunal Orders (General)	Various orders across states have enforced developer obligations: e.g., refund with interest for delayed projects, directions to form allottee association, penalizing developers for advertising unregistered	Internal Audit Takeaway: The regulatory environment is stringent – internal auditors should treat compliance lapses as high-risk. For instance, failing to register a project or delay in filing updates could

	projects, etc. Some tribunals have also held that chartered accountants who gave wrongful certification can face action if found negligent.	invite penalties or project freezes. Also, as part of entity's governance, audit committees may want to see a compliance certificate from internal audit on major obligations (much like Section 138 of Companies Act for other laws). The mention of CA liability means internal auditors should double-check any certifications they rely on (architect/engineer/other CA) for reasonableness.
Home Buyers in Insolvency Cases (2018 amendment)	Homebuyers are now considered financial creditors under the Insolvency and Bankruptcy Code. In cases like Jaypee Infratech, homebuyer committees played a role in resolution.	Internal Audit Takeaway: This development means if a real estate company is in financial distress, homebuyers have a seat at the table. Internal audit should thus also monitor early warning signs of financial stress (like high debt, project stalled) and escalate if going concern issues appear. Prevention of insolvency through prudent audit observations (like not over leveraging, or timely project execution to avoid refund obligations) can save the company.

Each of these cases and provisions reinforces an aspect of internal control or governance that a diligent internal audit should cover. By studying such outcomes, internal auditors can refine their audit programs to focus on areas where failures have occurred in the past.

17.4 FAQs – Frequently Asked Questions (for All Stakeholders)

Q1. What is the difference between an internal audit and an external (statutory) audit in the context of real estate companies?

A1. Internal audit is an ongoing, management-focused function that reviews a real estate company's internal controls, processes, and compliance throughout the year. It is generally not mandatory for all companies (except as per Companies Act thresholds), but is highly recommended for risk management. The internal auditor reports to management (or the Audit Committee) and covers operational areas like project

progress, regulatory compliance (e.g., RERA, GST), and efficiency of processes. External audit (or statutory financial audit), on the other hand, is a yearly requirement where an independent auditor opines on the company's financial statements. For real estate companies, the statutory auditor checks if the accounts are true and fair, in compliance with accounting standards (for example, revenue recognition for projects in books) and provisions of law. They focus on financial reporting and statutory disclosures, rather than operational details. In summary, internal audit is broader (covering operational and compliance risks) and continuous, acting as a preventive and corrective tool, while external audit is a certification of financial statements post year-end. Both complement each other: issues found by internal audit (like control weaknesses or potential misstatements) can be resolved before the external audit, leading to better financial integrity.

Q2. The real estate sector has many Acts and regulations. How does an internal auditor keep track of all of them and ensure compliance?

A2. Indeed, real estate is heavily regulated. A good internal auditor will maintain a compliance universe or checklist – essentially a master list of all applicable laws, rules, and compliance requirements. This chapter's Sections 4 and 5 illustrate many of these. Typically, the internal auditor will create compliance checklists for each functional area.

For example, a checklist for "Sales & Marketing compliance" might include verifying RERA project registration, adherence to Section 13 (10% cap on advance), whether marketing materials have required disclosures, etc. Another checklist for "Construction stage compliance" will include environmental clearance, labor law compliances, quality certifications, etc. Many internal auditors also use compliance management tools or software that send reminders for due dates (e.g., RERA quarterly update due, or property tax due date). Additionally, internal auditors stay updated through continuous learning – reading new notifications, ICAI circulars, RERA Authority updates – and often attend seminars or have subscriptions to legal update services.

In the audit process itself, one technique is to conduct periodic compliance audits: a dedicated audit where you test compliance with all major laws (kind of like an internal legal audit). The internal auditor also works closely with the company's compliance officer or legal team. By systematically testing a sample of transactions against legal requirements (say, pick 5 sales and ensure each meets all legal criteria), the internal auditor can judge overall compliance.

It's a proactive approach: rather than waiting for an external notice or penalty, the internal audit identifies non-compliance early so the company can rectify it. In critical areas, internal auditors will escalate issues to the Board's Audit Committee – for example, if a major project was found unregistered with RERA or a significant tax non-compliance is observed, this is raised at the highest level for urgent action.

Q3. Our real estate company is relatively small. Is an internal audit still necessary, and if so, should it be done by internal staff or outsourced?

- A3.** Internal audit is beneficial to companies of all sizes, because it acts as a third line of defense (after management's own checks and any risk management processes) to catch issues. For a small real estate developer, the operations might be less complex than a national builder, but they still face key risks: cash flow management, fulfilling promises to buyers, regulatory filings, etc.

If the company is too small to have a separate internal audit department, it can consider outsourcing the internal audit to a professional firm or consultant. Many boutique CA firms provide internal audit services and can tailor the scope to the size of the business. Outsourcing brings in specialized skills and an independent perspective. If cost is a concern, even a bi-annual or quarterly audit on critical areas can add value. On the other hand, if the company has some scale (say multiple projects or a turnover high enough to require internal audit under Companies Act), it can consider hiring one or two internal audit staff. An in-house internal auditor has the advantage of continuous presence and intimate knowledge of the company, but they must maintain independence (preferably reporting directly to the owners or board, not being involved in daily finance work).

Some companies adopt a hybrid approach: they have an in-house audit executive who coordinates and a consultant who guides or co-sources the audit. The key is that someone is periodically checking that controls are working, records are accurate, and compliance is up to date. This often saves money in the long run by preventing costly mistakes or penalties. Even small companies have benefitted, for example, by an internal auditor catching that a certain contractor's bills were inflated or that an expensive delay could have been mitigated by prompt action.

Q4. What are the biggest fraud risks in real estate companies, and how can internal audit help prevent them?

- A4.** Real estate, unfortunately, has historically been prone to certain frauds due to large cash flows and the long project lifecycles. Some of the biggest fraud risks include:
- Diversion of Funds: Using money collected from homebuyers for purposes other than the project (e.g., investing in land for a new project without disclosing, or personal use by promoters). This was seen in cases like Amrapali and Unitech. Internal audit's role: Monitor cash flows and project accounts. An auditor will check that the project funds (especially the escrow 70% funds) are only going to project vendors or expenses. Any unusual transfers (like to unrelated entities) are flagged. Also reviewing related-party transactions in depth helps here.
 - Sales Misreporting / Ponzi-type schemes: A developer might sell more units than exist (double-selling a flat) or sell on false promises (selling without approvals

hoping to get them later). In extreme scams, some developers launched too many projects, took money, and then couldn't complete (using new sales money to fund old projects). Internal audit's role: Verify that every sale is backed by an actual unit in approved plans and that no unit is allotted to two different buyers. Also, internal audit should reconcile construction progress with amount collected: if a project is say 50% complete but 90% money is taken from buyers, it's a red flag (RERA now prevents this to an extent, but cross-checking is good).

- Procurement and Invoice Fraud: Given huge procurement (cement, steel, contractors), there's risk of kickbacks or ghost vendors. For example, a dummy supplier could be set up to bill materials at high rates and someone inside gets a cut. Internal audit's role: Implement vendor due diligence (ensure vendors are real, with GST registration etc.). Also, competitive bidding or at least multi-quote comparison should be enforced for significant purchases – internal audit can test that. Data analytics can be used by internal audit to see patterns (like one vendor getting disproportionately high value or repeated emergency purchases just below approval threshold).
- Land/Title Fraud: Buying land with defective title, or being scammed into a joint development with someone who isn't actual owner. Also, internal fraud like employees colluding to buy land at inflated price from a related party. Internal audit's role: Do independent title checks and valuation cross-checks. Ensure external legal opinion is obtained for land deals. Any conflict of interest (like the land belonged to a relative of an employee) should be disclosed and handled by independent valuation.
- Bribery and Compliance fraud: Real estate often requires permits – there's a risk employees or agents engage in bribery to expedite approvals (violating anti-corruption laws) or bypass rules. Internal audit's role: While difficult to detect private bribery, a red flag approach helps – e.g., unusually fast approval that might indicate something, or entries in books like "liaison expenses" should be scrutinised. The internal auditor should also ensure the company has a code of conduct and training that prohibits bribery is not tolerated. Many companies now have to comply with anti-bribery laws, and an internal audit may evaluate those controls.
- Customer Data/Payment Fraud: Taking money "off the books" from a buyer (to under-report income or evade tax) – historically "cash components" were an issue. Or issuing receipts that are not recorded officially. Internal audit's role: Secret-shopping or confirmations – internal audit can directly contact a few customers (with management approval) to confirm the amount they paid and compare to books. Also check bank statements vs. receipts. Now with RERA and

digitization, this has reduced, but internal audit remains watchful for any inconsistencies.

In essence, internal audit combats fraud by ensuring strong internal controls: segregation of duties (one person cannot alone handle a transaction end-to-end), approvals, documentation, independent checks. It's often said internal auditors should adopt a "trust but verify" approach – assume employees intend to do right but still verify key transactions. Additionally, promoting a whistleblower mechanism where employees can anonymously report suspicious activities can give internal audit leads to investigate. By being proactive and skeptical, internal audit serves as an early warning system to prevent small irregularities from growing into large frauds.

Q5. With the introduction of RERA, what changes has it brought to the internal auditing process for developers?

A5. RERA has been a game-changer for real estate governance. Some key changes affecting internal audit are:

- Increased Focus on Project-specific Accounting: Before RERA, some developers pooled funds from various projects freely. RERA's mandate of separate project accounts (70% escrow) means internal audit now inspects each project's cash flows individually. Auditors verify escrow compliance and project cost allocations more rigorously. This has made audits more project-centric rather than only at company aggregate level.
- Ongoing Compliance Monitoring: RERA introduced ongoing requirements like quarterly updates, annual audit reports, and so on. Internal audit now includes a RERA compliance review as a standard item – checking that all these submissions are done timely and accurately. This is akin to how internal audit in other industries ensures say tax returns or GST filings are done; now for real estate, RERA filings are in focus.
- Transparency and Documentation: There's far more documentation to audit now – approved plans, sanctioned letters, etc., are all uploaded to the RERA site. Also, the agreement for sale content is regulated. Internal auditors thus have clear benchmarks: e.g., check the agreement template against the model rules. It's less subjective. Auditors also often check the developer's RERA website page to cross-verify data (like number of sold units or project end date) with internal records, adding an external validation step.
- Agent Registration and Conduct: Many developers have in-house sales teams and also broker networks. With RERA, internal audit looks at whether brokers marketing their project are registered. It might not have been a concern earlier, but now if a non-registered agent is used, it can cause penalties. So internal audit might ask for the list of agents engaged and verify their registration IDs.

Ensure that ID are valid during the project period for instance on 18th May 2025 MahaRERA de-registered 18693 real estate agents at one go.

- Grievance Redressal: RERA has empowered allottees (buyers) to file complaints. Internal audit pays attention to customer complaint logs and their resolution. A trend of complaints could indicate a systemic issue. Under RERA, complaints could quickly escalate to orders, so internal audit encourages robust customer service processes to fix issues before they become legal cases.
- Stress on Timely Delivery: Internal audit has always looked at project delays, but under RERA, delay has financial implications (interest to be paid to buyers, or possibility of project being declared “lapsed” by the Authority if too delayed). So auditors place greater emphasis on monitoring project timeline commitments. They may recommend better project monitoring tools or flag if a project is slipping behind schedule significantly so management takes corrective steps.
- Ethical Tone and Governance: RERA essentially tries to enforce certain ethics (no false promises, keep money separate, honour commitments). Internal auditors often find that post-RERA, management is also more receptive to governance improvements, since they know the law will hold them accountable. So internal audit might broaden into assessing the “tone at the top”, ensuring that management certifications (like the promoter’s affidavit about project land being encumbrance-free, submitted at RERA registration) are indeed accurate, not just a formality.

Q6. Our company is a real estate developer – should internal audit be done project-wise or at the entity level?

A6: Both perspectives are useful, and internal audit can adopt a hybrid approach:

- Project-wise Audits: Real estate operations can be segmented by project, since each project is almost like a standalone venture with its own profitability and risks. Auditing on a project basis means deep-diving into a single project’s end-to-end activities: land purchase, approvals, contracting, sales, collections, etc. This is beneficial for large or high-risk projects. It gives granular insight – for example, a focused audit on Project Sunshine might reveal that its sales are lagging or that a specific contractor is underperforming. Also, RERA compliance is project- specific, so checking a project’s RERA compliances (registration, escrow, form submissions) is naturally done at project level.
- Entity/Process-wise Audits: Some functions (processes) cut across projects, especially in corporate setups – e.g., the procurement department might negotiate bulk cement for all projects, or the sales and marketing team might handle leads for multiple projects. Auditing these at the entity level (process audit) ensures you evaluate controls that serve all projects. For instance, an audit

of the Accounts & Finance process at head office would check how payments are authorized for any project, how general ledger entries are made, etc., which affects all projects uniformly. Similarly, an HR compliance audit (for construction labor or staff) would cover multiple project sites.

- Rotational Focus: Often, internal audit plans will rotate – one quarter focusing on specific projects (maybe the larger ones or those with known issues), and another quarter focusing on specific processes across the company.
- Consolidated Reporting: Even when audits are done project-wise, findings can be aggregated to the entity level. For example, if multiple project audits reveal that “customer documentation is often incomplete at booking,” the internal audit report to management can highlight this systemic issue. In practice, internal audit teams in real estate firms maintain a project audit checklist as well as a functional audit checklist. They might audit say, 3 projects in detail each year (especially nearing completion or critical stage ones) and also cover key support functions company-wide. The choice can depend on risk assessment: if one project constitutes 50% of the company’s revenue, focusing more audit resources on it makes sense. On the other hand, if an across-the-board process like procurement is weak, it could affect all projects, so that gets priority. Thus, a balanced approach is recommended.

Q7. How can land owners who enter development agreements protect their interests through internal audits or similar mechanisms?

A7. Land owners who contribute land to a joint development (while the developer builds and markets) often have a lot at stake – they usually get a share in revenue or some of the constructed area. While a land owner might not have an internal audit department, they can take measures analogous to internal audit:

- Right to Audit Clause: First, in the Development Agreement, include clauses that allow the land owner to audit or inspect the project accounts. For example, if the deal is to get 30% of revenue, the land owner should have rights to see the sales agreements, collection reports, etc. Land owners can hire an independent CA or consultant to periodically audit the developer’s reports to them. This is essentially performing an internal audit function focused on the joint development project.
- Documentation and Approvals: Land owners should ensure that all approvals (building plans, etc.) are shown to them and copies given, so they know the project is legally on track. They should keep an eye on whether the project is registered with RERA and whether the quarterly updates are filed (since if the developer fails, the project could be in trouble – and by extension, the land owner’s interest suffers).

- Progress Monitoring: Land owners (or their representatives) should periodically visit the site to verify progress because their revenue share or flats depend on timely completion. If something seems off (like project stalled), they should investigate immediately. They can ask for progress reports or architect's certificates that the developer submits to banks/RERA, giving a factual picture.
- Sales and Pricing Transparency: Sometimes developers presell units at various prices; a land owner's revenue share might be based on actual sales realisations. So they should have a mechanism to verify that sales aren't being done to related parties at artificially low prices to reduce the payout. An independent audit of sales registers and perhaps even market benchmarking can help ensure the land owner is getting fair value.
- Escrow of Revenue: Land owners can insist that their share of the money goes into a separate escrow account to which they are a party, rather than fully controlled by developer. That way, an independent trustee (bank) could release their portion as per the agreement. This financial control can substitute some auditing, because if money flow is escrowed, misuse is harder.
- Case Law Awareness: Land owners should be aware of instances where land owners took developers to court for non- performance and what relief was granted. For example, if developer fails to deliver, the remedies might include returning land or compensating the land owner. Knowing this, the land owner can include protective clauses and be vigilant to enforce them early (with legal help). Internal audit-style checking would be to ensure the developer is meeting key milestones that trigger the land owner's obligations (e.g., handing over possession by X date).
- Professional Advisors: In effect, a land owner uses auditors and lawyers as their watchdogs – even if not continuous. Engaging a Chartered Accountant firm to do a half-yearly audit of the project's escrow and sales on the land owner's behalf can catch issues early.

So while a land owner doesn't run an internal audit in the corporate sense, they can mimic internal audit controls by contractual rights and independent checks. This reduces the risk of being at the mercy of the developer's information. Essentially, *trust but verify*. A prudent land owner treats the joint development like a partnership where transparency is key – and they take proactive steps to ensure it.

Q8. Can you provide an example of a checklist an internal auditor would use for auditing a real estate project?

A8: Certainly. A simplified example checklist (not exhaustive) for a real estate project audit might look like:

- Land Acquisition & Approvals: - Verify original title deeds are in possession and title search report is clean (no pending litigation or encumbrance). - Check that all necessary approvals (environment clearance, building plans, RERA registration, local municipal permits) are obtained and valid. Any fees due (like development charges, external development charges) paid?
- Financing & Funds: - If project has a construction finance loan, ensure compliance with loan covenants (e.g., quarterly progress certificates given to bank, interest paid on schedule). - Review the project bank account – ensure it's separate. Reconcile total collections from buyers with deposits in the account (should be $\geq 70\%$ of collections per RERA). - Check withdrawals from the account: are there supporting certificates and board approvals if required?
- Sales & Customer Advances: - For a sample of units sold, check Booking Form, allotment letter, and Agreement for Sale. Was no more than 10% collected before agreement? Agreement registered? - Trace customer payments in ledger – are receipts issued promptly? Are they correctly allocated to customer's account (no mis-postings)? - See if any cancellations occurred – were refunds handled as per policy/RERA timelines? - Confirm that the list of sold vs unsold units is accurately maintained (important for inventory and revenue recognition).
- Construction Progress & Cost: - Obtain project progress report – physically or via photos verify a sample (if report says "clubhouse 50% done", ensure some evidence of that). - Evaluate cost reports: compare budgeted cost vs cost committed vs cost incurred. Flag any category (e.g., steel, cement, labor) significantly over budget. Investigate reasons (price increase, higher quantity, wastage?).
- Check procurement: for major materials or contracts, was competitive bidding done? Are work orders properly documented and approved? - For work billed by contractors, verify measurement sheets and certification by site engineers for a sample. Ensure the billed quantities and rates align with contract terms. Also verify if any retention money is deducted (common practice to keep retention to ensure contractor quality).
- Compliance & Tax: - Ensure monthly GST returns for the project's sales (if separate GST registration or even in consolidated return) reconcile with sales recorded. Any GST payable on advance collected (yes, under GST advances for construction were taxable prior to 2019 change) should be paid. - TDS: If payments to contractors/subcontractors exceeded thresholds, was TDS deducted and deposited? - Labor compliance: If project site has $>$ certain workers, check labor license and records of wages, PF/ESI contributions.

- Quality & Safety: - Look at internal quality audit reports or snag lists. Is there a pattern of repeat issues (e.g., waterproofing failures)? If yes, has management taken broader corrective action (like switching supplier or design)? - Check safety incident log. Were any accidents reported? If yes, did company provide required compensation/ filed statutory reports? Internal audit can suggest improvements (like toolbox talks, safety training) if incidents seem high.
- Handover & Post-completion: - If project is nearing completion, check readiness of documentation like occupancy/completion certificate, formation of homeowner association, conveyance of land to society, etc., as required by law. - Ensure a process exists for attending defect liability complaints (RERA gives 5-year defect liability on promoter). If some flats are handed over, see if any complaints filed by owners and how promptly they were fixed.
- Financial Closure: - Confirm revenue recognition method applied (if completed contract, ensure none recognized prematurely; if POCM for old projects, ensure criteria met and percentage complete calculations are correct). - Check inventory valuation for unsold units or land – carried at cost, no revenue recognized on them incorrectly. - Verify that project- related overheads (common costs) are fairly allocated to the project and not omitted (to ensure correct profit calc.).

Each checklist point above would be ticked off with evidence by the auditor. In the ICAI Technical Guide on Construction, many such points are given with internal control questions for guidance. An internal auditor tailors the checklist to the project's specific context (e.g., if it's a commercial office project, maybe additional checks on leasing agreements if spaces are pre-leased). Using such a checklist, the auditor can systematically cover all facets of the project.

Q9. How does internal audit handle related party transactions in a real estate company?

A9: Related Party Transactions (RPTs) are common in real estate – for example, the developer may buy land from an entity owned by its directors, or sell flats to other group companies, or give advances to a sister concern. Internal audit's approach:

- Identify RPTs: First, ensure the company has a mechanism to identify and disclose related parties (per accounting standards and Companies Act Section 188/189). The auditor might obtain the list of related parties from the finance team or board minutes. Then cross-check transactions: all land purchases, major contracts, sales etc. to see if any involve those parties (or any not initially identified).
- Ensure Due Approval: As required by law, certain RPTs must have Audit Committee and/or Board and shareholder approval (depending on materiality). Internal audit verifies that these approvals were obtained in advance. For

example, if the company leased an office from the MD's relative, was this contract approved by the Board/Audit Committee as per Section 188? If not, that's a compliance lapse to report.

- **At Arm's Length?:** Internal audit will examine whether the terms of RPTs are at arm's length, i.e., comparable to market terms. If the company bought land from a sister firm, did it pay a market- aligned price supported by a valuation? If construction was given to a related contractor, was the rate similar to what others bid? Auditors might request independent valuations or benchmark data to evaluate this.
- **Proper Recording:** Check accounting treatment – e.g., any loans to related parties are properly authorized and interest-charged if needed. Ensure disclosure in financial statements is done as per applicable accounting standards (AS 18 or Ind AS 24).
- **Risk of Siphoning:** RPTs can be a vehicle for siphoning funds (as seen in some fraud cases where money is routed to shell companies). Internal audit applies a substance over form view – just because Board approved it doesn't mean it's good for the company. For any large RPT that seems disadvantageous (like an advance given to a group entity with no clear reason), auditors will raise concern and ask for justification/documentation.
- **Case example:** In the Amrapali forensic report, a network of related companies (shells) were used to divert money . An internal auditor should spot unusual RPTs like payments for "consultancy" to an entity with no obvious service, and flag it for investigation.
- **Ongoing Monitoring:** It's good practice for internal audit to maintain an RPT register and update it every audit cycle, checking new transactions. Also ensure any guarantees or commitments to related parties are tracked. Overall, handling RPTs requires skepticism and thoroughness – not only checking compliance boxes but also considering conflict of interest and fairness aspects. By doing so, internal audit helps prevent abuse of RPTs and protects the company's and shareholders' interests.

Q10. The real estate company is implementing an ERP system. How can internal audit contribute during this implementation?

A10: Implementing an ERP (Enterprise Resource Planning) system in real estate (like SAP or Oracle modules for construction) is a significant project. Internal audit can add value in several ways:

- **Pre-implementation Review:** Auditors can review the system design and controls being built. For example, ensure that workflows in the ERP align with required

approvals (e.g., any purchase above ₹X requires two-level approval – is that configured in system?). They can also recommend segregation of duties controls – e.g., the person who can create a vendor master should not be the one who approves payments in ERP, etc.

- Data Migration Checks: When migrating from old systems (or spreadsheets) to ERP, internal audit can test the accuracy of migrated data. This includes checking a sample of opening balances (customer receivables, land inventory values, etc.) in the new system against old records. Also, verify that key master data (like vendor master, customer master, item codes) have been correctly and completely ported.
- Parallel Run Monitoring: If the company runs old and new systems in parallel for a period, internal audit can reconcile outputs. For instance, if both systems produce a project cost report, do they match? Any discrepancies might indicate configuration issues.
- Post-implementation Controls Testing: After ERP go-live, do a focused audit on system controls. This covers:
 - User Access Controls: Check that user roles are properly defined (principle of least privilege). For example, a sales clerk should enter bookings but not be able to modify pricing master beyond a limit; an accounts person can post invoices but maybe not create vendors, etc. Review any super-user or admin access and ensure it's restricted.
 - Workflow Approvals: Test a few transactions in the ERP to see if the approval flow works. For instance, create a dummy purchase order exceeding the threshold – does it correctly route for higher approval or block if not approved?
 - Error Handling and Interface Controls: Ensure there are controls for any interface (like if ERP pulls bank statement data for reconciliation, what if the interface fails?). Also see how the system logs changes – e.g., does it keep audit trails of amendments to key data (like payment terms changed on a contract).
- Audit Module Utilization: Many ERPs have built-in report/audit modules. Internal audit can collaborate with IT to generate exception reports – e.g., list of manual journal entries passed after period closing, or list of backdated entries, or changes to milestone dates of units sold (which could be suspicious). Using the ERP's data analytics can greatly enhance audit coverage.
- Advisory Role: Internal auditors often have cross- functional knowledge and can foresee control issues. During ERP implementation, they can advise the project team to incorporate compliance requirements (for example, RERA needs project-level accounting – ensure the ERP is set to capture data project-wise so that later

extracting project financials is easy for Annual Audit by Chartered Accountant as per RERA). Or advice on document retention (scanning of sale agreements into the system for easy retrieval, etc.).

- Post-implementation Review: Finally, after a few months, internal audit should assess if the intended benefits of ERP (better controls, less manual work) are materializing. Sometimes, users find workarounds or revert to spreadsheets due to system issues. Auditors can report such cases and push for process adherence and further training if needed. In summary, internal audit's involvement in ERP implementation ensures that strong controls are embedded from day one, reducing the risk of control weaknesses that often plague new IT systems. This proactive engagement is far better than trying to fix problems after they cause financial or compliance errors.

Q11. How can internal auditors use data analytics in a real estate internal audit?

A11: Data analytics can significantly enhance internal audit effectiveness in real estate by turning large data sets into actionable insights. Some practical uses:

- Trend Analysis of Sales and Collections: Using software (like Excel, IDEA, or Python/R), an auditor can analyze the pattern of sales booking and collections. For instance, plotting cumulative sales vs. construction progress can highlight if sales are lagging (potential cash flow issue) or if many cancellations happen at a certain stage. It can also identify if any particular month had an unusual spike in sales (which might warrant a deeper look – was there a bulk sale to a related party to boost numbers?).
- Aging Analysis: Real estate companies collect money in tranches as construction progresses. An analytic script can compute an aging of receivables per customer – to identify buyers who are significantly overdue in payments. This helps audit to flag if collection efforts are lacking or if certain customers might default (which affects cash planning).
- Duplicate or Odd Transactions: Run tests for duplicate entries – e.g., two different customers allotted the same unit number (shouldn't happen), or duplicate vendor invoices (potential double payment or fraud). In project expenses, analytics can spot if two payments have the same invoice number or amount, etc.
- Cost Variance and Outlier Detection: By analyzing the project cost database, an auditor can find outliers – say, the cost per square foot of construction for Tower A vs Tower B if one is significantly higher, that's an outlier to investigate (maybe Tower A's contractor is overcharging). Or compare the rate of a common material like steel or cement across different purchase orders – if one PO has a much

higher rate, look into why (was it a different quality or potentially a procurement lapse?).

- Compliance Analytics: If the company has data on compliances (like dates of RERA filings, or tax filings), analytics can generate automated alerts for due dates or highlight missed/late compliance. Similarly, analyzing customer complaints data – categorize complaints by type and project to see if certain projects have unusual volumes of issues (pointing to deeper problems).
- Financial Ratio Analysis: Even though real estate accounting can be project-centric, one can analyze ratios like project gross margin, overhead ratios, etc., across projects or year on year. If one project's cost-to-sales ratio is trending higher quarter by quarter, it might indicate budget overshoot or cost booking timing issues.
- Geo-spatial or Map Analysis: For companies with many projects, plotting projects on a map with some metrics (like percentage sold or delayed days beyond RERA deadline) can be a creative way to visualize risk hotspots geographically (perhaps more relevant for presentation, but interesting nonetheless). Importantly, auditors should combine analytics with their domain knowledge: for example, a spike in costs might correlate with a known event (steel price hike) – which is fine, versus a spike that has no clear explanation. Data analytics helps audit cover 100% of data rather than sampling, and find hidden patterns that manual reviews might miss. It also saves time on routine tasks (like footing ledgers or reconciling, which can be automated), so auditors can focus on investigating exceptions. Embracing tools and technology is increasingly becoming part of internal audit best practices in all sectors, including real estate.

Q12. What steps should internal audit take if it uncovers a major fraud or irregularity during a real estate audit?

A12: Discovering a major fraud or irregularity is serious. Internal audit should act systematically:

- Gather Evidence Discreetly: Before raising any alarms, ensure you have factual evidence. For example, if you suspect siphoning of funds to a shell company, gather the relevant documents (vouchers, bank statements, emails). Maintain confidentiality to prevent evidence tampering. This may involve securing backups of electronic records or taking copies of key files.
- Report to Appropriate Level: As per internal audit protocols, significant findings should be reported to senior management and the Audit Committee. Typically, the Chief internal auditor would immediately inform the MD/CEO or Audit Committee Chair (depending on company policy) about the suspicion of fraud. In some cases, involving the head of legal or compliance at this stage is prudent.

- **Avoid Accusatory Tone Until Confirmed:** In communication, describe the facts of the irregularity without labeling it “fraud” outright (unless incontrovertible). For instance, say “We identified payments totaling ₹ to ABC Corp, which appears to have common directors with our promoter and no contract on record – this suggests potential misappropriation” rather than “Management has defrauded “X”. The latter could have legal implications. Stick to objective description.
- **Involve External Experts if needed:** Depending on scale, the Audit Committee may decide to bring in a forensic auditor or an external firm to conduct a detailed investigation. Internal audit should cooperate by handing over evidence and knowledge. In high-profile cases (like if it might involve senior management), an independent investigation ensures impartiality.
- **Secure the Control Gaps:** While the investigation goes on, internal audit should also recommend immediate control fixes to prevent further loss. For example, if the fraud happened due to one person having too much access, suggest temporarily freezing certain activities or implementing dual controls. It may even be necessary to recommend suspending certain projects or payments if those are the avenues of leakage.
- **Compliance with Reporting Requirements:** Under Companies Act, if the internal audit function is being performed by a CA firm or if the fraud meets certain thresholds, Section 143(12) (read with Rule 13 of Company Audit Rules) might require reporting of fraud to the government. Although that section technically applies to statutory auditors, internal auditors who are chartered accountants also ethically should ensure the matter is not hushed up. Typically, it will be escalated to the Board, and they might have to disclose it in the Directors’ report (as per Rule 13).
- **Follow Through:** Internal audit should track that management takes remediation steps: whether that means legal action against perpetrators, recovery efforts, or at least disciplinary actions internally. Also, update the risk assessment and audit plans based on the lessons learned – often one fraud indicates similar risks elsewhere, so plan to audit those areas sooner.
- **Communication within Company:** After the dust settles, internal audit might assist management in drafting circulars or new SOPs to all staff reinforcing controls (without divulging sensitive details, unless the fraud is already public knowledge). This helps create awareness so that similar misconduct is deterred. In summary, while internal auditors are not law enforcement, they serve as the first line to detect and escalate fraud. Handling it with professionalism, urgency, and integrity is crucial – it can protect the company’s finances and reputation when done correctly.

Q13. For a real estate contractor (construction contractor), what are some key points they should expect during an internal audit of the developer (their client)?

A13. If a developer is doing an internal audit, the contractor might indirectly be subject to some scrutiny since the auditor will review contractor-related transactions. Some key points a contractor should be mindful of:

- **Work Order and Contract Terms:** The internal auditor will definitely look at the contract agreement between the developer and contractor. The contractor should ensure their paperwork is in order – a signed contract, any extensions or change orders in writing. If the contract says certain milestones, the contractor should be aware that the audit might check if those were met or if delays occurred (and if penalties should apply). So being on schedule or having documented legitimate reasons for delays (force majeure, scope change) helps the contractor's case.
- **Billing and Measurements:** Internal audit will recheck some Running Account (RA) bills against measurement books or site reports. Contractors should keep meticulous site measurement records and ensure that the quantities billed match what's executed and approved by the site engineer. Any discrepancies (like billing for a higher quantity than executed) will be flagged – which can affect the contractor's reputation and payments. Transparency in billing, attaching necessary test reports or work certificates, will make the audit smooth.
- **Compliance with Tax and Labor Laws:** Auditors often verify that the contractor's invoices have proper GST and that the contractor's GST returns match (some developers even ask for GST return proof to allow input credit). They may also check if the contractor provided monthly challans for PF/ESI (since developers as principal employers want to ensure no labor law violation on their site). Contractors should thus ensure they are up to date on depositing PF for their workers, have labor registers, and provide copies when asked – it shows compliance and avoids the developer holding back payments.
- **Material Reconciliation:** If the developer supplied certain materials (cement, steel) to the contractor, the audit will check reconciliation statements. Contractors should prepare and submit these on time: how much was received, how much used in work, wastage within permissible limits, and stock remaining/returned. If the auditor sees a large unexplained gap (material issued vs work done), it may become an issue (possibly indicating waste or theft).
- **Quality and Safety Records:** Auditors might inspect project quality logs – e.g., if the contractor was supposed to do testing or provide certifications (like cube test results, welding test, etc.), ensure those are in the documentation. They may also look at safety incident records or insurance. A contractor should keep incident reports (if any accidents happened) and show what corrective measures were

taken. Also, the contractor should maintain a valid Contractor's All Risk (CAR) insurance and Workmen Compensation insurance and share copies, as audits often include verifying insurance coverage is in place during project execution.

- Adherence to Agreement for Sale Commitments: This is more on developer but indirectly on contractor: the flat buyers' agreement might promise certain specifications or amenities. The internal audit might check that those promises (like brand of flooring, or number of elevators, or clubhouse features) are being delivered. The contractor should be aware of these specs as per contract and ensure they meet them, because if not, audit will flag and developer will push contractor to fix it (or levy damages).
- Payments and Advances: If the contractor took any mobilization advance, the audit will check its recovery (usually advances are recovered from bills). The contractor should track that properly in bills so it's transparent. Also, if retention money is deducted, audit checks the accounting; contractors should know when retention is due for release (post-handover or defect liability period) and fulfill all conditions to get it – internal audit might review if retention release is justified.
- Variations and Extras: Many disputes arise from extras. Contractors should have all variation orders signed by the developer. If internal audit finds a payment without proper variation approval, they may question it and freeze that payment. So to avoid cash flow issues, contractors benefit from sticking to formal change order processes.

In essence, an internal audit of the developer is not “auditing the contractor” per se, but the contractor's performance and compliance heavily influence the audit findings. Contractors who keep good records, comply with contract terms, and maintain transparency will sail through such audits and maintain a strong trust with the developer (maybe even helping them secure future contracts).

Q14. How does internal audit benefit real estate homebuyers and investors? They are external stakeholders – do they feel any impact of a developer having good internal audit?

A14. Absolutely, although indirectly. When a developer has a strong internal audit function, it typically means:

- Better Compliance and Financial Health of the Developer: Homebuyers benefit from the developer following RERA norms – timely completion, proper fund usage, etc. For instance, an internal auditor would flag if a project is short on funds or if advances collected are being misused, prompting corrective action or infusion of funds by the developer. This reduces the risk of project delays or stoppage, which directly benefits homebuyers waiting for their homes. Investors (like those who buy properties for investment or institutional investors in the

company) also prefer companies with good governance (often internal audit is seen as part of governance) because it means less risk of scandals or collapses.

- **Transparency:** A company that embraces internal audit likely also embraces transparency. Homebuyers may see that in how the company communicates – e.g., regular construction updates, honest timelines, proper handling of escrow accounts (so money goes where it should). This confidence can be a selling point; some developers even mention their governance practices in brochures to build trust.
- **Quality and Delivery:** Internal audits often check quality processes and whether promised specifications are met. So buyers get what was promised – e.g., if internal audit catches that a cheaper material was being substituted, it would be rectified before delivery. Also, internal audit keeps an eye on whether the possession is given with proper Occupancy Certificate and legal paperwork. Buyers thus avoid unpleasant surprises (like finding out building isn't approved or amenities are missing).
- **Customer Service and Fair dealings:** Frequently, internal audit will look at complaints and how they are resolved. A developer with such oversight is more likely to treat customer complaints seriously and improve service. It could lead to practices like having an escrow for maintenance deposits, clear cancellation and refund processes – which ultimately protect consumer interests. In contrast, a company with no internal checks might mishandle customer money or ignore issues.
- **Protection of Investments:** For investors who invest via bonds or debentures in a real estate firm, internal audit adds confidence that the company's financial statements are reliable and that risks are managed. It might not be directly visible, but credit rating agencies, for example, often look at internal controls as part of management evaluation.
- **CAG/ Government Oversight (for public projects):** If it's a government real estate project (say housing scheme audited by CAG personnel), a good internal audit will pre-emptively ensure proper use of funds and adherence to scheme guidelines, which ultimately means public money is safeguarded and the housing project achieves its goals (right beneficiaries, no cost inflation, etc.).

So while homebuyers don't "see" internal audit like they see construction progress, its effects are felt in the form of a smoother buying experience and receiving a legally sound, quality product. One can analogize it to a car buyer not seeing the quality control engineer's work at the factory, but benefiting by getting a well-made car. In fact, one can advise savvy homebuyers to prefer developers known for good governance (internal audit being a part of that) because it often correlates with reliable delivery.

After RERA, one metric is the Annual Chartered Accountant Audit Report which is on the public RERA site in some states – if internal audit is effective, those reports will likely always be clean, indicating a disciplined promoter.

Q15. I am a Chartered Accountancy student interested in internal audit for real estate. What key skills or knowledge should I develop?

A15. That's a great career interest – internal audit in real estate is a niche that requires a blend of skills:

- (i) **Knowledge of Real Estate Regulations:** Start with a strong grasp of RERA – read the bare act and rules of one state (say your state) to understand the obligations of promoters and agents. Also familiarize yourself with building approval processes, maybe by reading municipal building guidelines or case studies of project approvals. This domain knowledge sets you apart.
- (ii) **Accounting and Finance Skills:** Real estate has unique accounting issues (revenue recognition methods, project cost accounting, etc.). Know Ind AS 115 (or AS 7 / Guidance Note if old Indian GAAP) for construction contracts/real estate revenue. Understand how to read a project feasibility or project report (NPV/IRR concepts, since internal audit might review project viability assumptions too).
- (iii) **Auditing and Internal Control Concepts:** Obviously, master the Standards on Auditing (though for statutory audit, they teach you rigour which helps in internal audit too) and Standards on internal audit as discussed. Learn about risk assessment – perhaps through case studies, e.g., identify risks in a hypothetical project and think how to mitigate or audit them. Also, get comfortable with using audit tools like flowcharts, internal control questionnaires, etc. because in internal audit you often map processes (like a flowchart of how a customer is onboarded from booking to registration) and then test controls at each step. *[Comment: Corrected capitalization of 'Internal Audit' mid-sentence.]*
- (iv) **Data Analysis and Excel:** Many internal audit findings come from analyzing data – e.g., aging of receivables, or matching lists (like list of sold units vs. registered sale deeds). Being good at Excel (Pivot tables, VLOOKUP, etc.) or even using audit software like ACL or IDEA can help find anomalies quickly. For a student, practicing by analyzing any sample data (say, a set of transactions) for trends/outliers is useful.
- (v) **Site and Technical Appreciation:** If possible, visit a construction site (maybe through industrial visits). Understand basic construction terms and stages – foundation, plinth, RCC frame, finishing, etc. You don't need to be an engineer, but internal audit might involve going on site to verify if progress claimed is real. If you can identify what a completed 10th floor slab looks like vs. just 5th floor,

you can corroborate or challenge reports better. Also, learn terms like FSI, carpet vs super area, TDR (Transfer of Development Rights) – these often come in real estate deals.

- (vi) **Soft Skills – Communication:** Internal audit involves a lot of interaction with various departments – engineering, legal, sales. You should be able to ask the right questions tactfully and communicate findings clearly. Maybe practice writing audit observations succinctly (e.g., “Observed that 2 out of 10 sale agreements tested were not registered within the stipulated time, which can lead to legal non-compliance under RERA Section 13.” – then recommend solution). Clear writing and presentation skills matter because you might present to management.
- (vii) **Stay Updated:** Finally, this field evolves. Keep an eye on real estate news: e.g., if the budget 2025 announces something for housing, or a landmark court judgment on real estate, note how it could create a new checkpoint for auditors. CA students can join the ICAI's internal audit Standards Board publications or follow their seminars, particularly any industry-specific ones for real estate/construction. *[Comment: Corrected capitalisation of 'Internal Audit' mid-sentence.]*
- (viii) **Practical Experience:** If you can, try to get an articleship or internship in a firm that has real estate clients in internal/ statutory audit. There is no substitute for seeing real documents and real scenarios. You'll learn, for instance, how an escrow account is operated or how the site MIS looks.

By building a mix of regulatory knowledge, audit techniques, financial acumen, and field awareness, you'll be well-equipped to excel as an internal auditor in the real estate sector. It's a challenging field but quite rewarding – you contribute to projects that shape the cities and provide homes to people, ensuring these are done right!

Q16. From a government or CAG auditor's perspective, how is auditing a public sector real estate project different from a private sector internal audit?

A16. Government (CAG) audits of real estate projects (for example, a state housing board, or a metro rail corporation doing property development, etc.) and internal audits in private companies share many fundamentals but have different emphases:

- **Audit Objectives:** CAG audits often have broader objectives like evaluating economy, efficiency, and effectiveness (the 3 E's) of government programs. So, if auditing a government housing scheme, the auditor might look at whether the scheme delivered the intended outcomes (e.g., allotted houses to eligible beneficiaries) besides just financial compliance. Internal audit in a private company is more focused on financial/compliance accuracy and risk management to protect the company's assets and ensure profitability.

- **Standards & Independence:** CAG audits follow Government Auditing Standards (often aligned with INTOSAI standards), which emphasise independence and public accountability. Internal auditors are part of the organisation they audit (though independent in function, they are still hired by management). CAG auditors have the power to call for any record in the public interest, and their reports may be tabled in the legislature, giving a very public dimension. Internal audit reports are confidential to management.
- **Scope and Depth:** Government audits might dive into policy adherence and propriety. For example, if a public developer were to allot land, the CAG would check if it followed the government's allotment policy, whether pricing was fair, if any undue favours were given – basically compliance with not just law but also sanctioned purpose and propriety. Internal audit might not typically question management's business decisions if they are within law (like giving a discount to a buyer might be a business call; an internal auditor flags if it breaks policy but not necessarily questions fairness unless it hurts the company). CAG might question fairness if it impacted public revenue. - Examples: A CAG audit report might say, "Project XYZ was delayed by 3 years, resulting in cost escalation of 50%; this indicates poor project management and failure to achieve the objectives of providing affordable housing in time." It might pin accountability on officials. An internal audit report in the private sector might say, "Project delayed 3 years – recommend management to implement stricter project monitoring and consider liquidated damages from contractors." The language and consequence differ: CAG is more reporting to the public/ Parliament, whereas internal audit is reporting to the company's Board.
- **Compliance Focus:** In public projects, compliance with government procurement rules (like tender processes), utilisation of funds as per the budget, etc., are key. Private internal audit also looks at procurement, but government audits have zero tolerance for deviation from mandated procedures (since it could imply corruption or favouritism). So, a govt auditor will meticulously check tender documents, evaluation sheets, etc., while an internal auditor in a private firm checks procurement for value for money but with more flexibility in what procedure the company chose (because private firms aren't bound by public procurement laws, they just need a sound process).
- **Follow-up and Action:** CAG reports often lead to PAC (Public Accounts Committee) reviews, media scrutiny, and sometimes investigations. In a private internal audit, findings lead to management actions, and unresolved issues might affect promotions or roles, but it's internal. Thus, the stakes in terms of publicity are different, though both are important for accountability.

However, the two also learn from each other: internal audit techniques like risk-based auditing are now used in many CAG audits to focus on key areas. And internal auditors in real estate could use some CAG approaches like performance auditing – e.g., checking if a project achieved the efficiency expected.

In summary, a government audit of real estate is about public accountability, adherence to governmental policies, and ensuring public funds achieve public goals, while a private internal audit is about safeguarding the company's interests, ensuring compliance with laws, and improving business operations. The contexts differ, but both require rigorous examination of project execution, finances, and compliance.

17.5 Conclusion – Outcome of the Chapter

By engaging with this chapter, participants should feel empowered and motivated to delve deeper into the domain of internal audit for real estate. You have gained an overview of the critical aspects – from regulatory frameworks to practical audit techniques – that form the backbone of auditing in this vibrant sector. The intended learning outcomes of this chapter include:

- (a) **Confidence in Fundamentals:** You should now have confidence in the fundamental concepts – knowing the key laws like RERA and standards like Ind AS 115, and how they impact audit procedures. Recognizing, for example, why *revenue timing* or *escrow accounts* matter so much, means you can approach an audit with clarity on where to focus. This foundational knowledge is the first step to building expertise.
- (b) **Holistic Thinking:** Internal audit in real estate is not siloed – it touches finance, engineering, legal, marketing. After this chapter, you're expected to think holistically. Perhaps you were earlier inclined to look only at financial statements, but now you appreciate the need to also walk the construction site, interact with project managers, and review legal compliances. This broad vision is a hallmark of a successful internal auditor in any industry, more so in real estate.
- (c) **Appreciation of Stakeholder Impact:** You have seen how internal audit ultimately protects stakeholder interests – be it ensuring homebuyers' funds aren't misused, or that contractors are paid fairly, or shareholders see reliable financial reporting. This should motivate you to take your role seriously, knowing that your work contributes to real outcomes (like timely delivery of homes, avoidance of scams, better company reputation). It's more than box-ticking; it's about making a positive difference.
- (d) **Motivation to Specialize:** Real estate sector is specialized – the chapter hopefully sparked interest with real cases and scenarios. If those intrigued you, consider pursuing further specialization. For instance, you might choose to undertake the ICAI Certificate Course on Real Estate Laws or join industry workshops. The sector is ever-evolving (smart cities, REITs, green building norms, etc., are new frontiers), so there is always

more to learn. This chapter is a launchpad – by mastering it, you're prepared to tackle advanced topics in this field.

- (e) **Ethical and Proactive Mindset:** One clear outcome is understanding the ethical responsibility internal auditors carry. In real estate, where public money and dreams are involved, integrity is non-negotiable. You should be motivated to uphold high ethical standards – whether it's resisting pressure to overlook an issue or proactively suggesting improvements even if it's not formally in scope. A proactive auditor who goes beyond the checklist (for example, noticing a potential safety issue at site and flagging it, even if the audit was about finance) is invaluable. Let the stories of failures (like Amrapali) and successes drive you to be vigilant and proactive.
- (f) **Continuous Learning and Adaptation:** Finally, an outcome is embracing continuous learning. The chapter itself pointed to many references, case laws, and evolving standards. The motivated participant will not stop here – you'll follow up by reading some of those case judgements, checking out ICAI guides, or analyzing the next big policy change (e.g., a new GST rule or environmental regulation) and how that affects audits. This habit of lifelong learning will keep you at the cutting edge of your profession.
- (g) **Internal Audit in the real estate sector emerges as a vital function that ensures projects and companies adhere to laws, use resources optimally, and uphold stakeholder trust.** This chapter has provided an in-depth look at how internal audit operates in real estate – from laying out objectives to tackling the nitty-gritty of compliance checklists and case studies. By now, you should appreciate that internal auditing goes far beyond box-ticking; it is about truly understanding the business of real estate (the technical aspects of construction, the legal framework of property, the financial modeling of projects) and using that understanding to guide and improve the organization.
- (h) **The outcome of studying this chapter can also have multi-faceted perspective:** - You've learned why internal audit is indispensable for real estate – ensuring legal compliance (like RERA) and preventing the mishaps that have plagued this industry in the past. - You've been introduced to what exactly an internal auditor checks – from land title to handover process, covering key Acts, rules, forms, and even how to respond to frequently asked questions. You now have at your fingertips a structured map of laws and best practices, complete with citations for further reference. - Perhaps most importantly, you've gained insight into how to approach an audit of real estate activities: systematically, with an eye on all stakeholders. Whether it's the land owner's concerns for clear titles, the developer's need for cost control and compliance, the buyer's right to transparency, or the regulator's demand for accountability – an internal auditor balances these to add value all around. - This chapter also implicitly highlighted the importance of ethical conduct and good governance. Internal audit reinforces these by checking not

just for compliance in form, but also in spirit (for instance, fairness in contracts, timely fulfillment of promises, etc.).

- (i) As you continue beyond this chapter, you are encouraged to apply these concepts in real scenarios. Perhaps volunteer or get involved in a small audit of a construction site or a housing society's accounts – see these principles in action. The chapter's comprehensive lists (Acts, checklist, glossary) serve as a reference you can return to when needed. They are tools in your toolkit as a budding professional.
- (j) Continuing Learning: Real estate is dynamic – regulations evolve (amendments in RERA, new environmental norms, GST tweaks), and new challenges emerge (e.g., REITs, green building standards). The end of this chapter is not the end of learning. It's a foundation upon which you can build specialist knowledge. The chapter serves as a guidance document – use it to orient yourself whenever you encounter a new concept or issue in real estate audit, and then dive deeper with the references provided.

Applying Concepts: The real test of knowledge is in application. Next time you come across a real estate company's brochure or financial statement, try to analyze it with an auditor's eye: Is the project RERA registered? Are they recognizing revenue correctly? What could go wrong and what controls would you expect? This kind of active engagement will solidify your understanding.

In outcome, if this chapter has made you comfortable with the idea of auditing a real estate entity – if it has demystified terms like escrow, carpet area, or Section 4(2)(I)(D), and if you can envision the flow of an audit from planning to reporting – then it has achieved its goal. You are now better prepared to contribute competently to an internal audit team in the real estate domain or to oversee such audits if you are in a management position. By ensuring internal audits are robust, you ultimately contribute to a healthier real estate sector – one where projects succeed and stakeholders prosper.

Let this conclusion be a starting point: an encouragement to carry forward the discipline of internal auditing into your career, continually learning, and always upholding the standards of excellence and integrity that are the hallmark of the auditing profession.

17.6 Self Appraisal – Session Learning Outcome

After studying this chapter on internal audit for Real Estate, learners can assess their understanding and readiness on key metrics. Use the following table to self-appraise your learning outcomes on a scale of 1 (Needs Improvement) to 3 (Excellent): *[Comment: Corrected capitalization of 'Internal Audit' mid-sentence.]*

Learning Metric	1 – Need Improvements	2 – Satisfactory	3 – Excellent
Attendance & Attention (Did I thoroughly engage with the material?)	Skimmed through the chapter or skipped sections; low attention to details.	Read the full chapter with moderate attention, though some details might have been missed.	Fully engaged with the text, took notes, and understood details and examples in all sections.
Conceptual Understanding (Grasp of key concepts: internal audit role, RERA compliance, etc.)	Struggle to explain core concepts; uncertain about terms (e.g., can't clearly define escrow or internal audit objectives in real estate).	Understand main ideas generally (e.g., know what RERA is, why internal audit is important) but may lack depth in certain areas or forget some steps.	Clear and deep understanding of concepts; can confidently explain internal audit's importance, cite key RERA rules, and discuss examples without reference.
Application & Analysis (Ability to apply concepts to scenarios or case studies)	Difficulty in applying concepts; unsure how to start auditing a real project or what to look for; might miss obvious red flags in a scenario.	Can apply some concepts to a scenario – e.g., identify a couple of compliance requirements – but may not cover all areas without guidance.	Can systematically apply the chapter's framework to any real estate audit scenario – identifying risks, relevant laws, and controls easily; able to analyze a case (like a delayed project) and pinpoint causes and remedies.
Regulatory & Standards Knowledge (Recall of acts, rules, standards)	Remembers very few specifics; might confuse provisions or not recall which law applies.	Remembers the key laws and some provisions (like knows RERA requires registration and 70% escrow, and that Companies Act mandates internal audit for some companies)	Strong recall of regulations and standards: can enumerate major RERA provisions, relevant ICAI standards, and even quote or paraphrase important sections and their implications.

		but not the finer points.	
Communication (Ability to communicate audit findings or concepts clearly)	Struggles to articulate findings; either too vague or too jargon-heavy without clarity.	Can communicate basic findings in writing or verbally but might miss structuring them (e.g., mixing issues without prioritization).	Able to clearly and professionally write or present an audit observation, with context, implications, and recommendation – essentially mirroring the clarity seen in this chapter's style.
Overall Preparedness (Confidence to perform or contribute to an internal audit in real estate)	Low – would require Significant assistance; not confident to identify what needs checking.	Moderate – could handle some parts of an audit with guidance (like checking documents) but not comfortable leading an audit or ensuring completeness alone.	High – feels ready to take on an internal audit assignment in real estate, knowing the steps to take, whom to consult, and which areas to focus on, thereby likely to add value to the process.

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Chapter 18

Audit in Real Estate

The term "Audit under Various Laws" refers to the statutory requirement for businesses entities to undergo an audit of their financial statements under different laws applicable in a jurisdiction of India. For example, multiple laws prescribe annual audits depending on the type of entity, nature of business, and regulatory requirements. Here's an overview of the major types of audits mandated under various Indian laws applicable in India.

18.1 GST Audit

Audit under Goods and Service Tax Act, 2017 is governed by Section 65 and section 66 of Act and Rules 101 and Rule 102 of Goods and Service Tax Rules.

18.1.1 Section 65. Audit by tax authorities

- (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- (2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
- (3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.
- (4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

- (5) During the course of audit, the authorised officer may require the registered person, —
 - (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
 - (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

- (6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
- (7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 or section 74A.

18.1.2 Section 66. Special audit

- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- (2) The **chartered accountant or cost accountant** so nominated shall, within the period of **ninety days**, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
- (4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.
- (5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- (6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 or section 74A.

18.1.3 Rule 101. Audit

- (1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year '[or part thereof] or multiples thereof.
- (2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.
- (3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.
- (4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
- (5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

18.1.4 Rule 102. Special Audit

- (1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in **FORM GST ADT-03** to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.
- (2) On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in **FORM GST ADT-04**.

18.2 Tax Audit under Income Tax Act, 1961

Tax Audit under Income Tax Act, 1961

Under the **Income Tax Act, 1961**, certain individuals and entities are required to get their accounts audited — this is known as a "**Tax Audit**" and is governed by **Section 44AB** of the Income Tax Act, 1961.

18.2.1 Section 44AB.

Every person, —

- (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year :

Provided that in the case of a person whose—

- (a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and
- (b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment,

this clause shall have effect as if for the words "one crore rupees", the words " ten crore rupees" had been substituted:

[**Provided further** that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash; or]

- (b) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or
- (c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or
- (d) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or
- (e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:

Following first proviso shall be substituted for the existing first proviso to section 44AB by the Finance Act, 2023, w.e.f. 1-4-2024:

Provided that this section shall not apply to a person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA:

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later:

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

Explanation. —For the purposes of this section,—

- (i) "accountant" shall have the same meaning as in the *Explanation* below sub-section (2) of section 288;
- (ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to the due date for furnishing the return of income under sub-section (1) of section 139.

Turnover Limit for non-requirements of Audit	Limit on cash Transaction	Remarks
Up to 10 crs	(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent. of the said amount; and (b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. of the said payment,	None

More than 1 Crs	If cash receipts and payments are more than 5% then limit of 10 Crs is not applicable. Audit is required even though Turnover is less than 10 Crs.	None
Turnover upto 1 Crs	Not Applicable	No Audit is required.

Definition of Person under income Tax Act is as per the section 2(31) of Income Tax Act, 1961.

"person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation. —For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

18.3 Audit under Limited Liability Partnership Act, 2007

Audit under Limited Liability Partnership Act, 2009

Under the **Limited Liability Partnership (LLP) Act, 2008**, audit requirements for LLPs are governed primarily by **Rule 24 of the LLP Rules, 2009** as per below details.

Rule 24(8) of Limited Liability Partnership Rules, 2009

Every LLP whose turnover exceeds forty lakh rupees in any financial year or whose contribution exceeds twenty-five lakh rupees shall be required to get its accounts audited by a Chartered Accountant in practice."

Even if the LLP is not mandatorily required to get audited, **partners may voluntarily opt** for audit to strengthen governance or for regulatory/financial reasons (like applying for loans or participating in tenders).

18.4 Audit under Companies Act, 2013

18.4.1 Section 129: Financial Statement

As per the section 129 of Companies Act, 2013, all types of companies are required to prepare the financial statements of company at regular intervals.

Audit and accounts related provisions are contained in Section 129 to 147 of Companies Act, 2013.

18.4.2 Section: 139-147: Key Provisions for Audit compliances

Section: 139 Appointment of auditors.

(1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, “appointment” includes re-appointment.

(2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirement of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act:]

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

- (3) Subject to the provisions of this Act, members of a company may resolve to provide that—

- (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

- (b) the audit shall be conducted by more than one auditor.

- (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

Explanation.—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009).

- (5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

- (6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days

at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor- General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(8) Any casual vacancy in the office of an auditor shall—

- (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;
- (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

- (a) he is not disqualified for re-appointment;
- (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
- (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Section 140 Removal, resignation of auditor and giving of special notice. —

(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

¹[(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

- (4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.
- (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.
- (iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
 - (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting:

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar:

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either *suo motu* or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word “auditor” includes a firm of auditors.

Section 141 Eligibility, qualifications and disqualifications of auditors. —

(1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely: —

- (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- (b) an officer or employee of the company;
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d) a person who, or his relative or partner—
 - (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
 Provided that the relative may hold security or interest in the company office value not exceeding one thousand rupees or such sum as may be prescribed;
 - (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;
- (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;
- (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
- (g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
- (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
- (i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term “directly or indirectly” shall have the meaning assigned to it in the *Explanation* to section 144.

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

Section 142 Remuneration of auditors.—

(1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein:

Provided that the Board may fix remuneration of the first auditor appointed by it.

(2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

Section 143 Powers and duties of auditors and auditing standards.

(1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—

- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
- (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
- (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
- (d) whether loans and advances made by the company have been shown as deposits;
- (e) whether personal expenses have been charged to revenue account;
- (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all ¹[its subsidiaries and associate companies] in so far as it relates to

the consolidation of its financial statements with that of ¹[its subsidiaries and associate companies.

(2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

(3) The auditor's report shall also state—

- (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
- (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (c) whether the report on the accounts of any branch office of the company audited under sub- section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;
- (d) whether the company's balance sheet and profit and loss account dealt within the report are in agreement with the books of account and returns;
- (e) whether, in his opinion, the financial statements comply with the accounting standards;
- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- (i) whether the company has adequate ¹[internal financial controls with reference to financial statements] in place and the operating effectiveness of such controls;
- (j) such other matters as may be prescribed.

(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

(5) In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and] thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor- General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—

- (a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and
- (b) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (56 of 1971), shall apply to the report of such test audit.

(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the

duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(9) Every auditor shall comply with the auditing standards.

(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949 (38 of 1949), in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein:

Provided that until the National Financial Reporting Authority is constituted under section 132, the Central Government may hold consultation required under this sub-section with the Committee chaired by an officer of the rank of Joint Secretary or equivalent in the Ministry of Corporate Affairs and the Committee shall have the representatives from the Institute of Chartered Accountants of India and Industry Chambers and also special invitees from the National Advisory Committee on Accounting Standards and the office of the Comptroller and Auditor-General.

(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

(13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.

(14) The provisions of this section shall *mutatis mutandis* apply to—

- (a) the ³[cost accountant] conducting cost audit under section 148; or
- (b) the company secretary in practice conducting secretarial audit under section 204.

(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall, —

- (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of one lakh rupees.

Section 144 Auditor not to render certain services. —

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company), or its holding company or subsidiary company, namely: —

- A) accounting and book keeping services;
- B) internal audit;
- C) design and implementation of any financial information system;
- D) actuarial services;
- E) investment advisory services;
- F) investment banking services;
- G) rendering of outsourced financial services;
- H) management services; and
- I) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor, —

- (i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity,

whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;

- (ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

Section 145 Auditor to sign audit reports, etc.

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Section 146 Auditors to attend general meeting.

All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Section 147 Punishment for contravention —

(1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable ^{1***} with fine which shall not be less than ten thousand rupees but which may extend to ²[one lakh rupees].

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees ³[or four times the remuneration of the auditor, whichever is less]:

Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year ⁴[and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less].

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

(i) refund the remuneration received by him to the company; and pay for damages to the company, statutory bodies or authorities ¹[or to members or creditors of the company] for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub- section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

(5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or a betted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

18.5 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Due Diligence and Assessment for Real Estate Projects

19.1 Introduction

Initial due diligence and assessment form the foundation of any real estate project. For Chartered Accountants advising clients in the real estate sector, a thorough understanding of these processes is essential to provide informed guidance and mitigate risks. This module explores the multifaceted aspects of real estate project assessment, covering market analysis, feasibility studies, financial evaluation, regulatory compliance, and legal considerations.

Due diligence in real estate involves a systematic and comprehensive investigation, audit, or review of a property or project to confirm all relevant facts and financial information. It serves as a risk management tool that helps stakeholders make informed decisions by identifying potential issues before they become problematic.

This module is designed to equip CA professionals with the knowledge and tools needed to conduct or oversee effective due diligence processes for real estate projects, empowering them to add significant value to their clients' decision-making processes.

19.2 Objective and Importance

Objectives:

- To provide CA professionals with a structured approach to real estate project assessment
- To develop competence in evaluating the viability of real estate investments
- To enable identification of potential risks and opportunities in real estate projects
- To facilitate informed decision-making for clients considering real estate ventures
- To ensure compliance with relevant regulations and standards

Importance:

- **Risk Mitigation:** Comprehensive due diligence helps identify and mitigate risks before significant investment is made
- **Financial Protection:** Proper assessment safeguards stakeholders' financial interests
- **Informed Decision-Making:** Detailed analysis enables data-driven investment decisions

- **Compliance Assurance:** Early identification of regulatory requirements prevents future legal complications
- **Negotiation Leverage:** Well-documented issues can provide negotiation leverage on price and terms
- **Professional Responsibility:** CAs have a duty to exercise reasonable care and skill when advising clients
- **Value Addition:** Expertise in real estate assessment enhances the CA's service offering

19.3 How to Read and Understand This Module

This module follows a systematic approach to real estate project assessment. Each section builds on the previous one, providing a comprehensive framework for due diligence:

1. Begin with understanding the broader context through **Market Assessment**
2. Analyze project viability through different **Feasibility Studies**
3. Examine financial aspects through **Financial Due Diligence**
4. Navigate regulatory considerations including **DCR** and **TDR**
5. Determine project worth through **Valuation** methodologies
6. Ensure proper documentation through **Legal Due Diligence**
7. Consider various stakeholders' perspectives throughout the life cycle of the project

To get the most value from this module:

- Review the checklists and SOPs provided at the end of each section
- Study the case examples to understand practical applications
- Refer to the glossary for unfamiliar terms
- Use the reference materials for deeper exploration of specific topics

19.4 Applicable Acts, Rules, and Regulations

Real estate projects in India are governed by numerous laws and regulations. The key legislations include:

1. **Real Estate (Regulation and Development) Act, 2016 (RERA)**
 - Establishes Real Estate Regulatory Authority in each state
 - Mandates registration of real estate projects

- Requires disclosure of project details
- Establishes mechanisms for consumer protection
- 2. Transfer of Property Act, 1882**
 - Governs the transfer of property between parties
 - Defines legal requirements for valid property transactions
- 3. Registration Act, 1908**
 - Mandates registration of property documents
 - Establishes procedure for document registration
- 4. Indian Contract Act, 1872**
 - Provides the framework for contractual agreements
 - Defines elements of valid contracts
- 5. Income Tax Act, 1961**
 - Governs taxation aspects of real estate transactions
 - Provides for TDS on property transactions
 - Covers capital gains implications
- 6. Goods and Services Tax (GST) Laws**
 - Applies to under-construction properties
 - Specifies tax rates for construction services
- 7. State-specific Development Control Regulations (DCR)**
 - Varies by state and local jurisdiction
 - Governs FSI/FAR, setbacks, land use, and building height
- 8. Environment Protection Act, 1986**
 - Requires Environmental Impact Assessment for large projects
 - Governs environmental clearances
- 9. Land Acquisition Act, 2013**
 - Regulates the acquisition of land for certain projects
 - Provides for compensation and rehabilitation
- 10. Urban Land Ceiling Regulations**
 - Controls urban land holding
 - Varies by state

11. Foreign Exchange Management Act, 1999 (FEMA)

- Regulates foreign investment in real estate
- Prescribes conditions for repatriation of funds

12. Local Municipal Laws and Building Codes

- Governs building permits and approvals
- Specifies construction standards

19.5 Key Components of Real Estate Project Assessment

19.5.1 Market Assessment

Market assessment involves analyzing the real estate market to determine the viability of a proposed project. It examines supply and demand factors, competition, and market trends.

19.5.1.1 Elements of Market Assessment

1. Demand Analysis

- Target customer identification and segmentation
- Demographic trends and population growth
- Employment trends and economic indicators
- Consumer preferences and purchasing power

2. Supply Analysis

- Existing inventory in the micro-market
- Upcoming projects and potential competition
- Absorption rates and inventory overhang
- Historical development patterns

3. Location Analysis

- Proximity to employment centers
- Connectivity and transportation
- Social infrastructure (schools, hospitals, etc.)
- Physical infrastructure (water, electricity, etc.)
- Neighborhood character and development pattern

4. Competitive Analysis

- Benchmark against similar projects

- Pricing strategies in the market
- Amenities and features offered by competitors
- Sales velocity of competing projects

5. Market Trends

- Price trends and appreciation patterns
- Rental yield trends
- Market cycle assessment (growth, stability, decline)
- Regulatory changes affecting the market

19.5.1.2 Methodology for Market Assessment

1. Primary Research

- Site visits and physical inspections
- Interviews with local brokers and developers
- Surveys of potential customers
- Discussions with local planning authorities

2. Secondary Research

- Industry reports and market studies
- Government data and census information
- Property listing websites and databases
- News articles and publications

19.5.1.3 Key Market Indicators to Monitor

1. Price Metrics

- Price per square foot/meter
- Year-on-year price growth
- Premium/discount to micro-market average

2. Absorption Metrics

- Monthly absorption rate
- Inventory overhang (months)
- Time to sell

3. Rental Metrics

- Rental yield
- Occupancy rates
- Rental growth

19.5.1.4 Documentation and Reporting

Market assessment should be documented in a clear, concise report that includes:

- Executive summary
- Methodology
- Findings
- Supporting data and analytics
- Recommendations

19.5.2 Feasibility Studies

Feasibility studies assess whether a project is technically, financially, and operationally viable. They provide a foundation for decision-making before significant resources are committed.

19.5.2.1 Types of Feasibility Studies

1. Technical Feasibility

- Site suitability assessment
- Environmental constraints
- Soil testing and geotechnical analysis
- Infrastructure requirements
- Construction methodology assessment

2. Economic Feasibility

- Cost-benefit analysis
- Return on investment projection
- Break-even analysis
- Sensitivity analysis for key variables

3. Operational Feasibility

- Management structure
- Operational expenses

- Maintenance requirements
- Facility management considerations

4. Schedule Feasibility

- Project timeline development
- Construction scheduling
- Critical path analysis
- Milestone identification

5. Resource Feasibility

- Raw material availability
- Labor requirements and availability
- Equipment needs
- Utility requirements

5.2.2 Key Considerations in Feasibility Studies

1. Site and Location Analysis

- Topography and soil conditions
- Environmental factors
- Accessibility and connectivity
- Proximity to amenities
- Zoning and permitted usage

2. Project Conceptualization

- Project type and positioning
- Target market segment
- Product mix and unit sizes
- Amenities and features
- Phasing strategy

3. Development Timeline

- Approval timelines
- Construction schedule
- Phasing of development

- Sales and marketing timeline

4. Risk Assessment

- Identification of key risks
- Probability and impact analysis
- Risk mitigation strategies
- Contingency planning

19.5.2.3 Methodology for Conducting Feasibility Studies

1. Data Collection

- Site-specific data
- Market data
- Cost data
- Regulatory information

2. Analysis and Modeling

- Financial modeling
- Sensitivity analysis
- Scenario planning
- Cost-benefit calculation

3. Evaluation and Recommendation

- Go/no-go decision framework
- Alternative scenarios
- Optimized project structure
- Implementation roadmap

19.5.3 Financial Due Diligence

Financial due diligence involves a comprehensive analysis of the financial aspects of a real estate project to assess its viability, profitability, and risks.

19.5.3.1 Components of Financial Due Diligence

1. Project Cost Analysis

- Land acquisition cost
- Construction cost

- Development fees and charges
- Soft costs (design, legal, marketing)
- Financing costs
- Contingency provisions

2. Revenue Projection

- Sales pricing strategy
- Absorption schedule
- Payment plan assumptions
- Rental income projections (if applicable)
- Other income sources

3. Funding Structure

- Equity requirements
- Debt financing options
- Joint venture structures
- Mezzanine financing considerations
- Pre-sales and customer advances

4. Cash Flow Analysis

- Construction cash flow
- Sales/leasing cash flow
- Operating cash flow
- Debt service requirements
- Dividend/distribution projections

5. Profitability Analysis

- Profit margin
- Return on investment (ROI)
- Return on equity (ROE)
- Internal rate of return (IRR)
- Payback period

6. Sensitivity and Scenario Analysis

- Impact of price variations
- Construction cost escalations
- Schedule delays
- Interest rate changes
- Absorption rate variations

19.5.3.2 Financial Metrics and Benchmarks

1. Project-level Metrics

- Gross Development Value (GDV)
- Total Development Cost (TDC)
- Development margin (GDV - TDC)
- Development yield (Development margin / TDC)
- Project IRR

2. Investment Metrics

- Equity multiple
- Cash-on-cash return
- Equity IRR
- Weighted Average Cost of Capital (WACC)
- Break-even occupancy/sales

3. Financing Metrics

- Loan-to-Cost (LTC) ratio
- Loan-to-Value (LTV) ratio
- Debt Service Coverage Ratio (DSCR)
- Interest Coverage Ratio (ICR)
- Fixed Charge Coverage Ratio (FCCR)

19.5.3.3 Financial Modeling

1. Model Components

- Assumptions sheet
- Development cost schedule

- Construction timeline
- Sales/leasing schedule
- Financing structure
- Cash flow statement
- Income statement
- Balance sheet
- Valuation summary

2. Best Practices in Financial Modeling

- Clear separation of inputs and outputs
- Consistent and transparent calculations
- Appropriate level of granularity
- Robust sensitivity analysis
- Documentation of key assumptions
- Regular updating and version control

19.5.3.4 Financial Risk Assessment

1. Risk Identification

- Market risks
- Execution risks
- Financing risks
- Regulatory risks
- Taxation risks

2. Risk Mitigation Strategies

- Contingency planning
- Insurance coverage
- Contractual protections
- Phased development approach
- Diversification strategies

19.5.4 Development Control Regulations (DCR) Assessment

DCR assessment involves analyzing the planning rules and regulations that govern development potential, building specifications, and land use permissions.

19.5.4.1 Understanding DCR Components

1. Floor Space Index (FSI) / Floor Area Ratio (FAR)

- Basic FSI/FAR permitted
- Premium FSI/FAR potential
- Computation methodology
- Exclusions and deductions

2. Transferable Development Rights (TDR)

- TDR generation mechanisms
- TDR utilization guidelines
- TDR loading factors
- TDR pricing and valuation

3. Building Envelope Controls

- Setback requirements
- Height restrictions
- Ground coverage limits
- Building line restrictions

4. Land Use Regulations

- Permitted uses
- Conditional uses
- Prohibited uses
- Mixed-use provisions

5. Parking Requirements

- Parking ratios by use
- Mechanical parking provisions
- Visitor parking requirements
- Relaxation conditions

6. Other Development Controls

- Open space requirements
- Recreational space requirements
- Fire safety provisions
- Accessibility requirements

19.5.4.2 DCR Analysis Process

1. Documentation Review

- Development plan/master plan
- Zoning regulations
- Special area regulations
- Government notifications
- Circular and amendments

2. Computation of Development Potential

- Calculation of permissible built-up area
- Estimation of saleable area
- Efficiency ratio determination
- Optimization of development mix

3. Compliance Analysis

- Identification of mandatory requirements
- Assessment of relaxation possibilities
- Analysis of precedents
- Consultation with regulatory authorities

4. Approval Process Mapping

- Identification of required approvals
- Timeline estimation
- Documentation requirements
- Authority jurisdiction

19.5.4.3 Maximizing Development Potential

1. FSI/FAR Optimization Strategies

- Utilization of premium FSI
- Amalgamation of plots
- TDR acquisition and utilization
- Special scheme benefits

2. Incentive FSI Mechanisms

- Affordable housing incentives
- Green building incentives
- Redevelopment incentives
- Transit-oriented development benefits

3. Relaxation Provisions

- Concessions for specific uses
- Compensatory provisions
- Relaxations for architectural features
- Hardship considerations

19.5.5 Transferable Development Rights (TDR)

TDR represents development potential that can be separated from land and transferred to other sites. Understanding TDR mechanisms is crucial for maximizing development potential.

19.5.5.1 TDR Fundamentals

1. TDR Generation Mechanisms

- Road widening and setback
- Heritage conservation
- Environmental conservation
- Reservation plots
- Slum rehabilitation

2. TDR Utilization Framework

- Receiving zones
- Utilization caps
- Loading factors
- Restrictions and conditions

3. TDR Types

- Amenity TDR
- Road TDR
- Slum TDR
- Reservation TDR
- Heritage TDR

19.5.5.2 TDR Valuation and Acquisition

1. TDR Market Assessment

- Price trends
- Demand drivers
- Supply factors
- Market participants

2. TDR Acquisition Strategies

- Direct purchase
- Phased acquisition
- Joint venture with TDR holders
- Forward contracts

3. TDR Cost Considerations

- Base purchase cost
- Legal and documentation fees
- Stamp duty and registration
- Loading factor impact

19.5.5.3 TDR Implementation

1. Documentation Requirements

- TDR certificate
- Development permission
- Chain of title documents
- NOCs from authorities

2. Utilization Process

- Application for utilization
- Integration with building plans
- Loading factor calculation
- Approval workflow

3. Risk Mitigation

- Title verification
- Regulatory compliance
- Authenticity verification
- Contingency planning

19.5.6 Valuation Methodologies

Real estate valuation is an essential component of due diligence that determines the fair market value of a property or project.

19.5.6.1 Valuation Approaches

1. Sales Comparison Approach

- Comparable property identification
- Weighting of comparables
- Adjustment methodology
- Reconciliation of indicators

2. Income Capitalization Approach

- Direct capitalization method
- Cap rate determination
- Discounted cash flow (DCF) analysis
- Net operating income projection

3. Cost Approach

- Land valuation
- Depreciation assessment
- Replacement cost estimation
- Reconciliation with other approaches

4. Residual Valuation Method

- Gross Development Value (GDV) estimation
- Development cost projection
- Developer's profit allowance
- Land value determination

5. Profits Method

- Applicable for trading properties
- Revenue projection
- Operating expenses
- Capitalization of profits

19.5.6.2 Valuation Parameters

1. Physical Parameters

- Location and accessibility
- Size and dimensions
- Physical condition
- Quality of construction
- Infrastructure availability

2. Legal Parameters

- Title clarity
- Encumbrances
- Development potential
- Regulatory constraints
- Tenure (freehold/leasehold)

3. Economic Parameters

- Market conditions
- Growth prospects
- Interest rates
- Inflation expectations
- Supply-demand dynamics

4. Highest and Best Use Analysis

- Legally permissible uses
- Physically possible uses
- Financially feasible uses
- Maximally productive use

19.5.6.3 Valuation Standards and Compliance

1. Valuation Standards

- RICS Valuation Standards (Red Book)
- International Valuation Standards (IVS)
- Indian Valuation Standards
- SEBI Regulations

2. Valuation for Specific Purposes

○ Financial reporting	○ Secured lending
○ Transaction advisory	○ Litigation support
○ Insurance purposes	

3. Valuation Reporting

○ Scope of work	○ Approaches utilized
○ Key assumptions	○ Limitations and conditions
○ Value conclusion	

19.5.7 Legal Due Diligence

Legal due diligence involves a comprehensive review of all legal aspects of a real estate project to identify potential risks, encumbrances, and compliance issues.

19.5.7.1 Title Investigation

1. Title Search Process

○ Revenue records verification	○ Registration office search
○ Encumbrance certificate review	○ Chain of title documentation

2. Title Documents Analysis

○ Sale deeds	○ Gift deeds
○ Partition deeds	○ Wills and inheritance documents
○ Court decrees	

3. Title Defects Identification

○ Incomplete chain of title	○ Unauthorized transfers
○ Disputed ownership	○ Encroachments
○ Unregistered agreements	

4. Title Insurance Considerations

○ Coverage scope	○ Premium determination
○ Exclusions and limitations	○ Claims process

19.5.7.2 Encumbrances and Restrictions

1. Mortgage and Charges

○ Registered mortgages	○ Equitable mortgages

- o Floating charges

2. Easements and Rights

- o Right of way
- o Support rights

3. Government Restrictions

- o Urban land ceiling restrictions
- o Archaeological site proximity

4. Litigation and Disputes

- o Pending lawsuits
- o Partition claims

- o Priority determination

- o Rights of light and air
- o Restrictive covenants

- o Coastal regulation zone
- o Defense zone restrictions

- o Arbitration proceedings
- o Specific performance suits

19.5.7.3 Approvals and Compliance

1. Required Approvals

- o Land use conversion
- o Environmental clearances
- o Airport authority clearance

- o Building plan approval
- o Fire safety approvals

2. RERA Compliance

- o Registration requirements
- o Escrow mechanism

- o Disclosure obligations
- o Penalties for non-compliance

3. Labor and Employment Compliance

- o Labor license
- o Construction workers welfare fund

- o PF and ESI registration
- o Minimum wage compliance

4. Environmental Compliance

- o Environment impact assessment
- o Hazardous material handling

- o Pollution control board clearances
- o Waste management compliance

19.5.7.4 Contractual Framework

1. Land Acquisition Documents

- o Purchase agreements
- o Joint development agreements

- o Development agreements
- o Power of attorney

2. Construction Contracts

- o EPC contracts
- o Material supply agreements
- o Works contracts
- o Labor contracts

3. Project Finance Documents

- o Loan agreements
- o Guarantees and undertakings
- o Security documents
- o Intercreditor agreements

4. Sales Documentation

- o Agreement to sell
- o Allotment letter
- o Sale deed
- o Possession letter

19.5.8 Financial Planning and Project Life Cycle

Financial planning across the real estate project life cycle involves strategic decision-making at each stage to ensure optimal financial performance.

19.5.8.1 Pre-development Phase

1. Land Acquisition Financing

- o Equity requirements
- o Joint ventures
- o Land financing loans
- o Land banking strategies

2. Pre-development Funding

- o Initial capital requirements
- o Design and planning costs
- o Approval cost funding
- o Market research funding

3. Pre-launch Marketing Budget

- o Brand development
- o Digital presence
- o Market positioning
- o Channel development

19.5.8.2 Development Phase

1. Construction Finance

- o Construction loans
- o Equipment financing
- o Mezzanine financing
- o Working capital management

2. Cash Flow Management

- o Construction draw schedules
- o Vendor credit optimization
- o Milestone-based payments
- o Working capital optimization

3. Sales and Marketing Finance

- Commission structures
- Marketing budget allocation
- Sales incentive plans
- Customer financing assistance

19.5.8.3 Post-development Phase

1. Asset Management

○ Maintenance reserve funds	○ Sinking funds
○ Operating expense management	○ Revenue optimization

2. Refinancing Strategies

○ Term loan conversion	○ Loan restructuring
○ Securitization possibilities	○ REIT considerations

3. Exit Strategy Planning

○ Asset sale timing	○ Portfolio rationalization
○ Value enhancement initiatives	○ Disposal tax planning

19.5.8.4 Financial Planning for Stakeholders

1. Developer/Builder Perspective

○ Capital structure optimization	○ Project financing strategies
○ Cash flow forecasting	○ Return maximization

2. Landowner Perspective

○ Joint development structures	○ Revenue share models
○ Deferred payment mechanisms	○ Area share arrangements

3. Investor Perspective

○ Investment structuring	○ Return expectations
○ Risk mitigation	○ Exit planning

4. Financial Institution Perspective

○ Security structure	○ Loan monitoring mechanisms
○ Default mitigation	○ Recovery strategies

19.5.9 Cost Escalation Analysis

Cost escalation analysis involves identifying, quantifying, and managing potential increases in project costs over its life cycle.

19.5.9.1 Sources of Cost Escalation

1. Market-driven Factors

- Material price inflation
- Labor cost increases
- Equipment rate changes
- Foreign exchange fluctuations

2. Project-specific Factors

- Design changes
- Scope creep
- Unforeseen site conditions
- Quality upgrades

3. Regulatory Factors

- Building code changes
- Tax rate modifications
- Development charge increases
- Compliance cost escalation

4. Time-related Factors

- Schedule delays
- Extended financing periods
- Holding cost increases
- Approval delays

19.5.9.2 Cost Escalation Measurement

1. Escalation Indices

- Construction cost indices
- Material price indices
- Labor cost indices
- Composite indices

2. Escalation Formula

- Base cost determination
- Index selection
- Time factor adjustment
- Weighting mechanism

3. Escalation Projection

- Historical trend analysis
- Regression modeling
- Expert opinion incorporation
- Sensitivity analysis

19.5.9.3 Cost Escalation Management

1. Contractual Mechanisms

- Escalation clauses
- Price adjustment formulas

- Cap and collar provisions

- Risk sharing arrangements

2. Hedging Strategies

- Forward contracts
- Options contracts

- Futures contracts
- Swap arrangements

3. Operational Strategies

- Bulk purchasing
- Vendor relationships

- Phased procurement
- Inventory management

4. Design and Planning Strategies

- Value engineering
- Modular construction

- Standardization
- Off-site fabrication

19.5.9.4 Stakeholder Implications

1. Developer/Builder Implications

- Margin compression
- Sales price adjustments

- Capital requirement increases
- Development timeline impact

2. Landowner Implications

- Project viability concerns
- Project delay risks

- Revenue share impacts
- Joint venture restructuring

3. Investor Implications

- Return reduction
- Payback period extension

- Additional funding requirements
- Risk profile changes

4. Financial Institution Implications

- Loan adequacy concerns
- Debt service coverage effects

- Security value impacts
- Additional facility requirements

19.6. Frequently Asked Questions (FAQs)

19.6.1 Market Assessment FAQs

Q: How frequently should market assessment be updated during a project's life cycle?

A: Market assessment should be updated at key decision points, typically every 6-12 months or when significant market changes occur. For long-term projects, a formal review schedule should be established to ensure timely adjustments to strategy.

Q: What are the key indicators of a saturated real estate market?

A: Key indicators include rising inventory levels, increasing days on market, stagnant or declining prices, high vacancy rates, decreasing absorption rates, and a significant increase in new supply relative to historical demand.

Q: How can micro-market analysis differ from macro-market trends?

A: Micro-markets often show distinct patterns that may diverge from broader market trends due to localized factors such as infrastructure development, employment centers, amenities, and neighborhood characteristics. A micro-market may thrive even in a declining macro-market due to its unique attributes.

19.6.2 Feasibility Study FAQs

Q: When is a project considered financially feasible?

A: A project is considered financially feasible when its projected returns exceed the cost of capital and meet the investor's required return threshold. Typically, this means achieving a positive NPV, an IRR above the hurdle rate, and satisfactory profit margins.

Q: How do you determine an appropriate contingency percentage for project costs?

A: Contingency percentages typically range from 5-15%, determined by project complexity, stage of design development, construction type, site conditions, and risk profile. Early-stage projects with limited information warrant higher contingencies (10-15%), while advanced-stage projects with detailed designs may use lower rates (5-8%).

Q: What are the common pitfalls in feasibility studies?

A: Common pitfalls include optimistic revenue projections, underestimated costs, inadequate timeline allowances, insufficient market research, failure to account for regulatory changes, and not considering multiple scenarios or sensitivity analyses.

19.6.3 Financial Due Diligence FAQs

Q: What is the difference between project IRR and equity IRR?

A: Project IRR measures the return on the total project investment (debt + equity), while equity IRR measures the return only on the equity portion of the investment. Equity IRR is typically higher than project IRR due to the leveraging effect of debt.

Q: How do you determine an appropriate discount rate for DCF analysis in real estate?

A: The discount rate is typically determined using the Weighted Average Cost of Capital (WACC) or by adding risk premiums to a risk-free rate. Factors influencing the rate include project type, location, development stage, tenant quality, lease terms, and market conditions.

Q: What are the key financial ratios banks look for when financing real estate projects?

A: Key financial ratios include Loan-to-Value (LTV) ratio (typically 65-75%), Loan-to-Cost (LTC) ratio (typically 70-80%), Debt Service Coverage Ratio (DSCR) (typically >1.25), and Interest Coverage Ratio (typically >1.5).

19.6.4 DCR and TDR FAQs

Q: Can FSI/FAR be transferred between different zones in a city?

A: Transfer of FSI/FAR between zones depends on local regulations. Many cities allow TDR to be used in Separate receiving zones, often with loading factors that adjust the transferable development potential based on land values and development priorities in different zones.

Q: How is TDR pricing determined in the market?

A: TDR pricing is determined by supply-demand dynamics, receiving zone land values, development potential of receiving plots, regulatory changes affecting TDR utilization, and the cost of alternative FSI premium options.

Q: What is the typical process for obtaining TDR certificates?

A: The typical process involves surrendering land or development rights to the authority, verification of eligibility, assessment of developable area being surrendered, calculation of TDR quantum, and issuance of TDR certificate by the competent authority.

19.6.5 Valuation FAQs

Q: Which valuation approach is most appropriate for development land?

A: The residual method is typically most appropriate for development land as it considers the end value of the completed development, deducts all costs including profit, and arrives at the residual land value.

Q: How do you determine the appropriate capitalization rate for income-producing properties?

A: Capitalization rates are determined by analyzing comparable sales, market surveys, investor expectations, risk assessments, location quality, tenant quality, lease terms, and growth prospects of the property.

Q: How does RERA affect property valuation practices?

- A: RERA affects valuation by increasing transparency, requiring standardized area calculations, mandating project-specific escrow accounts, and setting timelines for project completion. These factors reduce risk and may lead to lower risk premiums in valuations.

19.6.6 Legal Due Diligence FAQs

Q: What is the difference between a search report and a title report?

- A: A search report typically covers a limited time period (usually 12-30 years) and focuses on transactions and encumbrances, while a title report provides a comprehensive analysis of ownership rights, encumbrances, and legal compliance over a longer period to establish clear title.

Q: How do you verify land use permissions and zoning compliance?

- A: Verification involves checking master plans, zoning regulations, land use certificates, conversion orders, and development plans with local planning authorities. This may require obtaining zoning certificates or land use permissions from appropriate authorities.

Q: What are the key legal risks in joint development agreements?

- A: Key risks include unclear title of the landowner, ambiguous area sharing arrangements, insufficient development potential, approval delays, inadequate default provisions, non-adherence to RERA requirements, and improper income tax and GST structuring.

19.6.7 Financial Planning FAQs

Q: How does phased development affect project financing?

- A: Phased development reduces initial capital requirements, allows for recycling of capital from earlier phases to later phases, spreads market risk, enables progressive funding based on milestone achievements, and may improve project IRR through faster returns from early phases.

Q: What are typical debt-equity ratios for different types of real estate projects?

- A: Typical debt-equity ratios range from 60:40 to 75:25 for residential projects, 65:35 to 70:30 for commercial projects, 50:50 to 60:40 for hospitality projects, and 55:45 to 65:35 for retail projects. These ratios vary based on developer track record, project location, and prevailing market conditions.

Q: How can developers optimize project financing costs?

- A: Developers can optimize financing costs through phased drawdowns, negotiating favorable interest terms, exploring alternative funding sources like mezzanine finance or private equity, structuring customer advances, refinancing high-cost debt with lower-cost options, and maintaining strong financial discipline to achieve higher credit ratings.

19.6.8 Cost Escalation FAQs

Q: What are the most effective contractual mechanisms to manage cost escalation risk?

A: Effective contractual mechanisms include price escalation clauses linked to published indices, guaranteed maximum price (GMP) contracts, cost-plus with guaranteed maximum contracts, fixed-price contracts with clearly defined scope, shared savings clauses, and contingency management provisions.

Q: How can developers forecast material price escalation for long-term projects?

A: Developers can forecast material price escalation by analyzing historical price trends, consulting with industry experts, using published indices and forecasts, maintaining relationships with key suppliers, understanding material supply chains, and employing regression analysis with economic indicators.

Q: What percentage of project cost should be allocated as contingency for escalation?

A: Typically, 3-5% for short-term projects (1-2 years) and 5-10% for long-term projects (3+ years). The percentage should be higher for projects with significant imported materials, complex designs, or in volatile markets. The contingency should be reviewed periodically and adjusted based on market conditions.

19.7 Glossary of Terms

Absorption Rate: The rate at which properties are sold or leased in a specific market during a specified time period.

Break-even Occupancy: The occupancy level required to cover all operating expenses and debt service of a property.

Cap Rate (Capitalization Rate): The ratio between the net operating income produced by an asset and its capital cost or current market value.

Development Control Regulations (DCR): Rules established by local authorities that govern the development and construction of buildings within their jurisdiction.

Debt Service Coverage Ratio (DSCR): The ratio of net operating income to total debt service, used to measure a property's ability to pay its debt obligations.

Encumbrance: A claim, lien, charge, or liability attached to and binding upon real property.

Floor Space Index (FSI)/Floor Area Ratio (FAR): The ratio of a building's total floor area to the size of the piece of land upon which it is built.

Gross Development Value (GDV): The projected value of a development when it is complete and fully occupied.

Highest and Best Use: The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.

Internal Rate of Return (IRR): The discount rate that makes the net present value of all cash flows from a particular project equal to zero.

Loan-to-Value (LTV) Ratio: The ratio of a loan to the value of an asset purchased, typically expressed as a percentage.

Mezzanine Financing: A hybrid of debt and equity financing that gives the lender the right to convert to an equity interest in the company in case of default.

Net Operating Income (NOI): The income generated by a property after deducting operating expenses but before deducting taxes and financing costs.

Premium FSI: Additional FSI that can be purchased from authorities over and above the basic permissible FSI.

Real Estate Regulatory Authority (RERA): A regulatory body established under the Real Estate (Regulation and Development) Act, 2016, to regulate the real estate sector in India.

Residual Valuation: A method of valuing land by estimating the value of a completed development and then deducting all development costs and developer's profit to arrive at the residual land value.

Sensitivity Analysis: An analysis to determine how different values of an independent variable affect a particular dependent variable under a given set of assumptions.

Setback: The minimum distance required between a property line and the buildable area of a lot.

Transferable Development Rights (TDR): Development rights that can be separated from a piece of land and transferred to another location.

Title Search: A process of examining public records to determine the legal ownership of property and to discover any claims, defects, or encumbrances on it.

Weighted Average Cost of Capital (WACC): The average rate that a company is expected to pay to finance its assets, weighted by the proportion of debt and equity in its capital structure.

Zoning: The division of a city or county by legislative regulations into areas (zones), specifying the uses allowable for the property in these areas.

19.8 End of Chapter Outcomes

Upon completion of this chapter, CA professionals should have achieved the following competencies:

1. **Assessment Capability:** Ability to conduct comprehensive due diligence for real estate projects, including market, financial, legal, and regulatory assessments.
2. **Risk Identification:** Competence in identifying and evaluating key risks associated with real estate projects, including market risks, financial risks, legal risks, and regulatory risks.
3. **Financial Analysis:** Proficiency in financial modeling, valuation techniques, and financial metric analysis specific to real estate projects.
4. **Regulatory Navigation:** Understanding of key regulatory frameworks, including DCR, TDR, and RERA, and their implications for project viability.
5. **Stakeholder Advisory:** Ability to provide informed guidance to various stakeholders, including developers, landowners, investors, and financial institutions.
6. **Documentation Requirements:** Knowledge of essential documentation and approval requirements for real estate projects.
7. **Strategic Planning:** Capability to develop strategic approaches to project structuring, financing, and execution based on thorough due diligence.
8. **Valuation Expertise:** Competence in applying appropriate valuation methodologies for different types of real estate assets and development projects.
9. **Cost Management:** Understanding of cost escalation factors and strategies to mitigate their impact on project viability.
10. **Professional Judgment:** Development of nuanced professional judgment in evaluating real estate opportunities and challenges.

19.9 Reference Materials

19.9.1 Books and Publications

1. **Real Estate Development: Principles and Process** by Mike E. Miles, Gayle Berens, Mark Eppli, and Marc A. Weiss
2. **Professional Real Estate Development: The ULI Guide to the Business** by Richard Peiser and David Hamilton
3. **Real Estate Finance and Investments: Risks and Opportunities** by Peter Linneman
4. **Real Estate Valuation: A Subjective Approach** by Kavas Kapadia
5. **The Complete Guide to Real Estate Finance for Investment Properties** by Steve Berges
6. **Emerging Trends in Real Estate** (Annual Publication by PwC and Urban Land Institute)

7. India Real Estate Report (Knight Frank, Annual Publication)

19.9.2 Laws and Regulations

1. Real Estate (Regulation and Development) Act, 2016
2. Transfer of Property Act, 1882
3. Registration Act, 1908
4. Indian Contract Act, 1872
5. Income Tax Act, 1961 (provisions related to real estate)
6. Foreign Exchange Management Act, 1999 (regulations for foreign investment in real estate)
7. State-specific Development Control Regulations
8. Environment Protection Act, 1986

19.9.3 Professional Standards and Guidance

1. **ICAI Valuation Standards 2018**
2. **RICS Valuation – Global Standards (Red Book)**
3. **International Valuation Standards (IVS)**
4. **ICAI Technical Guide on Internal Audit of Construction Industry**
5. **ICAI Technical Guide on Real Estate Transactions**
6. **ICAI Guidance Note on Accounting for Real Estate Transactions**

19.9.4 Online Resources

1. **Ministry of Housing and Urban Affairs:** <http://mohua.gov.in/>
2. **Real Estate Regulatory Authority Websites** (state-specific)
3. **National Real Estate Development Council (NAREDCO):** <https://naredco.in/>
4. **Confederation of Real Estate Developers' Associations of India (CREDAI):** <https://credai.org/>
5. **Royal Institution of Chartered Surveyors (RICS) India:** <https://www.rics.org/in/>
6. **Reserve Bank of India Guidelines for Real Estate Financing:** <https://www.rbi.org.in/>

19.9.5 Case Studies and Industry Reports

1. **Industry Reports by Consulting Firms:** CBRE, JLL, Knight Frank, Cushman & Wakefield

2. **Financial Institutions' Research Reports:** HDFC, SBI, ICICI Bank research on real estate sector
3. **Rating Agency Reports:** CRISIL, ICRA, CARE analyses of real estate sector
4. **Academic Case Studies:** IIM, RICS School of Built Environment case compilations

19.10 Appendix A: Checklists for Due Diligence

A.1 Market Assessment Checklist

- Demographic trends analysis
- Employment and economic indicators review
- Supply analysis (existing and upcoming)
- Demand analysis (historical and projected)
- Competitive landscape mapping
- Price trend analysis
- Rental trend analysis
- Infrastructure development assessment
- Social amenities evaluation
- Target customer segment identification
- Absorption rate analysis
- Market cycle positioning
- Regulatory environment assessment
- SWOT analysis of the micro-market

A.2 Legal Due Diligence Checklist

- Title search for 30 years
- Review of title documents
- Encumbrance certificate verification
- Mortgage and charge verification
- Easement and right of way identification
- Land use permission verification
- Conversion order review
- Zoning compliance verification

- Building plan approval status
- Environmental clearance status
- Fire safety approval status
- Airport authority clearance (if applicable)
- RERA registration verification
- Property tax payment status
- Pending litigation check
- Boundary verification
- Compliance with Urban Land Ceiling Act
- Review of development agreement/joint venture agreement
- Construction permits and approvals
- Non-agricultural use permission

A.3 Financial Due Diligence Checklist

- Land cost verification
- Construction cost estimation
- Development timeline assessment
- Revenue projection review
- Working capital requirement analysis
- Funding structure evaluation
- Debt servicing capacity assessment
- Profitability metrics calculation
- Cash flow projection analysis
- Sensitivity analysis
- Break-even analysis
- Tax implications assessment
- Financial modeling review
- Capital structure optimization
- Exit strategy evaluation
- Risk assessment and mitigation

- Contingency planning
- Cost escalation provisions
- Financial covenant compliance

A.4 DCR and TDR Assessment Checklist

- Zoning verification
- Permissible land use confirmation
- Basic FSI/FAR calculation
- Premium FSI/FAR potential
- TDR loading factor verification
- Setback requirements review
- Building height restrictions check
- Ground coverage limitations
- Parking requirements assessment
- Open space requirements verification
- Recreational space requirements
- Road width and access requirements
- Special planning zone regulations
- Heritage restrictions (if applicable)
- Environmental restrictions
- Coastal zone regulations (if applicable)
- Airport funnel zone restrictions (if applicable)
- Defense zone restrictions (if applicable)
- Fire safety norms review

Appendix B: Standard Operating Procedures (SOPs)

B.1 SOP for Market Assessment

1. Define the Assessment Scope

- Identify the specific market and sub-market
- Define the property type and positioning
- Determine the assessment objectives

2. Collect Market Data

- Gather demographic and economic data
- Compile supply and inventory data
- Research pricing and absorption data
- Document infrastructure developments

3. Analyze the Competitive Landscape

- Identify direct and indirect competitors
- Compare project specifications
- Analyze pricing strategies
- Assess unique selling propositions

4. Evaluate Demand Factors

- Analyze historical absorption patterns
- Identify target customer segments
- Assess affordability parameters
- Evaluate consumer preferences

5. Synthesize Findings

- Prepare market positioning recommendations
- Develop pricing strategy
- Identify optimal product mix
- Prepare risk assessment

6. Document and Present

- Compile comprehensive market report
- Prepare executive summary
- Develop presentation materials
- Arrange stakeholder presentation

B.2 SOP for Financial Due Diligence

1. Project Scope Definition

- Define project parameters
- Identify key stakeholders

- Determine financing objectives
- Establish assessment timeline

2. Data Collection

- Gather cost estimates and quotations
- Compile revenue assumptions
- Document financing terms
- Collect historical financial data

3. Financial Modeling

- Develop cost schedule
- Create revenue projection
- Structure financing model
- Prepare cash flow statement

4. Scenario Analysis

- Define base case
- Identify upside potential
- Assess downside risks
- Develop sensitivity analysis

5. Risk Assessment

- Identify key financial risks
- Quantify potential impact
- Develop mitigation strategies
- Prepare contingency plans

6. Reporting and Recommendation

- Compile financial due diligence report
- Prepare financial feasibility summary
- Develop financing recommendations
- Present to decision-makers

B.3 SOP for Legal Due Diligence

1. Scope Definition

- Define property boundaries
- Identify ownership entities
- Determine assessment depth
- Establish review timeline

2. Document Collection

- Gather title documents
- Compile approval documents
- Collect encumbrance certificates
- Document regulatory permissions

3. Title Investigation

- Conduct 30-year title search
- Review ownership chain
- Identify encumbrances
- Verify property boundaries

4. Regulatory Compliance Review

- Check zoning compliance
- Verify building approvals
- Assess environmental compliance
- Review tax compliance status

5. Risk Assessment

- Identify title defects
- Document regulatory non-compliance
- Assess litigation exposure
- Evaluate contractual risks

6. Reporting and Recommendation

- Compile legal due diligence report
- Prepare title risk assessment
- Develop compliance recommendations
- Present to stakeholders

Appendix C: Case Studies

Case Study 1: Market Assessment for a Residential Township

Project Overview: A developer planned a 25-acre residential township in a rapidly developing suburb. The project would include apartments, villas, and supporting retail and recreational facilities.

Challenge: The developer needed to determine the optimal product mix, pricing strategy, and phasing plan to maximize returns while ensuring market absorption.

Approach:

1. Conducted comprehensive market assessment covering demographic trends, supply-demand dynamics, and competitive landscape
2. Analyzed absorption rates for different product types in the micro-market
3. Evaluated infrastructure development plans and their impact on property values
4. Assessed target customer segments and their preferences
5. Benchmarked pricing against comparable projects

Outcome:

1. Recommended a phased development approach starting with mid-segment apartments
2. Advised on optimal unit mix with 60% 2BHK, 30% 3BHK, and 10% 4BHK units
3. Suggested premium pricing for units with specific views or locations
4. Proposed early development of key amenities to establish project positioning
5. Recommended holding back premium villa development until infrastructure maturity

Key Learnings:

1. Phased development allows for risk mitigation and capital recycling
2. Product mix should be aligned with demographic trends and affordability
3. Early development of signature amenities enhances project positioning
4. Market assessment should be periodically updated as project and market evolve

Case Study 2: Financial Due Diligence for Mixed-Use Development

Project Overview: An investor was considering participation in a 5-acre mixed-use development comprising retail, office, and serviced apartments.

Challenge: The investor needed to evaluate the financial viability of the project and determine an appropriate investment structure.

Approach:

1. Conducted detailed financial modeling of development costs and revenue streams
2. Analyzed expected returns for different components (retail, office, serviced apartments)
3. Evaluated financing options and debt service capabilities
4. Performed sensitivity analysis on key variables (construction costs, rental rates, occupancy levels)
5. Assessed exit strategies and potential return scenarios

Outcome:

1. Identified that retail component offered highest returns but also highest risk
2. Recommended restructuring of debt component to improve project IRR
3. Proposed phased equity infusion tied to milestone achievements
4. Suggested lease pre-commitments for office space to reduce market risk
5. Advised on appropriate risk premium for expected returns

Key Learnings:

1. Mixed-use developments require component-specific financial analysis
2. Debt structuring significantly impacts project returns
3. Pre-commitments substantially reduce project risk
4. Exit strategy should be planned at entry stage
5. Sensitivity analysis is essential for risk management

Case Study 3: DCR and TDR Assessment for Urban Redevelopment

Project Overview: A developer was evaluating a redevelopment project in a prime urban location with complex DCR and TDR implications.

Challenge: The developer needed to optimize the development potential of the site while navigating complex regulatory requirements.

Approach:

1. Analyzed applicable DCR provisions and potential relaxations
2. Evaluated TDR acquisition options and loading factors
3. Assessed premium FSI cost versus TDR cost
4. Modeled various development scenarios to maximize built-up area
5. Consulted with planning authorities on interpretation of regulations

Outcome:

1. Identified opportunity to increase FSI by 0.5 through TDR utilization
2. Recommended phased TDR acquisition strategy to optimize costs
3. Advised on optimal building configuration to meet DCR requirements
4. Proposed design modifications to qualify for incentive FSI
5. Developed compliance roadmap for various planning approvals

Key Learnings:

1. DCR interpretation often requires consultation with authorities
2. TDR utilization strategy impacts overall project economics
3. Building design should be optimized for regulatory compliance
4. Phased approvals strategy can expedite project timeline
5. Regulatory changes need to be monitored throughout the project lifecycle

Case Study 4: Legal Due Diligence for Land Acquisition

Project Overview: An institutional investor was acquiring a large land parcel for future development.

Challenge: The investor needed to ensure clear title, proper approvals, and compliance with all regulatory requirements.

Approach:

1. Conducted comprehensive title investigation covering 30+ years
2. Reviewed all land documents and ownership records
3. Verified zoning and land use permissions
4. Assessed litigation history and potential claims
5. Evaluated environmental compliance status

Outcome:

1. Identified a gap in the title chain requiring additional documentation
2. Discovered an unregistered easement affecting part of the property
3. Found minor boundary discrepancies requiring rectification
4. Recommended specific indemnities in the purchase agreement
5. Advised on necessary pre-acquisition approvals

Key Learnings:

1. Title investigation should cover minimum 30 years
2. Document verification requires physical inspection of records
3. Boundary verification is essential despite paper documentation
4. Encumbrances may not always be formally registered
5. Environmental compliance is increasingly critical for land acquisition

19.11 Self Appraisal

SI No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

The Resident Welfare Association – RWA's

20.1 Background and the concept of community living / group housing – Journey of RWA's

Adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognizes the right to adequate housing as an integral component of the human right to an adequate standard of living.

- a) However, will it be a reality for everyone, whose responsibility is to provide housing for all? Is it Government? If so, how effective is delivering these responsibilities?
- b) One of the key challenges for the government is to ensure the availability of different types of housing that suit people from various economic backgrounds. Not everyone's needs, affordability, or expectations are the same, while some require affordable housing, others seek mid-range or premium living options. Therefore, it is important for the government to ensure that housing is available for all sections of society, from economically weaker sections (EWS) to middle-income and higher-income groups.
- c) Hence the government thought to include and invite the private players to deliver the Housing, So the concept of Real Estate.
- d) Globalisation, technology made humans flexible, mobile. Esp., migration of people for the purpose of employment made it mandatory to deliver more houses in urban areas/cities.
- e) However, Land is limited and scarce as the city grows. To effectively use the limited land, the concept of community living gained importance, wherein common facilities, amenities be shared, maintained by the group of owners/residents in a housing project.
- f) In legal, it is called a group housing project. The Group housing may be horizontal (Rowhouses) or Vertical (Apartment) development of a Real Estate Project. Owners in the group housing project have common ownership, common interest in entire project land and common areas, common assets in a project – so the concept of community living started.
- g) Community living has its own pros and cons. There are many communities which are large and like a town itself. In order to maintain these larger areas in a community living, require an agency to regulate, monitor, maintain, supervise and service the communities.

- h) In traditional living (independent houses) in a government-formed/developed layout, all the facilities or amenities are maintained by the local municipality or corporation. Viz., roads, parks, water supply, waste segregation, sewer lines, electricity, upkeep of roads, parks, maintenance of electricity, water lines etc
- i) However, in privately developed projects Eg., In an Apartment Project, Villa Projects, Row Housing projects, there would be common amenities, facilities, common areas, common equipment's, common assets for the use of the residents of the project, these shall be maintained by the respective project residents.
- j) Generally, the promoter of the projects maintains these common assets, areas, facilities, amenities etc till the completion of the entire development of the project and the sale of all units in the project. Once all units are disposed of, there exists no interest for the promoter to associate with the project/owners.
- k) While the promoter of the project moves out and he shall enable the formation of the association of owners and handover the entire common areas, common assets apart from property documents, various approvals, NOC's, drawings, copies of the invoices of the assets etc.,
- l) The association is responsible for managing the day-to-day affairs of the residents, organizing events, managing facilities in the apartments and complexes, and safeguarding the rights of the owners or residents in a project.
- m) If so, let us understand the prevailing legislation that enables the formation of the Association, govern, regulate and the functioning of the Apartment owners Association.

20.2 Legal Provisions and Governance Framework for RWAs – Journey of RWA's

- (a) Resident Welfare Associations (RWAs) serve as body constituted within residential societies or apartment complexes to represent the collective interests of property owners and residents. These associations are responsible for administering day-to-day operational functions, maintaining common assets, areas and facilities, organizing community development activities, and safeguarding the rights and welfare of all members and the residents. RWAs are legally recognized entities established under the various statutes or legislation specific to individual states. For the formation of an RWA, a minimum of number of residents must subscribe to the byelaws / Memorandum of Association later which delineates the association's objectives, governance structure, and operational scope. The association is then registered with the jurisdictional Officer as notified by respective states.
- (b) In the recent times, RWAs have progressively transitioned into formal institutions with defined legal responsibilities and broader community engagement. The evolving dynamics of urban living have necessitated RWAs to assume an expanded role that

includes active participation in civic matters, engagement with government bodies, and advocacy on issues concerning infrastructure, public safety, and environmental protection. Formal recognition demands transparency, accountability, and sound governance across all stakeholders namely, the general public, financial institutions, home buyers, promoters, tax authorities, and the government.

- (c) The regulatory framework governing the formation of a Resident Welfare Association (RWA) varies depending on the type of community housing established on the land. It is not only essential to understand the different types of housing such as villas, condominiums, apartments, flats, row houses, and plotted layouts but also to recognize how these variations influence the legal, regulatory, and community management frameworks associated with them. Therefore, understanding the fundamentals of the land type and the nature of the property developed is essential to comprehend the relevance of RWAs, its formation procedures, and the applicable tax regulations.

1. Governance and Management of Resident Welfare Associations (RWAs) – can be discussed with the following headers –

- (a) Legal Framework Supporting RWAs
- (b) Importance of Registration and Compliance
- (c) Role of Bye-laws and Model Bye-laws
- (d) Formation of an RWA
- (e) Roles and Responsibilities of Promoters / Builders in Handover
- (f) Drafting Bye-laws and Rules for Internal Governance
- (g) Governance Structure of an RWA
- (h) Financial Management of an RWA
- (i) Operational Management of an RWA
- (j) Rights and Duties of Members / Residents
- (k) Legal Responsibilities and Liabilities
- (l) Handover from Builder to RWA
- (m) Technology and Best Practices for RWAs
- (n) Challenges Faced by RWAs
- (o) Case Studies and Practical Examples
 - (i) Successful RWAs – Best Practices
 - (ii) Lessons from Legal Disputes

- (iii) Examples of Efficient Financial and Operational Management
- (p) Conclusion
- (i) Importance of Professional Management
- (ii) Need for Continuous Learning and Legal Awareness
- (iii) The Role of RWAs in Building Responsible, Safe, and Harmonious Communities

20.3 Legal Framework Supporting RWAs

The accountability of builders and promoters plays a vital role in ensuring the seamless transition of housing projects from developers to residents. As mandated under Section 11(4)(e) of the Real Estate (Regulation and Development) Act, 2016 (RERA), promoters are mandated to enable the formation of Owners Association or society or co-operative society, as the case may, of the allottees, or a federation of the same under the applicable laws of the respective States in India. Further, RERA states, in the absence of local laws, the association of allottees, shall be formed within a period of three months of the majority of allottees booked their building, plot or apartment.

The provisions of RERA are convincing the fact that, formation Resident Welfare Association is necessary, the vehicle through which is it to be managed is handed over to the respective statutes applicable in the States. This principle can be adopted voluntarily even for projects not registered under RERA.

The legal framework typically requires RWAs to have a registered body, elected office-bearers, and bylaws to govern management. RWAs are responsible for maintenance, financial management, and resolving disputes among residents, while ensuring compliance with applicable laws. These frameworks promote transparency, accountability, and efficient management of residential complexes, safeguarding the interests of owners.

In this context, it becomes essential to examine the legal framework governing Association. The RWAs can be formed under the following framework or statutes, depending on the State and residential complex structure:

1. Association of Persons:

An Association of Persons (AOP) is a legal term under the Income Tax Act, 1961, to describe a group of individuals who come together for a common purpose, which may or may not involve generating income, profits, or gains. An AOP is formed when two or more persons join for a common purpose or action. Under Section 2(31) of the Income Tax Act, as amended from April 1, 2002, an AOP is recognized as a "person" for tax purposes, even if its objective is not to produce income. An AOP does not always require formal registration to exist. The State law permitting to register the AOP under the State Societies Registration Act or any other specific Act provides legal recognition to such RWA. Otherwise, the RWA formed as unregistered AOP under any of the Statutes is governed and administered solely by the

internally framed Bye-Laws. The unregistered AOP will not be governed by any State specific Statutes in functioning, management, audit, regulation, dispute, grievance redressal etc., This model is suited for any RWA not having more than eight or so buildings

2. Societies:

In many states, RWAs are registered as societies under their respective State Societies Act, which provides a framework for non-profit organizations and adopted by many RWAs, subject to clarification by local courts in that State. RWAs registered as societies operate as democratic bodies, managing community welfare, maintenance, and dispute resolution, with Bye laws governing their functioning.

3. Co-operative Society:

Co-operatives are defined as association of people who get together and pool their resources for a common economic pursuit. Hence any economic pursuit can be taken up under co-operative setup.

A co-operative society is a separate legal entity and is registered as a body corporate with perpetual succession. Being an artificial person it can-

- a) Enter into contracts,
- b) Acquire, hold and dispose properties,
- c) Can sue on behalf of its members

In the State of Maharashtra, RWAs are formed as a co-operative society. It is regulated and controlled by the Maharashtra Co-operative Societies Act, 1960 (Act) and Maharashtra Co-operative Societies Rules, 1961 (Rules). A co-operative society is registered and classified on the basis of its objectives

20.4 Importance of Registration and Compliance

Resident Welfare Associations are community-driven organizations formed to manage and enhance the welfare of residents in housing societies or neighbourhoods. The Registration and Compliance with applicable laws and regulations are critical for RWAs to function effectively, maintain legitimacy, and fulfill their objectives. Below is the advantage of registering RWA under applicable State Laws.

1. Legal Status:

Registering an RWA under relevant laws (e.g., Societies Registration Act, or Co-operative societies Act or Apartment Ownership Act) grants it legal status. This enables the RWA to enter contracts, open bank accounts, and represent residents in legal or administrative matters, such as disputes with developers or local authorities. Any non-compliance with the rules may lead to cancellation of registration.

2. Government's Subsidies:

A registered RWA can engage with Local Authorities, for civic necessities to address issues like water supply, waste management, Gas supply or security. Legal Registration may qualify the RWA for government grants, subsidies, or tax through any of the schemes applicable as per respective State laws.

3. Protection of Collective Interests

The RWA is primarily formed for protecting the interest and welfare of its members. The legal structure enables it to represent on behalf of members in negotiations with Builders, Land owners or Government Authorities in case of any new initiatives or disputes. The RWAs conducts regular meetings, Annual General Meetings as per legal requirements stipulated in the statutes. This helps in democratic functioning, fair representation, and prevents mismanagement of funds or favouritism in electing management members.

4. Financial Prudence

A registered RWA can open a dedicated bank account for collecting maintenance fees, donations, or other funds, ensuring transparency and accountability. The Statutes under which the RWA is registered mandates the preparation of financial statement, audit of accounts and submission to authorities within stipulated time period. This builds trust among residents regarding the management of common funds and appropriate application of specific funds. The ethical practices followed in maintenance fee collection, fair allocation of resources.

5. Dispute Resolution

A registered RWA derives powers through Bye-laws to mediate disputes among residents or with external parties. It can enforce rules and guidelines, such as those related to parking, noise, or common area usage, with legal backing.

20.5 Role of Bye-laws and Model Bye-laws

"Bye-laws" means the registered bye-laws for the time being in force, and includes a registered amendment of the bye-laws; Bye-laws are the internal rules and regulations that govern the functioning of an RWA. They serve as a legal and operational framework to ensure smooth management, transparency, and fairness in the administration of a residential society.

Model bye-laws are standardized templates or guidelines notified by the Competent Authority of cooperative societies or any other Act to RWAs in drafting their own bye-laws. In general, Model Bye-law are designed to align with statutory requirements, are a useful starting point, subsequently the RWAs may modify to address specific needs, such as rules for amenities or cultural events.

From an auditor's perspective, understanding and reviewing the bye-laws is crucial. Bye-laws form the legal foundation for the governance and functioning of the RWA. An auditor must ensure that the financial operations and administrative decisions are in line with these rules.

Auditors assess whether meetings, elections, and resolutions are conducted as prescribed. They often broadly specify controls over spending, approvals, budgeting, and record maintenance. Auditors must verify adherence to these controls to ensure accountability. In cases of disputes or irregularities, bye-laws serve as a reference for determining the correct legal course of action.

The key roles of bye-laws include:

1. Defining Governance Structure:

Bye-laws outline the organizational structure of the RWA, including roles and responsibilities of office-bearers (e.g., President, Secretary, Treasurer etc.) and the Executive Committee members. They specify procedures for electing committee members, conducting regular and Annual meetings, and decision-making processes.

2. Regulating Community Conduct:

Their bye-laws outline rules for residents, covering areas such as Usage of common facilities, carpentry work hours inside house, parking, noise control, use of common facilities, waste disposal, and pet management etc.,

3. Financial & Legal compliance:

Bye-laws detail procedures for collecting maintenance fees, managing funds, and budgeting for community expenses (e.g., security, repairs, amenities). They mandate transparency through publishing of monthly Income & Expenditure statement, internal audits, and financial reporting, and accountability to residents. They ensure the RWA adheres to statutory requirements, such as filing annual returns or maintaining records, to retain its legal status.

4. Dispute Resolution:

Bye-laws provide mechanisms for resolving conflicts among residents or between residents and the RWA, such as mediation or arbitration processes. Empowering the RWA:

Bye-laws grant the RWA authority to enforce rules, impose penalties for violations (e.g., late payment of fees), and represent residents in dealings with external entities like developers or municipal authorities.

20.6 Formation of an RWA

Forming a Resident Welfare Association (RWA) in every State involves specific legal and procedural steps in terms of registration rules, fees and related compliance. Further the process can vary depending on whether the RWA is registered under the Societies Registration Act, Apartment Ownership Act or Co-operative Societies Act.

Below is a step-by-step guide to forming an RWA that is commonly prevalent. However, the stamp duty and Registration fee varies from state to state.

Steps to Form a Resident Welfare Association:

Step 1: Gather Interested Residents

Assemble at least 7 residents (or more, depending on the registration act) who are willing to form the RWA and share the objective of formation of association. These individuals must be above 18 years of age and residents of the society (flat owners or, in some cases, tenants)

Step 2: Serving of Notice for General Meeting

Issue a 21-day notice to all flat owners/residents, inviting them to a general meeting to discuss RWA formation setting out Agenda for discussion.

The agenda includes the following

1. Discussion for need for formation of RWA
2. Election of Executive Committee Members
3. Election of Office Bearers

Step 3: Holding of General Meeting

General Meeting to elect Executive Committee Members and Office Bearers with majority votes. In the General Meeting, the Bye-Laws and regulations covering membership criteria, Maintenance collection, Authorisation for Bank Transactions, Meeting process, Roles and Responsibilities of the Office Bearers are discussed.

Step 4: Selecting the relevant Registration Act

In certain States there has been confusion and legal challenges in the applicability of relevant act for registration of RWA. With the consent of all members, the right entity and the Act through which RWA would be registered is decided.

Step 5: Prepare Required Documents

- (i) The Memorandum of Association / Bye-Laws, are to be duly signed by the members / subscribers.
- (ii) The List of subscribers / Office Bearers with photographs, signatures, and address proof (e.g., Aadhaar, Voter ID, or Driving license).
- (iii) Address proof of the RWA (e.g., utility bill or rent agreement with NOC from the owner/ Developer).
- (iv) Affidavit on stamp / e-stamp paper with duly paid stamp charges.
- (v) Notarized, from one subscriber (e.g., President or Secretary) affirming the society's objective and compliance.
- (vi) Proceedings of the first meeting to form the RWA, duly attested.
- (vii) Identity and address proof of all Executive Committee Members / subscribers

(viii) Additional documents (if applicable):

- (a) Certified building plan
- (b) Builder's consent or representation, if the builder is involved
- (c) Application fee as prescribed by respective authorities.

Step 6: Submit Application to the Registrar

Submit the documents at the jurisdictional Registrar / competent Authority Officer specified under respective State's Registration Act. The Registrar verifies documents, and upon approval, issues a registration certificate. The process typically takes 15–25 working days, depending on government's approval. In few of the States, the application submission is through online portal.

Step 7: Post-Registration Steps

- a) The Office Bearers have to initiate the process of Bank Account opening in the name of RWA, as prescribed in the Bye-law.
- b) Formalise the roles of President, Secretary, Treasurer, and other committee members.
- c) Start managing common areas, collecting maintenance fees, ensuring security, and addressing resident concerns.
- d) Conduct the first regular meeting and carry on the management of functions.

20.7 Roles and Responsibilities of Promoters / Builders in Handover

The right of association germinates three months from since the majority of the allottees in any projects are booked. The rights of the association can be established and the promoter is responsible for the allottees and association in the following as specified under Sec.8, Sec. 11, and Sec.16 of RERA Act, 2016.

- a) the Association of Allottees will have the right of first refusal for carrying out of the remaining development works, in case of revocation of registration of the project.
- b) The promoter is responsible for all obligations, to the association of allottees as per the agreement for sale.
- c) The promoter is responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;
- d) The promoter is responsible for the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

- e) The promoter will execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority.

20.8 Drafting Bye-laws and Rules for Internal Governance

- a) Drafting of Objectives: Clearly state the RWA's purpose, e.g., maintenance, security, and resident welfare.
- b) Membership Criteria: Specify eligibility (e.g., flat owners, tenants) and voting rights.
- c) Governance Structure: Outline roles (President, Secretary, Treasurer) and managing committee duties.
- d) Election Process: Detail procedures for electing committee members, including frequency and voting rules.
- e) Meetings: Mandate Annual General Meetings (AGMs), quorum, and notice periods (e.g., 14 days / 21 days).
- f) Financial Management: Define maintenance fee collection, budgeting, and mandatory audits.
- g) Dispute Resolution: Include mechanisms like mediation for resolving resident conflicts.
- h) Common Area Rules: Set guidelines for parking, noise, and usage of amenities like gyms or gardens.
- i) Penalties: Specify fines or actions for rule violations, e.g., late fee payments.
- j) Compliance: Annual filing and compliance to align with respective State laws.
- k) Membership Termination: Outline grounds and process for removing members.
- l) Fund Allocation: Detail how funds are used for maintenance, repairs, or events.
- m) Transparency: Require public disclosure of financial statements and meeting minutes.
- n) Amendments: Define process for updating bye-laws with member approval (e.g., 2/3 majority).
- o) Safety Regulations: Include compliance with fire safety, waste management, and labor laws.
- p) Resident Responsibilities: Clarify duties like timely fee payment or rule adherence.
- q) Representation: Authorize RWA to engage and represent before builders, authorities, or vendors and Government Authorities..

- r) Appointment of Auditor: Define the process of appointment of auditor and term or as specified in the respective state laws.

20.9 Governance Structure of an RWA

The governance structure of RWA consists of General body as the apex authority, a Executive / Managing committee for daily operations, and office-bearers (President, Secretary, Treasurer) for leadership. There are Sub-committees under Executive / Managing Committee to support and handle specific tasks. These kind of structuring helps in democratic functioning, equal participation in activities and decision making of members. There are large RWAs, wherein there is a role of Estate Manager, who holds the key position of the administrative functions. He acts as the point of contact for any daily administrative issues, Project related activities etc., The vendors function under the supervision of the Estate Manager. This structure promotes transparency, better administration and effective management of RWAs operations.

20.10 Financial Management of an RWA

In a Resident Welfare Association (RWA), the responsibility for maintaining the books of accounts typically lies with the office bearers particularly the Treasurer, under the overall supervision of the President. The Treasurer is accountable for financial record-keeping and ensures that the accounts are maintained in accordance with the applicable bye-laws including audit.

The auditor should also examine:

- (i) The place where books of accounts are maintained, usually at the registered office of the RWA or another officially designated location.
- (ii) if the RWA has outsourced certain administrative or financial functions, the auditor must assess their role, responsibilities, and the adequacy of internal controls.
- (iii) who has access to the financial records and whether proper authorization mechanisms are in place.
- (iv) The operation and approval of banking transactions
- (v) The collections and expenses in the cash mode
- (vi) Closure of entries and documentation to ensure statutory audits or inspections.

By evaluating these aspects, the auditor can ensure that the financial management of the RWA is both transparent and compliant.

- a. RWA has Opened a dedicated bank account in the RWA's name post-registration to manage funds. The bank account operations (Physical / online banking) are operated by authorised persons as per Bye-law.

- b. The contributions from residents (e.g., per square foot or flat rate) as per bye-laws are correctly calculated and collected.
- c. The management has prepared an annual budget for operating expenses like security, housekeeping, utilities, and events and capital expenditure.
- d. Audit is conducted as specified in the Bye-Laws.
- e. The Audited accounts are presented before the members for approval.
- f. For major expenditure whether funds are allocated with due members approval in the General Meeting.
- g. Is there any imposing of fines for late fee payments, as outlined in bye-laws, to ensure timely collections.
- h. There is due process in Vendor selection, awarding contracts, engagement agreement and Payments.
- i. The Receipts and Payments are prepared on a monthly basis and sent to members on a periodical basis.
- j. The Association is Tax compliant with respect to Direct and Indirect Taxes.
- k. Usage of Software Tools for Accounting and Receivable management.

20.11 Operational Management of an RWA

The operational management of a Resident Welfare Association (RWA) entails the systematic administration of daily activities to ensure secure and peaceful living within the legal framework of respective state laws.

The RWAS is tasked with below major areas of operations in coordinating and monitoring for the effective functioning:

a) Security Services

This process involves the diligent oversight of common areas, including lifts, corridors, stairwells, gardens, and recreational facilities, to ensure a conducive living environment for residents. The RWA engages with trained personnel and the installs surveillance systems or access control mechanisms, to safeguard residents and their property.

b) Utility Services:

Another important management is the provision of uninterrupted utilities, including water, electricity, and internet, achieved through proactive coordination with municipal authorities and service providers.

c) Housekeeping

Housekeeping operations, encompassing cleaning, waste segregation, and pest control, are meticulously managed to uphold hygiene standards and adhere to municipal regulations, ensuring a clean and healthy community space.

d) Garden and Landscaping:

The RWA coordinates with builders or developers to facilitate the handover of common areas and amenities, ensuring proper management post-transition. Therefore, retaining and enhancing the beauty of the common area landscape is one of the important duty of RWA. This is done through engaging with professional agencies involved in recommending right kind of planting trees and plants.

e) Vendor Management

The RWA engages and supervises vendors for maintenance tasks, such as plumbing, electrical repairs, and infrastructure upkeep, ensuring timely and quality service delivery while maintaining cost-effectiveness.

f) Cultural & Entertainment

RWA plays a vital role in protecting the cultural diversity and heritage. The Management has to ensure that, every member's religious and spiritual practices are respected and guidelines are framed.

g) Financial Management

Financial operations form the backbone of RWA management. The tracking of receivables and introducing an effective mechanism for timely collection of dues is an important operation of the finance division. The RWAs can form expert committee to advise on the statutory matters relating to taxation for good governance. The RWA create Accounting Policies and operational procedures for every aspect of finance functions.

h) Infrastructure Management

The RWA ensures timely infrastructure maintenance, to address repairs to critical systems like lifts or electrical networks. Eco-friendly initiatives, such as rainwater harvesting or solar power adoption, may be implemented to promote sustainability and reduce operational costs.

i) Public Relationship Management

Effective communication with residents is facilitated through notices, digital platforms, or general meetings, with a response or feedback enabled process. The RWA to ensure emergency response protocols are established for incidents like fires or medical emergencies, with clear communication to residents to ensure preparedness. Effectively using technology the property can be managed using Mobile Apps for complaint resolution, and resident communication.

j) Legal Management

Compliance with legal and regulatory frameworks is highly recommended in respect of adherence to fire safety standards, waste management protocols, and environmental guidelines, as mandated by local authorities.

20.12 Rights and Duties of Members / Residents

The Rights and Duties of the members are outlined in the Bye-laws of the RWA. the rights serve as a foundation for entitlement and enjoyment of common interest in the property. The rights ensures that members can participate in decision making and have access to information. Conversely, duties are responsibilities that members undertake to follow Bye-laws, exercise their vote during election etc., These rights and duties are derived from the legal framework of the statutes namely State Societies Registration Act / Co-operative Societies Act etc.,

Below are the common rights and duties of members of RWA

a) Rights of Members

- (i) Members have the right to attend general meetings and caste their votes on key decisions and electing members.
- (ii) Members can access the RWA's bye-laws, financial records, and activity reports.
- (iii) Members have equal opportunities and protection in any entitlement and enjoyment.
- (iv) Members have the right to utilise common areas, facilities and services, or resources provided by the association
- (v) Members can appeal decisions or seek redress for grievances through established procedures.

b) Duties of Members

- (i) Members must adhere to the Bye-laws, rules, and code of conduct formulated by the RWA.
- (ii) Members have duty in contributing time and effort for the welfare activities of the RWA.
- (iii) Timely payment of Common Area Maintenance and other payments to RWA.
- (iv) Members have duty to cooperate in common activities that would bring harmony and peace.
- (v) Members are obligated to respect and support decisions made by the association.
- (vi) Members must maintain confidentiality that is considered as sensitive information by the Association.

- (vii) Members should volunteer for tasks or roles when needed, actively contributing to the association's activities and success.

20.13 Legal Responsibilities and Liabilities

The Legal Responsibilities and Liabilities of members in an association or society are critical components that ensure the RWA operates within the boundaries of applicable laws. These responsibilities and liabilities are driver from Bye-Laws. It is essential for every member to understand these for the quiet and peaceful living in the community. Let us understand few legal responsibilities and liabilities:

a) Legal Responsibilities

- (i) Members are legally obligated to adhere to the association's governing documents, namely Bye-laws, policies documents and Notices from time to time issued by the management. Failure to comply may result in disciplinary actions or legal consequences, as these documents are often legally binding under the RWA's framework.
- (ii) Members must pay membership fees, dues, or other financial obligations promptly, as intimated and decided by the majority of members. Non-payment can lead to loss of membership rights or legal action by the association to recover dues, as per applicable jurisdictional laws.
- (iii) Members must ensure their actions align with applicable local, state, or national laws, while conducting any group events or activities. organizing events without necessary permits could expose the association to legal penalties.
- (iv) Members have a responsibility to participate in general meetings and decision-making processes, ensuring the association's democratic functioning.

b) Legal Liabilities

- (i) Members can be held personally liable for actions that cause harm to the association or third parties, such as fraud, misrepresentation, or unauthorized use of association funds. This may result in civil or criminal penalties, depending on the severity.
- (ii) Office-bearers or committee members may face liability for breaching fiduciary duties, such as mismanaging funds or failing to act in the association's best interests. Legal action may be taken by other members or external regulators.
- (iii) Members who act negligently in organising events without following safety regulations, may be liable for damages or injuries caused to others.
- (iv) Members who make false or damaging statements about the association or its members may face legal liability for defamation.

- (v) Members responsible for submitting financial reports, tax filings, or other regulatory documents must ensure timely and accurate submissions. Failure to do so can lead to fines, penalties, or cancellation of Registration of RWA.

20.14 Legal Responsibilities in Handover from Builder to RWA

The handover from a builder to a Residents' Welfare Association (RWA) is a pivotal process in the lifecycle of a housing society, marking the transition of control, maintenance, and management responsibilities from the builder to the residents. This process, often referred to as the "handover takeover" (HOTO) This process involves meticulous documentation, audits, and legal compliance to safeguard residents' rights and ensure the society's long-term sustainability.

a) Legal Responsibilities in Handover from Builder to RWA

- (i) The builder is typically responsible for initiating or facilitating the formation of the RWA, as mandated by laws like RERA. This involves gathering interested homeowners, electing a management committee, and registering the RWA under the appropriate legal framework that are specific to every State in India. If the builder delays or fails to initiate this process, residents can form the RWA independently, though this may complicate the handover. Legal registration empowers the RWA to manage common areas and enforce decisions.
- (ii) The builder must execute a conveyance deed to transfer ownership of common areas (e.g., lobbies, gardens, parking lots) to the RWA / buyer within a specified period, typically three months from the issuance of the occupancy certificate, as per RERA Section 17. This includes providing all title documents, such as land records and approved plans, to ensure legal ownership is clear and undisputed. Failure to do so may result in legal action against the builder.
- (iii) The builder is legally obligated to provide a comprehensive set of documents, including the occupancy certificate, completion certificate, no-objection certificates (NOCs) from fire, water, pollution, and electricity authorities, approved building plans, and car parking allocation records. These documents ensure the society complies with local regulations and is equipped for future maintenance and governance. The RWA must verify these documents to avoid inheriting legal or compliance issues.
- (iv) Until the RWA is formed, the builder is responsible for maintaining the society and collecting reasonable maintenance charges, as outlined in RERA Section 4(d). Upon handover, the builder must transfer the corpus fund, audited financial statements, and any leftover maintenance funds to the RWA. These funds are critical for initial operational costs, and a certified accountant should verify the accounts to ensure transparency.

- (v) The builder must complete all promised amenities and common areas (e.g., clubhouse, swimming pool, lifts) as per the sales agreement and approved plans before the handover. The RWA should conduct a joint inspection with the builder to identify defects, such as water seepage or incomplete civil works, and ensure rectification before assuming responsibility. This step prevents the RWA from inheriting costly repairs.
- (vi) The builder is responsible for transferring utility connections (e.g., water, electricity, gas) to the RWA's name or providing NOCs for the RWA to do so. This ensures uninterrupted services and prevents future disputes over utility payments or compliance. The RWA must coordinate with local authorities to finalize these transfers.

b) Legal Liabilities in Handover from Builder to RWA

- (i) The builder remains liable for rectifying defects in common areas for up to five years post-handover, as per RERA regulations. If the RWA assumes maintenance responsibilities prematurely, especially for towers without an occupancy certificate, it may inadvertently assume liability for defects or safety issues, weakening claims against the builder. The RWA must document all pending tasks and enforce deadlines for completion to avoid financial burdens.
- (ii) If the builder fails to provide required documents (e.g., occupancy certificate, NOCs) or deviates from approved plans, the RWA may face legal and financial liabilities for non-compliance after the handover. For instance, occupying a building without an occupancy certificate is illegal and could lead to penalties or eviction. The RWA should engage legal counsel or a third-party auditor to verify compliance before accepting the handover.
- (iii) If the builder mismanages maintenance funds or fails to provide audited accounts, the RWA could inherit financial liabilities, such as unpaid vendor dues or taxes. Members of the RWA's managing committee may face personal liability if they fail to conduct due diligence, such as auditing financial records or verifying the corpus fund. Appointing a professional auditor is critical to mitigate this risk.
- (iv) Builders may unlawfully retain control of income-generating common areas (e.g., commercial spaces) after the handover, violating RERA and state laws that grant apartment owners exclusive rights to such areas. The RWA may need to pursue legal action, such as filing a case under the Maharashtra Ownership Flats Act or approaching consumer courts, to enforce its rights.
- (v) If the builder provides unauthorized utility connections (e.g., commercial power for residential use), the RWA could face regulatory scrutiny or penalties post-handover. For example, in Karnataka, using a commercial connection for residential billing without proper authorization is illegal, and the RWA may be held complicit if it does not disassociate itself in writing.

- (vi) The RWA may face liability for unresolved disputes or misunderstandings during the handover, such as disagreements over the handover date, property condition, or key distribution. To avoid legal complications, the RWA should establish a clear agreement with the builder, outlining obligations and timelines, and consult legal professionals to ensure compliance

20.15 Technology and Best Practices for RWAs

With the growing complexity of modern housing societies, RWAs are increasingly leveraging digital tools to streamline operations, improve communication, and maintain financial accountability. These technologies, combined with best practices rooted in legal compliance, effective governance empower RWAs to address challenges such as maintenance, security, and dispute resolution. By adopting innovative solutions and standardized processes, RWAs can enhance operational efficiency, reduce costs, and ensure sustainable management of the society.

Technology for RWAs

- a) **Property Management Software:** there are various software platforms and Mobile Apps streamline RWA operations by digitizing tasks such as visitor management, maintenance fee collection, and complaint tracking. These tools provide residents with mobile apps to pay dues, raise issues, and access society updates, reducing manual efforts.
- b) **Financial Management Tools:** Software automates accounting tasks, including tracking maintenance fees, generating invoices, and producing audited financial reports.
- c) **Communication Platforms:** Mobile apps enable instant communication between residents and the RWA. These platforms allow for real-time updates on events, maintenance schedules, or emergencies.
- d) **Security and Surveillance Systems:** Installing CCTV cameras, smart access control systems, and IoT-enabled sensors enhances society security
- e) **Facility Booking Systems:** Online platforms for booking amenities like clubhouses, gyms, or community halls eliminate scheduling conflicts and ensure fair access. These systems also track usage and generate revenue reports for income-generating facilities, supporting financial transparency.
- f) **Energy and Water Management Tools:** Smart metering systems for electricity and water, help monitor usage, detect leaks, and promote sustainability. These tools enable RWAs to allocate utility costs fairly and comply with environmental regulations, reducing operational expenses.
- g) **Document Management Systems:** Cloud-based platforms allow RWAs to store and share essential documents (e.g., Bye-laws, occupancy certificates, or meeting minutes)

securely. These systems ensure easy access for residents and compliance with legal requirements for record-keeping as per Statutes.

20.16 Best Practices for RWAs

- a) **Registration:** Ensure the RWA is registered under the appropriate legal framework, such as the Societies Registration Act or state-specific apartment ownership acts.
- b) **Financial Management:** Conduct regular audits of maintenance funds, corpus funds, and other financial transactions by engaging certified accountants. Share financial reports with residents quarterly via email or RWA apps to maintain transparency.
- c) **Governance:** Hold regular general body meetings (AGMs/EGMs) and ensure all residents have a voice in decision-making. Elect office-bearers through fair voting processes, adhering to the society's bylaws, and document meeting minutes for legal compliance and future reference.
- d) **Communication:** Establish clear communication channels, such as monthly newsletters, app notifications, or physical notice boards, to keep residents informed about RWA decisions, maintenance schedules, and events. Respond promptly to resident queries or complaints to build trust and avoid escalation.
- e) **Maintenance:** Conduct regular inspections of common areas, lifts, and utilities to identify and address issues like water seepage or electrical faults. Create a maintenance schedule and engage reliable vendors, ensuring all contracts comply with local regulations to avoid liability for substandard work.
- f) **Engagement:** Organize events like festivals, sports days, or workshops to foster a sense of community. Use technology, such as event management modules in RWA apps, to streamline planning and encourage participation, ensuring inclusivity across diverse resident groups.
- g) **Sustainability :** Implement eco-friendly practices, such as rainwater harvesting, solar panels, or waste segregation, to reduce costs and comply with environmental regulations. Use smart metering to monitor resource usage and educate residents on sustainable practices through workshops or app notifications.
- h) **Contract Management:** Maintain a transparent process for selecting vendors for services like security, housekeeping, or repairs. Use written contracts with clear terms, vetted by legal counsel, to avoid disputes and ensure compliance with labor laws and tax regulations.
- i) **Data Privacy:** Protect resident data, such as contact details or payment information, in accordance with data protection laws for data storage and ensure only authorized committee members access sensitive information.

20.17 Challenges Faced by RWAs

Residents' Welfare Associations (RWAs) play a vital role in managing housing societies, ensuring smooth operations, and fostering community harmony. However, RWAs face numerous challenges that can hinder their effectiveness, ranging from financial constraints and legal complexities to resident apathy and conflicts with builders. These challenges often stem from the diverse needs of residents, limited resources, and the need to comply with legal frameworks like the Real Estate (Regulation and Development) Act, 2016 (RERA) or state-specific apartment ownership acts. Addressing these issues requires strategic planning, effective communication, and leveraging technology to streamline operations and maintain transparency. By understanding and tackling these challenges, RWAs can enhance their governance and create a sustainable, cohesive living environment for residents.

- a) RWAs struggle with insufficient funds due to delayed receipt of maintenance charges or non-payment of maintenance fees by residents.
- b) The lack of resident involvement in election, activities, or volunteering for committees.
- c) Disputes with builders during or after the handover process, such as incomplete amenities, missing documents (e.g., occupancy certificates), or withheld corpus funds, are common.
- d) Aging infrastructure requiring replacement of lifts, painting, plumbing, or electrical systems, leads to frequent breakdowns and costly repairs.
- e) Conflicts among members over issues like parking allocation, noise complaints, or misuse of common areas create disturbance.
- f) Enabling tech driven security measures, like CCTV systems or trained guards, is a persistent challenge, in societies with limited budgets
- g) Engaging trustworthy vendors for services like housekeeping, security, or maintenance is difficult, particularly when balancing cost and quality.
- h) With the adoption of digital tools like RWA management apps, protecting resident data in compliance with laws like India's Personal Data Protection Act is critical.
- i) Compliance with environmental regulations and managing utility costs (e.g., electricity, water) require investment in smart technologies, which may strain budgets.
- j) Many RWA committee members lack expertise in financial management, legal compliance, or technology adoption, leading to inefficiencies.
- k) The handover from the builder to the RWA, is often delayed due to incomplete documentation, unresolved defects, or disputes over common areas.

20.18 Case Studies and Practical Examples

a) Successful RWAs- Best Practices

Successful Residents' Welfare Associations (RWAs) are those that effectively manage residential societies by leverage technology, adopt best practices, and prioritize community welfare to create harmonious, well-maintained, and sustainable living environments. By implementing robust governance structures, ensuring financial accountability, and promoting inclusivity, successful RWAs overcome common challenges such as resident apathy, financial constraints, and disputes with builders.

The following best practices, drawn from the operational strategies of high-performing RWAs, provide a roadmap for efficient management and long-term success.

b) Best Practices for Successful RWAs

(i) **Governance Structure:** Establish a clear committee hierarchy with defined roles for office-bearers, as mandated by bye laws in line with State specific statutes. Conduct regular elections through transparent voting processes and hold annual general meetings to ensure democratic decision-making.

(ii) **Financial Management:** Use software for maintenance collection, Payment process, security management, Bookkeeping, and generation of audited financial reports. Share quarterly financial statements with residents to build trust.

(iii) **Technology adoption:** Adopt property management platforms to streamline operations like visitor management, complaint tracking, and amenity bookings. Integrate smart metering systems for utilities and CCTV for security to enhance efficiency and safety.

(iv) **Maintenance Planning:** Create a preventive maintenance schedule considering the life and usage of each asset. Allocate a portion of the corpus fund for major repairs.

(v) **Resident Communication:** Maintain open communication channels, such as monthly newsletters or notice boards, to encourage resident participation in governance and decision-making, reducing apathy and conflicts.

(vi) **Legal Compliance:** Ensure the RWA is registered under the appropriate legal framework as per applicable laws in the states.

(vii) **Dispute Resolution:** Establish a formal grievance redressal committee to address resident complaints or disputes over parking, noise, or amenities.

(viii) **Sustainability Initiatives:** Implement eco-friendly practices like rainwater harvesting, solar panels, or waste segregation to reduce utility costs and comply with environmental regulations

(ix) **Contract Management:** Develop a standardized process for selecting vendors for security, housekeeping, or repairs, using written contracts vetted by legal counsel.

- (x) **Capacity Building:** Provide training for RWA committee members on financial management, legal compliance, and technology use to enhance expertise.
- (xi) **Handover from Builder:** During the handover process, conduct joint inspections with the builder to verify the completion of amenities and common areas, to avoid inheriting liabilities or incomplete projects.
- (xii) **Welfare Programs:** Initiate programs like health camps, skill development workshops, or children's activities to enhance resident well-being and inclusivity.

c) **Lessons from Legal Disputes**

Generally Legal disputes involving Residents' Welfare Associations (RWAs) often arise due to issues such as non-compliance with legal frameworks, disputes with builders, or conflicts among residents. These disputes, whether related to delayed handovers, financial mismanagement, or violations of bye-laws, provide valuable lessons for RWAs to strengthen their operations and avoid costly litigation.

The lessons derived from these disputes may help RWAs in understanding the need for clear documentation, effective communication, and legal diligence to safeguard the interests of the association and its residents.

- ***Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India* 6th Dec 2017, Bombay High Court**
 - RERA Judgment highlights builders' delays in transferring common areas and documents, leading to prolonged legal battles. RWAs must conduct thorough joint inspections, verify documents (e.g., occupancy certificates, NOCs), and ensure the conveyance deed is executed within three months of the occupancy certificate, as mandated by RERA Section 17. Engaging legal counsel during the handover prevents inheriting liabilities or incomplete projects.
- ***M/s Raj Housing Development Pvt Ltd vs Goa Real Estate Regulatory Authority (2025) F.No:3/RERA/Complaint (416)/2024/500dt.23.4.2025***
 - Mismanagement of maintenance or corpus funds can lead to disputes and penalties. RWAs should use proper softwares for accurate bookkeeping, conduct annual audits by certified accountants, and share financial reports with residents to comply with RERA Section 4(d)..
- ***Ansal Properties & Infrastructure Ltd. vs Manish Dang on 21 February, 2017, State Consumer Disputes Redressal Commission***
 - Internal conflicts, such as those over parking or maintenance charges, often escalate to consumer courts, as seen in *Ansal Properties v. Consumer Forum* (2017). RWAs should set up a grievance redressal committee, as required by RERA, to resolve disputes

amicably through mediation, reducing the need for costly litigation and maintaining community harmony.

- ***Mrs Saraswathi Prakash vs State Of Karnataka on 28 February, 2025***

Registering the RWA under correct statute and jurisdiction makes the RWA legally sustainable. In this case, the Court directed RWA to register under different act than what is presently registered under.

20.19 Examples of Efficient Financial and Operational Management for Residents' Welfare Associations (RWAs)

Introduction

Efficient financial and operational management is the cornerstone of a successful Residents' Welfare Association (RWA). By adopting streamlined processes, leveraging technology, and adhering to best practices, RWAs can effectively manage resources, maintain infrastructure, and foster community harmony.

These examples provide actionable insights for RWAs to optimize their operations and financial health.

a) Examples of Efficient Financial Management

- (i) **Automated Fee Collection and Audited Accounts:** RWA can implemented Accounting Software tools to automate maintenance fee collection. This will help in reducing defaults by 30% through online payment reminders and instant receipts.
- (ii) **Corpus Fund Investment:** RWA invest their corpus fund in fixed deposits with a reputed bank, generating annual interest. If Bye-law permits, the investment can be better managed by high yielding flexi FDs
- (iii) **Vendor Payment:** RWA negotiated bulk contracts with vendors for security and housekeeping, securing a 15% cost reduction. Payments were processed through NEFT with clear contracts vetted by legal counsel, ensuring compliance with tax laws.
- (iv) **Revenue from Common Areas:** The RWA monetized common areas like the clubhouse and parking spaces for events, generating 10% of their annual budget.

b) Examples of Efficient Operational Management

- (i) **Digital Operations:** This RWA adopt Mobile App for visitor management, security tracking, and complaint resolution, reducing gate-related incidents by 50%. Residents could book amenities like the gym or community hall via the app, ensuring fair access. Regular maintenance schedules were uploaded, and resident feedback was addressed within 48 hours, enhancing operational efficiency and resident satisfaction.

- (ii) **Preventive Maintenance Planning:** The RWA implemented a quarterly maintenance schedule for lifts, generators, and plumbing, using IoT sensors to detect issues like water leaks early. They allocated 15% of the budget for preventive repairs, reducing major breakdowns by 25%. Contracts with vendors were documented and vetted to comply with local labor laws, avoiding legal liabilities.
- (iii) **Sustainability Initiatives:** RWAs install solar panels and rainwater harvesting systems, cutting electricity costs by 20% and water bills by 15%. They used smart meters integrated with software to monitor usage and allocate costs fairly, ensuring compliance with environmental regulations. Resident workshops on waste segregation further promoted sustainability, earning local government recognition.
- (iv) **Community Engagement Programs:** The RWAs organise monthly events like yoga classes and children's workshops, funded through the corpus fund's interest. They used Mobile Apps to coordinate events and gather resident feedback, boosting participation by 35%.
- (v) **Security Enhancements:** The RWAs install CCTV systems integrated with Mobile Gate App, allowing residents to monitor live feeds via the app. Trained security personnel were hired through a vetted agency, with contracts ensuring compliance with labour laws. This reduced theft incidents by 40% and ensured safety regulation compliance, avoiding potential liabilities.
- (vi) **Streamlined Handover Process:** During the builder handover, the RWA engaged a third-party auditor to verify documents like the occupancy certificate and NOCs, ensuring compliance with RERA Section 17. A joint inspection identified defects, which the builder rectified within the five-year liability period. This meticulous process prevented legal disputes and ensured a smooth transition to RWA management.

Conclusion -

Importance of Professional Management, Continuous Learning, and the Role of RWAs in Building Responsible, Safe, and Harmonious Communities

Introduction

Residents' Welfare Associations (RWAs) are pivotal in ensuring operational efficiency, legal compliance, and community harmony. The importance of professional management, continuous learning, and legal awareness cannot be overstated, as they enable RWAs to address complex challenges effectively. Professional management brings expertise and streamlined processes, while continuous learning and legal awareness ensure RWAs remain compliant with evolving regulations like the Real Estate (Regulation and Development) Act, 2016 (RERA) and state-specific laws. These elements collectively empower RWAs to create thriving, well-governed societies.

a) Importance of Professional Management

- (i) **Operations:** Professional management firms bring specialized knowledge in areas like financial accounting, vendor management, and facility maintenance, reducing errors and enhancing efficiency.
- (ii) **Finance:** Professionals ensure compliance with RERA Section 4(d) by maintaining audited accounts and transparent budgets using various accounting tools.
- (iii) **Legal:** Professionals negotiate cost-effective contracts with vendors for services like security or housekeeping, ensuring compliance with labor laws and quality standards
- (iv) **Accounts:** By outsourcing tasks like maintenance scheduling or dispute resolution to professionals, RWA committees can focus on strategic decisions in managing the society effectively.

b) Need for Continuous Learning and Legal Awareness

- (i) **Adapting to Evolving Regulations:** RWAs must stay updated on changes in laws like RERA or India's Personal Data Protection Act to avoid penalties.
- (ii) **Training for Committee Members:** The office bearers must be encouraged to join and attend regular workshops or webinars to get trained on financial management, conflict resolution, and technology adoption
- (iii) **Resident Education:** RWAs should conduct sessions to inform residents about their rights and obligations under Bye-laws.

c) The Role of RWAs in Building Responsible, Safe, and Harmonious Communities

- (i) RWAs encourage responsible practices like timely payment of dues, waste segregation, and adherence to bylaws. There are few RWA in metro cities implemented waste management workshops, reducing landfill waste by 20%.
- (ii) By installing CCTV systems, smart access controls, and trained security personnel, RWAs ensure resident safety.
- (iii) Organizing events like festivals, health camps, or sports days, strengthens resident bonds and inclusivity.
- (iv) A formal grievance committee, as mandated by RERA, resolves disputes over parking, noise, or amenities amicably
- (v) RWAs promote eco-friendly environmental practices like rainwater harvesting or solar panels, which cut utility costs by 15-20%.
- (vi) Using platforms like WhatsApp or Payment Gateway for real-time updates on maintenance, budgets, or events builds trust.

20.20 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Capital Gains on Immovable Property

21.1 Basics regarding Capital Gain on Sale of Property

1. Profits or gains arising from the transfer of an immovable property, held as a capital asset, are taxed under the head “**Capital Gains**”
2. The incidence of tax on capital gains depends upon the **period for which the capital asset was held** before the transfer.
3. An immovable property, being land or building or both, held for a period of 24 months or less qualifies as a ‘**short term capital asset**’ and if such capital asset is held for more than 24 months it qualifies as ‘long term capital asset’. For assessment years prior to AY 2018-19, such period was 36 months instead of 24 months [Section 2(29A)]
4. Transfer of a short-term capital asset gives rise to Short Term Capital Gains (“**STCG**”) and transfer of Long-Term Capital Gains (“**LTCG**”). The Tax rates for STCG and LTCG are different.
5. **STCG arising on account of transfer of short-term capital assets are computed as under:**

Full value of consideration	XXX
Less: Expenditure incurred wholly and exclusively in connection with transfer of asset	(XX)
Net sale consideration	XXX
Less: Cost of acquisition	(XX)
Less: Cost of improvement	(XX)
Short term capital gains	XXX

The STCG computed as above forms part of total income and is chargeable to tax as per the normal rate of tax as applicable to Assessee.

6. **LTCG arising on account of transfer of long-term capital assets are computed as under:**

Full value of consideration	XXX
Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset	(XX)
Net sale consideration	XXX
Less: Indexed* cost of acquisition	(XX)

Less: Indexed* cost of improvement	(XX)
Long term capital gain	XXX

*Indexation is available only if Land or Building was acquired before July 23, 2024

Indexation is a process by which the cost of acquisition is adjusted against an inflationary rise in the value of assets. For this purpose, CBDT notifies the cost inflation index for each year. The benefit of indexation is available only for long term capital assets.

For computation of indexed cost of acquisition, the following factors are to be considered:

- (a) Year of acquisition/improvement.
- (b) Year of transfer.
- (c) Cost inflation index of the year of acquisition/improvement.
- (d) Cost inflation index of the year of transfer

The indexed cost of acquisition is computed with the help of the following formula

$$\text{Cost of acquisition} \times \frac{\text{Cost inflation index of the year of transfer}}{\text{Cost inflation index of the year of acquisition}}$$

Indexed cost of improvement is computed with the help of the following formula:

$$\text{Cost of improvement} \times \frac{\text{Cost inflation index of the year of transfer}}{\text{Cost inflation index of the year of improvement}}$$

Rate of taxation for LTCG:

The LTCG computed as above is chargeable to tax at a special rate of tax (surcharge and cess applies).

Two options are available for Individual and HUF taxpayers, in case of transfer of land or building acquired before July 23, 2024. Taxpayers have the option to pay tax at either 12.5% without indexation benefits or 20% with indexation benefits.

For **Taxpayers other than Individuals and HUF**, in case of land or building purchased on or after 23rd July, 2024, the tax rate will be 12.5% without indexation benefit.

Taxpayer Type	Asset Type	Date of Acquisition	Tax Rate	Indexation
Individual / HU	Land or Building	Acquired before July 23, 2024	12.5%	Yes
Other than Individual / HUF	Land or Building	Acquired on or after July 23, 2024	12.5%	No

Further, no deduction under chapter VIA is allowed against LTCG.

Relevance of stamp value / guidance value:

Where the actual sale consideration receivable for the transfer of a capital asset, being land or building or both, is less than the value adopted or assessable by the Stamp Valuation Authority for the purpose of stamp duty, the value so adopted or assessable shall be deemed to be the full value of consideration for computing capital gains under Section 50C of the Income Tax Act.

Full Value of Consideration = Higher of actual sales consideration or value adopted by Stamp Valuation Authority.

Relief for Seller: In this regard, some **relief has been provided by the Finance Act 2020**. The effect of the above-deeming provision would not apply if the difference between actual sales consideration and stamp duty valuation of such property is **not more than 10% of the actual sale consideration**. (Prior to A.Y. 2021-2022, the tolerance band was 5%) [Third Proviso to Section 50C]

Impact on Buyer: Where the amount of actual purchase consideration for purchase of immovable property is less than the Stamp Duty Value of such property, the difference between the Stamp Duty Value and purchase consideration shall be **taxable in the hands of the Buyer under the head "Income from Other Sources"** at the normal rate of tax applicable to such Assessee [section 56(2)(x)].

Exception due to materiality: The above provision will not apply if the above referred difference does not exceed Rs. 50,000. Further, some relief has been provided from A.Y. 2019-20. Whereby, the effect of the above provision would not apply if the difference between Stamp Duty Value and actual purchase consideration is not more than 10% (was increased from 5% from A.Y. 2021-22) of actual purchase consideration. [Section 56(2)(x)(b)]

Capital Gains Exemption Provisions under Sections 54, 54EC, 54GB, and 54F – Eligibility, Conditions, and Benefits

LTCG is exempt from tax if the seller invests the amount of such capital gain or net proceeds as the case maybe, in a specified type of assets. The key exemptions in this regard have been summarized below:

Section	54	54EC	54GB	54F
Exemption available	Individual or HUF only	Any Assessee	Individual or HUF Only	Individual or HUF Only
Sale of	Long term asset being residential house or land appurtenant thereto	Asset being land/building or both	Asset being residential house property	Any Long-term capital Asset other than residential house property.

Investment Made in Purchase of	Amount of Capital Gains to be invested in a Residential house property in India (Note 2 below)	Amount of Capital Gains to be Invested in Specified bonds of NHAI / RECL /Other notified Bonds (These bonds will now have maturity of 5 years or more)	Amount of sale consideration invested in purchase of Equity Shares of an eligible company in which the Assessee holds 25 % or more shares/voting power, and the eligible company makes investment in Plant & Machinery as prescribed	Amount of sale consideration is to be invested in a residential house property in India.
Time Period of Purchase	If purchased within one year before or 2 years after,	Within 6 months of transfer	Before the due date of ITR (refer note 1 below)	If purchased within 1 year before or 2 years after, if constructed within 3 years of transfer (refer Note 1 below)
Consequence if new assets sold within a particular period	If new assets are sold within 3 years of purchase, while calculating capital gains for the new asset the capital gain exemption allowed earlier will be reduced from its cost of acquisition	On sale of Bonds or otherwise conversion into money within 5 years, Long Term Capital Gain exempted earlier will be taxable in the year of such a sale or conversion.	If new assets (shares or plant and machinery) is sold within 5 years, then the amount of long-term capital gain exempted will be taxable in the year of such sale in the hands of respective Assessee.	If new assets are sold within 3 years, then the amount of Long-Term capital gain is exempted from earlier taxable in the year of such sale.

Note 1: If investment in new assets is not made before the due date of filing tax return for the year in which LTCG is taxable, such amount of investment shall be deposited in a specified bank/institution under the Capital Gains Account Scheme before such a due date.

Note 2: If LTCG is up to Rs. 2 Crore, the Assessee can acquire two residential house properties in the prescribed time limit. The benefit of two-house property is available once in a lifetime (As Amended by Finance Act, 2019 w.e.f A.Y. 2020-2021)

Under sections 54 and 54F, the cost of new assets is restricted to ten crore rupees while arriving at the cost of acquisition.

Note 3: 1st Proviso to Section 54(1) bars exemption if the Assessee owned more than one residential house on the date of transfer; or the Assessee buys an additional house within one year of transfer; or constructs one more house within three years of transfer. [Proviso to Section 54F(1)]

Note 4: Amount of deduction claimed under section 80C to be taxable if residential house is sold within 5 years. [80C(5)(iii)]

Where loan was taken for purchase of residential house property and deductions were claimed for the principal repayment, stamp duty and registration under section 80C of the Act and thereafter, if such house property is sold within five years from the end of the financial year in which the possession of such property was obtained, the tax benefits which were claimed earlier will have to be reversed. The tax deduction claimed for the principal repayment, stamp duty and registration under section 80C becomes taxable in the year of such sale.

If seller is resident in India:

1. In case the total amount of purchase consideration payable for such immovable property is more than INR 50 lakhs, the Buyer is required to deduct tax at the rate of 1% of the purchase consideration payable to the resident seller. [Section 194-IA]
2. Such TDS is required to be deducted at the time of payment or credit to the account of the Seller whichever is earlier.
3. The Buyer is required to deduct tax at the rate of 20% in case the seller does not provide his PAN to the buyer. [Section 206AA]
4. The tax so deducted must be deposited by the Buyer with the Government authorities within 30 days from the end of the month in which TDS was deducted along with Form 26QB. [Rule 30(2A)]
5. The Buyer is also required to furnish a TDS certificate as per Forms 16B to the Seller within 15 days from the due date for furnishing Form No 26QB after generating & downloading the same from the web portal specified by the income tax Department.
6. The Seller can claim credit of such TDS in his income tax return.
7. The Seller can claim a refund of the TDS in his income-tax return if he is incurring a loss on the sale of the property or if he is claiming exemption from long-term capital gains under any of the ways discussed earlier.

If Seller is a "non-resident" in India:

1. If the immovable property is being purchased from a person who is a non-resident in India as per the provisions of the Income-tax Act, the Buyer is obligated to deduct tax 20% if the asset is a long-term capital asset and @ 30% if the asset is a short-term capital asset (plus surcharge and cess as applicable) (Sec. 195)
2. Such TDS is required to be done at the time of payment or credit to the account of the Seller, whichever is earlier.
3. The tax so deducted must be deposited by the Buyer with the Government authorities within 7 days from the end of the month in which TDS was deducted.
4. The Buyer will also need to have a Tax Deduction Account Number (TAN)
5. The Buyer is also required to furnish the applicable Quarterly TDS Statement in Form 27Q in the prescribed manner. The due dates for filing such quarterly TDS statements have been summarized below:

Quarter Ending on	Due date for filing TDS statement in form 27Q
30 th June	31 st July of Financial Year
30 th September	31 st October of Financial Year
31 st December	31 st January of Financial Year
31 st March	31 st May of Financial Year.

21.2 Basics concept of Joint Development Agreement (JDA) in Real Estate Sector

Real estate plays a critical role as an infrastructure sector that drives the economic growth and development of a country. The development of real estate projects involves significant investment, a high level of expertise, continuous effort, and long gestation periods. Investment is required not only for acquiring land but also for obtaining regulatory approvals, ensuring compliance with development norms, undertaking construction activities, and marketing the project. These projects can range from industrial townships and commercial complexes to residential townships and group housing societies. Given the scale and complexity involved, the entire process of developing and completing a real estate project often takes several years.

To facilitate such development, the model of Joint Development Agreements (JDAs) has gained popularity. Under this arrangement, the landowner contributes the land, while the

developer assumes the responsibility of funding and executing the development and construction of the project. This collaboration allows both parties to leverage their respective strengths—land ownership on one side, and financial resources and development expertise on the other—to jointly bring the real estate project to fruition.

Benefits arising from the Joint Development Agreement to the Landowner and Real Estate Developer:

For Landowner	For Real Estate Developer
Landowners may not have requisite experience in developing the property. The landowner gets an advantage to get its property developed by the professional developer as per the need and specification.	The cost of land in a project forms a substantial part of the total cost of a project. In such an arrangement the developer is not required to make investment in acquiring land at the initial stage.
The landowner may get consideration in the form of either lump sum consideration or percentage of sales revenue or certain percentage of constructed area in the project, depending upon the terms and conditions agreed upon between them.	The real estate developer can develop the property on the said land and can earn additional profit after deducting the money paid to the landowner. Real estate developers can utilize their expertise in project development with limited resources in a much efficient manner.

7. Types of Joint Development Arrangements

(a) The owner of an old house is ready to develop the property in modern style which may have been allowed by the regulatory authorities: - In such a case the owner hands over the house to the developer for the development and the floors constructed are shared between them. In addition, the developer may provide in a given case certain monetary consideration and alternative residence to the owner to live during the development period. This type of arrangement is mostly seen in metro cities.

(b) Large real estate project for development of residential or commercial complexes:- The developer may not be in position to invest in acquisition of land for the development of such a project. In such a case, landowner contributes his land whereas the development is undertaken by the developer and the consideration for land is given by the developer to the landowner linked with the development of the project as per the terms and conditions mentioned in the agreement.

8. Section 45(5A) of Income Tax Act, 1961

Section 45 of the IT Act is the charging section of the income chargeable under the head Capital Gains.

Highlights of Section 45(5A)

- (a) Applicable – Only to **Individuals or HUF**
- (b) Year of transfer – Year in which **possession** of immovable property is transferred under a Joint Development Agreement ('JDA')
- (c) Year of tax – Year in which **completion certificate** (CC) is issued by Competent Authority
- (d) Full value of consideration – Stamp duty value on the date of issue of CC of his share in project + consideration received in cash.

Note: Above provisions will not apply if in case Assessee transfers his share in project on or before the date of issue of completion certificate and capital gain will be taxable in the year in which transfer took place i.e., possession transfer in JDA.

Taxability in the hands of Real Estate Developer: - The Income arising to the developer under JDA, in the form of sale consideration of his share in the developed property is considered as his **business income** and taxed as per applicable provisions.

Taxability in the hands Landowner: -The income arising to landowner either as percentage of built-up area in a developed property or monetary consideration is taxable under the head income from **capital gains**.

In the ordinary course, a transaction is subject to capital gain in the year of transfer of the capital asset. In case of the JDA or Specified Agreement('SA') where the capital asset being land, building, or both have been transferred to the developer, such transaction is taxable in the year of transfer.

In most cases there can be a significant time gap between the year in which the transfer took place and the year in which the consideration is received. Therefore, landowners of the capital asset faced difficulties in payment of taxes.

To minimize the hardship of the Assessee, **The Finance Act 2017 has inserted a new section 45(5A) in the IT Act w.e.f. 01.04.2018 which reads as below:**

Section 45(5A). *Notwithstanding anything contained in sub-section (1), where the capital gain arises to an Assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :*

Provided that the provisions of this sub-section shall not apply where the Assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.

Explanation. —For the purposes of this sub-section, the expression—

- (i) *“competent authority” means the authority empowered to approve the building plan by or under any law for the time being in force.*
- (ii) *“specified agreement” means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.*
- (iii) *“stamp duty value” means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.]*

As new sub-section (5A) in section 45 of the IT Act, overrides the provisions of Section 45(1), therefore, the taxable event i.e. the transfer of title of land by the landowner (only in the cases of individuals and HUFs) to the Developers under a JDA, arises on receipt of the certificate of completion for the whole or part of the project, issued by the competent authority, provided the landowner does not transfer his share in the project to any other person on or before the date of issue of said certificate of completion.

Further, new sub-section (5A) in section 45 of the Income Tax Act also provides that the stamp duty value of land or building or both, of the landowner’s share in the project/developed estate, on the date of issuing of certificate of completion by the competent authority, to the land owner, as increased by any monetary consideration received by the landowner, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset, under section 48 of the IT Act.

Before insertion of the above section by Finance Act 2017 (till A.Y. 2017-18) Section 45(1) of the IT Act, is charging section and provides that-

“Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 54, 54B, 54D, 54E, 54EB, 54F, 54G and 54H, be chargeable to income tax under the head ‘Capital Gain’ and shall be deemed to be the income of the previous year in which the transfer took place.”

In view of the above, Capital Gains arise on “transfer” of a capital asset. As per Section 2(47)(v) of the IT Act, the expression “transfer” amongst other things includes:

“Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882)”

It is submitted that the tax department, relying upon the said definition of transfer, had always **contended that the taxability of the capital gains in the hands of the landowner, arises as soon as the JDA is signed** between the landowner and the developer. It does not matter that property is not built up and transferred to the prospective buyers. Therefore, the tax department considered the taxable event as and when the JDA is signed and entered between the landowner and the developer.

But the biggest question which arises is ‘when the project is just on paper at the time of signing of JDA, with no real existence, what would be the taxable value of consideration in the hands of the landowner’.

To answer the above question, the tax department stated that as per the provisions of section 50D of the IT Act, which reads as under:

“Where the consideration received or accruing as a result of the transfer of a capital asset by an Assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.”

In view of the above, the taxable value of consideration in the hands of the landowner would be the fair market value of the project including land on the date of execution of the JDA.

Pursuant to the provisions of section 50D of the IT Act, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer’ but the project under JDA takes time to complete (2 to 3 years) and is subject to fluctuation risk. **Therefore, fair market value of the project on the date of execution of JDA is not justified.**

The Hon’ble Supreme Court in its landmark Judgment in the case of CIT v. Balbir Singh Maini” Civil Appeal No. 15619 of 2017 held that

The provisions of ‘transfer’ under section 2(47)(v) of the IT Act, are not applicable since the JDA entered into by the taxpayer with developers is not registered. In order to qualify as a ‘transfer’ of a capital asset under section 2(47)(v) of the IT Act, there must be a ‘contract’ which can be enforced in law under Section 53A of the Transfer of Property Act, 1882 (TOPA). There is no contract which can be taken cognizance of, for the purpose specified in Section 53A of the TOPA after the amendment to the Registration Act, 1908 in 2001, unless the said contract is registered. Since JDA was never registered, the JDA has no efficacy in the eye of law, therefore, no ‘transfer’ can be said to have taken place.

The Supreme Court also observed that the income from the capital gain on a transaction has never materialized and it is a hypothetical income. There is no profit or gain which arises from the transfer of capital assets. The taxpayer did not acquire any right to receive income, in as much as alleged right was dependent upon the necessary permissions being obtained. There was no debt owed to the taxpayers by the developers, and therefore, the taxpayer had not acquired any right to receive income under JDA. Therefore, no profit or gains 'arose' from the transfer of capital assets so as to attract Section 45 and 48 of the Act.

21.3 Method of Accounting.

(a) Project Completion Method/Completed Contract Method (CCM): A method of recognizing revenues and costs from a long-term project in which profit is recorded only when the project has been completed. Even if payments are received while the project is in progress, no revenues are recorded until its completion. The completed-contract method is a conservative way of accounting for long-term undertakings and is used for certain types of construction projects. In the case of sale of immovable property, ownership of the property is transferred as per the Transfer of Property Act, 1882 when legal title of ownership is transferred. As per the Transfer of Property Act, 1882 legal title of the property is transferred by way of registration of sale deed or in accordance with the provision of section 53A of the Transfer of Property Act.

Revenue is recognized as per the above principle when ownership of property is transferred. In real estate project ownership can be transferred only when property comes into existence and physical possession of the property is handed over.

(b) Percentage Completion Method (PCM): A method of recognizing revenues and costs from a long-term project in relation to the percentage completed during the course of the project. Thus, the percentage-of- completion method allows business profits (or losses) on a project before its completion. Under PCM, revenue is recognized as per stage of completion of the project on year-to-year basis during the development of the project.

IMPACT OF ICDS ON THE REVENUE RECOGNITION BY THE REAL ESTATE DEVELOPER

Applicability of Accounting Standard-7 "Construction Contract" on the Builder/Real estate Developer

The ICAI has prescribed Accounting Standard No. 7 "Construction Contract" in which accounting of Construction contractor described.

The Method of Recognition of revenue provided under the A.S. 7 is as follows:

(a) Before 2002 - Pre-2002 AS-7 (Old) dealing with construction contracts permitted two methods for revenue recognition, namely, Percentage of Completion Method (POCM) and Completed Contract Method (CCM). Accordingly, prior to 2002 the construction contractor could follow either POCM or CCM method for the recognition of revenue under the Income tax.

(b) After 2002 - Accounting standard was revised by the Institute of Chartered Accountant of India, which now permitted only one method i.e. Percentage of Completion Method for the construction industry at large and this was also accepted by the tax authorities. Accordingly, the use of completed contract method is no longer permitted to construction contractor

Thereafter, CBDT vide notification dated 31 March 2015 introduced 10 ICDS to be effective from 1 April 2015 and shall be accordingly applied for AY 2016-17 onwards. These were introduced for the computation of taxable income/losses and were made applicable from the financial year 2015-16 i.e. A.Y. 2016-17 and Assessee is required to mandatorily follow these standards for the computation of the income.

Out of these ten ICDS, the ICDS No. III is related to “Construction Contract” wherein the computation of taxable income of the construction contract is provided.

The method of recognition of revenue provided under the ICDS III is as follows: -

Section 145(1) – Income chargeable under the heads “Profits and Gains from Business or Profession” or “Income from other Sources” – subject to 145(2)- as per method of accounting regularly followed.

Section 145(2) – the Central Government has power to notify “ICDS”.

Section 145(3)-AO has the power to make the best judgement assessment u/s. 144 if he is not satisfied with the:-

- correctness or completeness of the accounts of the Assessee; or
- method of accounting is not regularly followed; or
- Income not computed as per ICDS

Hence ICDS must be mandatorily followed, or else the best judgement assessment can be done by the Assessing Officer. Under the ICDS III the method of recognition of revenue by the Contractor is the same as per revised AS 7. So, under this ICDS it is mandatory requirement to follow the Percentage of Completion method for the recognition of revenue.

As per revised AS-7 and ICDS III, after 2002 it is clear that Assessee under construction contract is required to follow the percentage of completion method for the recognition of revenue.

But the question arises whether the ICDS III and AS-7 are applicable to the Real Estate Developer or not.

Background of AS -7

The ICAI has issued Accounting Standard (AS) 7 – ‘Construction Contract’ in the year 1983 which was later on revised in the year 2002. The AS 7 laid down the principles of accounting for ‘construction contracts’ in the financial statements of the Contractors. As per the revised AS 7, the accounting has to be done as per percentage/progressive completion method.

In response to a query, on applicability of revised AS 7 to a real estate developer, before the Expert Advisory Committee (EAC) formed by the ICAI, the EAC observed that the pre revised AS 7 specifically mentions its applicability to enterprises undertaking construction activities on their own which would include real estate developer. However, the revised AS 7 is applicable only to Contractors.

The Scope of AS -7 before the revision in the year 2002 is as follows

“This Statement deals with accounting for construction contract in the financial statement of an Enterprise undertaking such contract (hereinafter referred to as “Contractor”) this statement will also apply to enterprise undertaking construction activities of the type dealt with in this statement not as contractor but on their own account as a venture of commercial nature where the enterprise has entered into agreement for sale”.

As per above, prior to 2002 the AS -7 was applicable to both Contractors and Real Estate Developers who develop the building and thereafter sell them on their own account.

The Scope of AS-7 after the revision in the year 2002 - “The Standard should be applied in accounting for construction contract in the financial statement of Contractor”

As per the revise AS -7 the scope of the standard was limited to contractors only. After revision, Real Estate Developers/Builders are not covered under the AS -7, accordingly they are not required to follow the percentage of completion method for the revenue recognition.

The Scope of ICDS III - “This Computation and Disclosure should be applied in determination of income for a construction contract for a contractor”

Applicability of ICDS III - Meaning of Construction contract as given in ICDS is as follows:

Section 2(1)(a) A “construction contract” is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes:

- (i) Contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects.
- (ii) Contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.

Therefore, the ICDS is applicable for a Construction Contractor and to service providers such as architects, project managers, etc. who generally render services which are directly related to the construction contract. These categories of taxpayers will now be mandatorily required to compute their taxable income on P.O.C.M basis.

However, the ICDS is silent whether the same is applicable to Real Estate Developers or not. But if we see applicability of ICDS – III then it will apply only on construction contract and

service provider who is providing the service related to the construction contract and the scope of ICDS III is also similar to AS -7 and as per various decided case law it can be implied that the provision of AS -7 is not applicable for a Real Estate Developer, and accordingly the mandatory requirement to follow the percentage of completion method for recognition of revenue under ICDS III will not be applicable for a Real estate developer.

Question: Whether Real Estate Developer can follow Completed Contract Method (CCM)?

Answer: The Income-tax Act does not prescribe any specific method to be adopted to compute taxable income of real estate developers. There is no specific provision under the Income-tax Act in this regard and therefore, business income of the real estate developer is to be computed and assessed in accordance with the normal provisions of computation of business income prescribed under the Act. The tax authorities cannot impose and do not have power to insist on adopting any particular method for revenue recognition and computation of taxable income by the real estate developer.

Furthermore, for the purpose of tax computation and filing of Income Tax return by the real estate developer, income can still be computed by adopting the Completed Contract Method even after the issue of revised guidance notes, primarily for the following reasons:

- The developer has followed CCM regularly in the past and therefore following the principle of consistency and as per method of accounting regularly employed as permitted under section 145, it continues to follow CCM.
- No specific ICDS has been issued by CBDT applicable to real estate developers. Therefore, neither the assessing officer nor the Assessee is having any specific provision under the Act to be followed for tax computation purpose by the real estate developers.

Following case laws have been decided in favor of Assessee, wherein option is given to the Assessee to choose either of the methods i.e. CCM or PCM

a.	Krish Infrastructures Ltd v. Asstt. CIT [2013] 35 taxmann.com 38/58 SOT 127 (Jaipur – Tribunal)
b.	Awadesh Builders v. ITO [2010] 37 SOT 122 (Mum).

Cases where adoption of CCM is approved (favorable to Assessee)

a. CIT V. Manish Buildwell Ltd (Delhi)	b. Haware Constructions (P) Ltd V. ITO
c. Prem Enterprises V. ITO (Mumbai)	d. ITO V.Kasturi Construction

21.4 Some Important Aspects Regarding Conversion Of Capital Asset Into Stock In Trade And Vice Versa

DEFINITION AND INTERPRETATION OF SECTION 2(47) OF INCOME TAX ACT, 1961, SOME IMPORTANT ASPECTS REGARDING CONVERSION OF CAPITAL ASSET INTO STOCK IN TRADE AND VICE VERSA, COMPULSORY ACQUISITION OF CAPITAL ASSETS AND COMPENSATION RECEIVED THEREOF.

Clause (47) of section 2 of Income-tax Act, 1961 defines the term "transfer" as under:-

"transfer", in relation to a capital asset, includes, -

- (i) the sale, exchange or relinquishment of the asset; or*
- (ii) the extinguishment of any rights therein; or*
- (iii) the compulsory acquisition thereof under any law; or*
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him. such conversion or treatment; or*
- (iva) the maturity or redemption of a zero-coupon bond; or*
- (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or*
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.*

Explanation 1-For the purposes of sub-clauses (v) and (vi). "Immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.-For the removal of doubts, it is hereby clarified that transfer includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by the way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of the company registered or incorporated outside India."

Interpretation of the above definition

As it uses the word '*includes*' it is an inclusive definition and does not exclude the contextual or the ordinary meaning of the word '*transfer*'.

- (i) Relinquishment means 'to withdraw from' or 'to abandon' or 'to give up anything or any right' or 'to cease to hold' or 'to surrender'. For example, co-owners of property relinquish their rights in the property, transfer of right in right share etc.
- (ii) Extinguishment means cancellation or destruction of a right.
- (iii) Compulsory acquisition of a capital asset under any law means capital asset such as land or interest in land is purchased or taken under statutory powers without an agreement of the owner.

It is compulsorily acquired by the government authorities for the development of infrastructure facilities for public, for example land acquired by NHA or by Railways for its further development for public. Such compulsory acquisition results in the transfer of the ownership rights of the asset by the owner to the government. Therefore, the definition of transfer under section 2(47) covers such situation within its ambit and capital gains shall be liable to be charged to tax on compulsory acquisition of the asset in the year of acquisition

- (iv) Conversion of capital asset into stock in trade - When a person converts any capital asset owned by him into stock in-trade of a business carried on by him, it is regarded as a transfer under section 2(47)(iv). Normally, there can be no transfer if the ownership of an asset remains with the same person. However, the Income-tax Act provides an exception for the purpose of capital gains. The definition of transfer u/s 2(47) has been expanded to include conversion of capital assets into stock in trade to be covered within the ambit of transfer of capital asset.
- (v) **Analysis of clause (v)** - Transaction involving the allowing of the possession of an immovable property in part performance of a contract of the nature referred to in section 53A of Transfer of Property Act, 1882 treated as 'transfer'

To attract section 53A of the Transfer of Property Act, 1882, the following conditions should exist:

- (a) There should be a contract for consideration, it should be in writing; it should be signed by the transferor,
- (b) The contract should pertain to the transfer of immovable property, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,
- (c) The transferee should have taken possession of the property & had done some act in furtherance of the contract.
- (d) The transferee should be ready and willing to fulfil his part of the contract.

- (e) Even without execution of sale deed, the transferee acquires the rights in the property and the transferor cannot claim any right in respect of the property other than the right expressly provided in the terms of the contract.

As per the Transfer of Property Act, 1882, ownership rights of the immovable property are validly transferred when conveyance deed is registered in favor of the transferee. The analysis of section 53A of the Transfer of Property Act, 1882 shows that an alternative method for transfer of ownership rights of the immovable property, has been prescribed even when conveyance deed is not registered. The combined reading of various components of section 53A indicates that when there is an intention to transfer the ownership rights of the property by the transferor to the transferee by entering into a contract for consideration and handing over the possession of the property and accepting part consideration there under, the transferee acquires the rights in the property, provided the transferee is willing to perform the balance part of his obligations.

Thus, unless there is contract with the intention to transfer the ownership rights of the immovable property, mere handing over the possession of the immovable property would not be enough to constitute transfer of the property.

What are the tax consequences in case of Conversion of capital asset into stock in trade?

The provision of Section 45(2) is applicable when Capital Asset is converted into a business asset by the owner of asset/land and subsequently asset is used by him by undertaking business activity. Such business activity may be carried out by the owner of the land himself or with a builder/developer in a Joint Development Agreement. But it is important that the ownership of the land should not be transferred to the Builder/Developer through the Joint Development Agreement. It should be in the name of the owner of Capital Asset/Land.

In the case of conversion of capital assets into stock in trade, transfer would be considered in the year in which such conversion took place. However, capital gain will be taxable in the year in which converted assets (Stock in trade) are sold.

Further, in case of converted assets (Stock in trade), the Assessee would also be liable to tax under the head - profits and gains from business or profession, on sale of Stock in trade

Computation of taxable income under both the heads is shown below:

Under the head Capital Gain

Full value of consideration (Fair market Value on the date of conversion)	XXX
Less: Cost of acquisition	(XX)
Less: Cost of improvement	(XX)
Long term/short term capital gain	XXX

Under the head Profits and Gains from Business or Profession

Sale price of stock in trade	XXX
Less: Cost (fair market value of Asset as on the date of conversion)	(XX)
Profits/gains from business or profession	XXX

Note:

If any part of Stock in trade is sold, then only partial capital gains shall arise in the year in which such partial stock in trade is sold.

In the case of conversion of capital assets into stock in trade and subsequent sale of stock, the period of six months shall be calculated from the date of sale of stock in trade for the purpose of exemption under section 54EC.

Consequences in case of conversion of stock in trade into a capital asset? (Amended by Finance Act, 2018 w.e.f A.Y. 2019-20)

Section 28(via) of the profits and gains from business or profession provides that FMV of inventory as on the date on which it is converted into, or treated as, a capital asset shall be taxable under profits and gains from business or profession on the date of conversion.

For the purpose of computing capital gains, the cost of acquisition of such asset shall be the fair market value referred in section 28(via) of the income tax act.

Consequences in respect of compensation on compulsory acquisition of capital assets under any law?

Normally capital gain is taxed in the year of transfer. But in case of a compulsory acquisition of capital asset, capital gains will be taxable in the year in which *compensation is received*.

Types of Compensation

(a) Initial Compensation - Compensation decided by the government authorities and paid to the Assessee. Normally these compensations are undisputed compensation.

(b) Enhanced Compensation - Where compensation is fixed by the government authority and the same is not acceptable to the Assessee, the Assessee may approach the court of law for claiming higher compensation. If the court orders the government to provide such higher compensation, such compensation is termed as **Enhanced Compensation**.

Compensation is received in installments –

Type of Compensation	Trigger for Taxability	Year of Taxability
Initial Compensation	Receipt of the first installment	Year in which the first installment is received

Enhanced Compensation	Receipt of compensation	Year in which the amount is received
Enhanced Compensation (received under interim court order)	Final order passed by the court or other authority	Year in which the final order is passed

Further Interest received on late compensation shall be taxable under Income from other sources in the year of receipt and 50% deduction will be allowed u/s 57.

Amendments made in Income Tax due to 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' (RFCTLARR) which has been made effective from 1st January 2014 which states as hereunder:

The CBDT has clarified that compensation received in respect of any award or agreement which has been exempted from levy of income-tax vide **section 96** of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR)** shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision for exemption of such compensation in the Income Tax Act, 1961.

21.5 Provision related to section 50C, 43CA and section 56(2)(x) of the Income Tax Act, 1961.

(c) SECTION 50C

(1) Where the consideration received or accruing as a result of the transfer by an Assessee of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessed or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) *Without prejudice to the provisions of sub-section (1), where –*

(a) *The Assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer.*

(b) *The value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

Explanation 1.-For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.-For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) *Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.*

Analysis of Section 50C:

- (a) This section is applicable to all assesses such as Individual, HUF, Firm, Companies or any other persons.
- (b) This section is applicable in case of transfer of capital assets being land, building or both.

- (c) In case the asset being land, building or both is not held as capital asset but held as stock in trade, then the provisions of section 43CA would be applicable rather than provisions of section 50C.
- (d) Where Assessee claims that stamp duty value (SDV) is more than fair market value and such SDV has not been disputed in any appeal, then the AO may refer the valuation to the Valuation Officer.
- (e) If the value ascertained by Valuation Officer is more than SDV of stamp valuation authority, then full value of consideration would be equal to SDV of Stamp Authority and value determined by Valuation Officer would be ignored. However, if the value ascertained by Valuation Officer is less than the SDV of Stamp Valuation Authority, then the full value of consideration would be equal to value ascertained by Valuation Officer.
- (f) Normally SDV as on the date of registration is considered. But if the date of the agreement and date of registration are not the same, then Assessee can take SDV as on the date of the agreement, if the Assessee has received consideration or part thereof up to the date of the agreement. The consideration received should be by way of an account payee cheque, account payee draft or use of any electronic clearing system through bank account or any other electric modes as prescribed.
- (g) This section is applicable where sales consideration is less than the SDV assessed or assessable by stamp valuation authority. However, a tolerance band of 10% is given to Assessee from A.Y. 2021-22. Which means, if the SDV does not exceed 110% of sales consideration, then the provisions of this section are not applicable (This tolerance band was earlier introduced in Budget 2018 and was set at 5%. But from A.Y. 2021-22, this has been increased to 10%)

Furthermore, in the following case, the tolerance limit was set and allowed up to 15% of variance between SDV and Sales Consideration.

(a) C B Gautam V. Union of India [199 ITR 530 SC]

(b) Welfare Properties Pvt Ltd V. DCIT 13(3)(1), [ITA 4394/MUM/2018 – 29.11.2019]

Whether this tolerance limit may be made applicable retrospectively?

It has been held in the case of *Chandra Prakash Jhunjunwala V. Dy. CIT [2020] 181 ITD 185/188 DTR (Kol. 'B')* that third proviso to Section 50C has been inserted to remove an undue hardship to the Assessee or to remove apparent incongruity and same being curative in nature is applicable with retrospective effect from 1st April 2003 i.e. the date effective from which Section 50C was introduced.

In case of immovable properties, if SDV as on 01.04.2001 is available, then the Fair Market Value as on 01.04.2001 should not be more than SDV as on 01.04.2001 (Added by Finance Act 2020, w.e.f. AY 2021-22)

- (a) **Example 1:** Mr. A acquired a House property on 12.02.1992 for Rs. 2,00,000. FMV as on 01.04.2001 is Rs. 4,50,000 & SDV as on 01.04.2001 is Rs. 3,60,000. **In this case COA of property is Rs.3,60,000.**
- (b) **Example 2:** Mr. A acquired a House property on 12.02.1992 for 2,00,000. FMV as of 01.04.2001 is Rs 4,50,000 & SDV as on 01.04.2001 is Rs. 7,60,000. **In this case, the COA of property is Rs 4,50,000. (In this case if an Assessee has not obtained Valuation Report from Registered valuer determining Fair Market Value as on 01.04.2001 then SDV can be taken as on 01.04.2001. i.e., Rs. 7,60,000)**
- (c) **Example 3:** Mr. A acquired a House property on 12.02.1992 for Rs. 2,00,000. FMV as on 01.04.2001 is Rs.1,50,000 & SDV as on 01.04.2001 is 1,20,000. **In this case COA of property is Rs. 2,00,000,**
- (d) **Example 4:** Mr. A acquired a House property on 12.02.1992 for Rs. 2,00,000. FMV as on 01.04.2001 is Rs. 4,50,000 & SDV as on 01.04.2001 Not available. **In this case COA of property is Rs 4,50,000**

Section 43CA:

(1) *Where the consideration received or accruing as a result of the transfer by an Assessee of an asset (other than a capital asset), being land or assessed or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer:*

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

As per the Finance Act 2021, this safe harbor limit of 10% for home buyers and real estate developers selling such residential units has been increased to 20% for certain transfers of residential property complying with the following requirements:

- (i) the transfer of such residential unit takes place during the period beginning from the 12th day of November 2020 and ending on the 30th day of June 2021.
- (ii) such transfer is by way of first-time allotment of the residential unit to any person; and
- (iii) the consideration received or accruing as a result of such a transfer does not exceed two crore rupees.

(2) *The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).*

(3) *Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*

(4) *The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of the asset.*

Analysis of Section 43CA:

- (a) This section is applicable from assessment year 2014-15.
- (b) This section is applicable to any person transferring land or building or both held as stock in trade.
- (c) In case transfer of property takes place without registration of sale deed but by execution of sale agreement and power of attorney or by way of transfer with the regulatory authority in any other manner, Provision of section 43CA is applicable.
- (d) Normally SDV as on the date of registration is considered but in case if the date of agreement and date of registration is not same, then Assessee can take SDV as on the date of agreement if the Assessee has received consideration or part thereof up to the date of agreement by account payee cheque, account payee draft or use of any electronic clearing system through bank account or any other electric modes as prescribed.
- (e) Assessee has the option to claim before the Assessing Officer that the value adopted or assessed or assessable by the Stamp Valuation Officer exceeds the Fair Market Value (FMV) as on date of the transfer and ask him to refer the valuation of the property to the Valuation Officer as per the provisions of section 50C.
- (f) **Preference to Valuation Officer (Provisions of Section 50C (2) and (3) made applicable to section 43CA) [Section 43CA (2)]:** Section 43CA(2) provides that the provisions of section 50C(2) and (3) shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under section 43CA(1).

Common points w.r.t Section 50C and 43CA in case of reference to valuation Officer:

Assessing Officer (AO) may refer the case to Valuation Officer in the following circumstances:

- (a) Fair Market Value (FMV) claimed by the Assessee as per the registered valuer and AO is of the opinion that value so claimed is at variance with its FMV.
- (b) In other cases:
 - (i) If AO is of the Opinion that FMV as claimed by the Assessee is more than the lower of below.
 - **15% of value claimed by Assessee; or**
 - **Rs. 25000/-**
 - (ii) Having regard to the nature of assets and other relevant circumstances, it is necessary to do so.

Legal Integration:

Provision	Purpose
Section 55A	Empowers CBDT to notify valuation rules
Rule 111AA	Provides reverse calculation method from stamp duty to FVC
Section 45	Taxes capital gains
Section 50C/43CA	Treat SDV as consideration when declared value is lower
Section 96 of RFCTLARR	Exempts such compensation from income tax (if not under Sec 46)

SECTION 56(2)(X):

Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,

- (a) *any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
- (b) *any immovable property, -*
 - (A) *without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
 - (B) *for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely-*
 - (i) *the amount of fifty thousand rupees; and*

(ii) the amount equal to "[ten] per cent of the consideration:]"

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub clause

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account "[or through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the Assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections:

(Provided also that in case of property being referred to in the second proviso to sub- section (1) of section 43CA, the provisions of sub-item (i) of item (B) shall have effect as if for the words ten per cent, the words "twenty per cent had been substituted:]

(C) any property, other than immovable property-

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any sum of money or any property received-

(i) from any relative; or

(ii) on the occasion of the marriage of the individual; (under a will or by way of inheritance, or

(iii) Under a will or by way of inheritance; or

(iv) in contemplation of death of the payer or donor, as the case may be: or

(v) from any local authority as defined in the Explanation to clause (20) of section 10; or

(vi) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(vii) from or by any trust or institution registered under "[section 12A or section 12AA or section 12AB]; or

(viii) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

(ix) by way of transaction not regarded as transfer under clause (1) or "[clause (iv) or clause (v) or] clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vich) or clause (vid) or clause (vii) [or clause (viia) or clause (viib) or clause (viic) or clause (viid) or clause (viie) or clause (viif)] of section 47; or

(x) from an individual by a trust created or established solely for the benefit of relative of the individual;

(xi) from such class of persons and subject to such conditions, as may be prescribed.]

(xii) [(by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(xiii) by a member of the family of a deceased person,-

(A) from the employer of the deceased person; or

(B) from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

where the cause of death of such person is illness related to COVID-19 and the payment is-

(i) received within twelve months from the date of death of such person; and

(ii) subject to such other conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation. -For the purposes of clauses (XII) and (XIII) of this proviso, "family", in relation to an individual, shall have the same meaning as assigned to it in Explanation 1 to clause (5) of section 10:]

55[**Provided further** that clauses (VI) and (VII) of the first proviso shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of section 13.]

Explanation For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "Stamp Duty Value" shall have the same meaning as respectively assigned to them in the explanation to clause (vii).

Analysis of Section 56(2)(X):

- (a) This section was introduced by the Finance Act, 2017 and it is made applicable from A.Y. 2018-19 to all persons.
- (b) Prior to this section, the provisions related to immovable property was covered in Section 56(2)(vii)(b), which was only applicable to Individuals and HUF.
- (c) The provision of Section 56(2)(vii)(b) is introduced from 1st October 2009 and is made applicable in receipt of immovable property only to individuals and HUF and not to any other person such as firm, company, etc. The said provisions were effective from 1st October 2009 till 31st March 2017, thereafter the provisions of section 56(2)(x) are made applicable with respect to all Assessee.
- (d) Section 56(2)(x) is applicable only if the property is in the nature of capital asset of the recipient. If it is in the nature of Stock in trade, the provisions of this section are not applicable.
- (e) This section is applicable to immovable properties and movable properties such as Shares & Securities, Jewelry, Drawing, Painting, Sculptures, Archaeological collections, any other work of art and Bullion.
- (f) Money or property is not taxable if it is received from Relative, on occasion of Marriage, Under Will or by way of Inheritance, in contemplation of death, from any Trust registered u/s 12AA, from any hospital or medical institution, from any university or educational institution, from any local authority defined u/s 10(20), From an individual by a trust created solely for the benefit of the relative of the individual, by any fund, trust, institution, referred in section 10(23C), by way of certain transaction not regarded as transfer under section 47.
- (g) With respect to stamp duty value to be considered on the date of sale agreement and stamp duty value as adopted, assessed or assessable, the provisions of section 50C are applicable to this section also.
- (h) If any person receiving any asset for inadequate consideration and he was already assessed under this section on the basis of SDV or FMV, then Cost of Acquisition of such asset shall be the FMV or SDV which was considered under Income from Other Sources u/s 56(2)(x)
- (i) Normally SDV as on the date of registration is considered but in case if the date of agreement and date of registration is not same, then Assessee can take SDV as on the date of agreement if the Assessee has received consideration or part thereof up to the date of agreement by account payee cheque, account payee draft or use of any electronic clearing system through bank account or any other electric modes as prescribed.

Clause (XI) of proviso to Section 56(2)(x) of the IT Act read with **Rule 11UAC** of the IT Rules, provides for prescribed class of persons to whom the provisions of Section 56(2)(x) of the IT Act would not apply.

The Central Board of Direct Taxes (CBDT) vide notification¹ dated 29 June 2020 has replaced the said Rule 11UAC of the IT Rules. As per the revised Rule 11UAC, effective from fiscal year 2019-20, the provisions of Section 56(2)(x) of the IT Act would not apply to:

Any immovable property, being land or building or both, received by a resident of an unauthorized colony in the National Capital Territory of Delhi, where the Central Government has regularized the transactions of such immovable property based on the prescribed documents in favor of such resident

21.6 Exemption of Capital Gains u/s. 54, 54B, 54EC & 54F of Income Tax Act, 1961.

a) Profit on transfer of house property used for residence [Section 54]:

The benefit of section 54 is confined to sale of a residential house after 24 months and reinvestment in a residential house. Reinvestment benefits are available both for purchase and construction of the house. Purchase has to be either one year before or two years later. Construction has to be completed within three years of the sale of the assets in respect of which benefit of reinvestment is claimed. There have been many decisions on purchase/construction of the house. Further, certain clarifications have also been issued in this regard. These have been summarized as follows:

- (i) House includes part of the house: House property does not mean a complete independent house. It includes independent residential units also, like flats in a multistoried complex. The emphasis is not on the type of the property, but on the head under which the rental income is assessed. **[CIT (Addl.) v Vidya Prakash Talwar (1981) 132 ITR 661 (Del)].**
- (ii) Release deed may also be treated as purchase: Where a property is owned by more than one person and the other co-owner or co-owners release his or their respective share or interest in the property in favor of one of the co-owners, it can be said that the property has been purchased by the releasee. Such release also fulfils the condition of section 54 as to purchase so far as releasee-Assessee is concerned **[CIT v T.N. Aravinda Reddy (1979) 120 ITR 46 (SC)]**
- (iii) Addition of floor to the existing house eligible for exemption under section 54: The Assessee sold his residential property and invested the capital gain within the stipulated time in the construction of a new floor on another house owned by him by demolishing the existing floor, it was held that he was entitled to exemption under section 54. **[CIT v Narasimhan (PV) (1990) 181 ITR 101 (Mad)].**

- (iv) No exemption under section 54 if land only is sold: The house property concerned must be building or land appurtenant to building. The basic test was whether the land appurtenant to building could be used independent of the user of the building. If so, it cannot be said to be land appurtenant to building. Further, the basic requirement is that the capital gain should arise from the transfer of building or land, the income of which is chargeable under the head Income from house property. If the land alone is sold, the provisions of section 54 will have no application as much as the income from land is not chargeable under the head Income from house property. **[CIT v Zaibunnisa Begum (1985) 151 ITR 320 (AP)]**.
- (v) Successor is entitled to benefit of exemption in case of death of the Assessee: In case of Assessee's death during the stipulated period, benefit of exemption under section 54(1) is available to legal representative if the required conditions are satisfied by the legal representative. **[Ramanathan (CV) v CIT (1980) 155 ITR 191 (Mad)]**.
- (vi) Purchase of limited interest in the house eligible for exemption under section 54: Where an Assessee had sold the residential house and acquired only 15% interest in another house and such other house was already used for residence prior to purchase, it was held that the benefit should be available to the Assessee. **[CIT v Chandaben Maganlal (2000) 245 ITR 182 (Guj)]**. In coming to the conclusion, the High Court followed its own earlier decision in **CIT v Tikyomal Jasanmal (1971) 82 ITR 95 (Guj)**. In that case, what was purchased was a unit of house property, while in the present case before the High Court, it was a limited interest in the property.
- (vii) Construction in another property not eligible for exemption: An Assessee gifted some land to his wife. He, thereafter, constructed a building on the said land. The Government acquired the land and building and paid compensation for the land to the wife and for the building to the Assessee (husband). It was held that capital gain on land was assessable in the hands of the husband by virtue of section 64 but he was not entitled to exemption under section 54 in respect of capital gain on the acquisition of land of the wife as the capital gain to the wife did not arise on transfer of a residential house. **[T.N. Vasavan v CIT (1992) 197 ITR 163 (Ker)]**.
- (viii) House of the firm used by partners: Where a firm's property is used for residence of partners and thereafter distributed to the partners upon dissolution of the firm and the partner sells the same, exemption can be claimed by the partner under section 54. For this purpose, the period for which this property was held by the firm shall also be taken into account for determining the question whether the house property in exemption was a long-term capital asset or not. **[CIT v M.K. Chandrakanth (2002) 258 ITR 14 (Mad)]**.
- (ix) There can be both purchase and construction: Where the Assessee had partly invested the capital gains on the purchase of another house and partly on the construction of additional floor to the house so purchased within the prescribed time limit, it was held that the Income-tax Officer was not justified in restricting exemption to investment on

purchase only, holding that the exemption under section 54 was admissible either for purchase or for construction but not for both. [**Sarkar (B.B.) v CIT (1981) 132 ITR 661 (Del)**].

- (x) Construction can start before the sale of asset: The construction of the new house may start before the date of transfer, but it should be completed after the date of transfer of the original house. [**CIT v J.R. Subramanya Bhat (1987) 165 ITR 571 (Karn)**]. The very fact that purchase of another house as also the construction can take place before the sale means that cost of purchase or new construction need not flow from the sale proceeds of the old property. [**CIT v H.K. Kapoor (Decd) 1998 234 ITR 753 (All)** and **CIT v M. VasudevanChettiar (1998) 234 ITR 705 (Mad)**].
- (xi) Allotment of a flat by DDA under the Self-Financing Scheme shall be treated as construction of the house [Circular No. 471, dated 15-10-1986]. Similarly, the allotment of a flat or a house by a cooperative society, of which the Assessee is the member, is also treated as construction of the house
- (xii) [Circular No. 672, dated 16-12-1993]. Further, in these cases, the Assessee shall be entitled to claim exemption in respect of capital gains even though the construction is not completed within the statutory time limit. [**SashiVarma v CIT (1997) 224 ITR 106 (MP)**]. Delhi High Court has applied the same analogy where the Assessee made substantial payment within the prescribed time and thus acquired substantial domain over the property, although the builder failed to hand over the possession within the stipulated period. [**CIT v R.C. Sood (2000) 108 Taxman 227 (Del)**].
- (xiii) As per a circular of CBDT, the cost of the land is an integral part of the cost of the residential house, whether purchased or constructed. [Circular No. 667, dated 18-10-1993].
- (xiv) Where an Assessee who owned a house property sold the same and purchased another property in the name of his wife, exemption under section 54 shall be allowable. [**CIT v V. Natarajan (2006) 154 Taxman 399 (Mad)**].
- (xv) Where the Assessee utilized the sale consideration for other purposes and borrowed the money for the purpose of purchasing the residential house property to claim exemption under section 54, it was held that the contention that the same amount should have been utilized for the acquisition of new asset could not be accepted. [**Bombay Housing Corporation v Asst. CIT (2002) 81 ITD 454 (Bom)**]. Also followed in **Mrs. Prema P. Shah, Sanjiv P. Shah v ITO (2006) 282 ITR (AT) 211 (Mumbai)**].
- (xvi) Where non-resident Indian sold property in India and purchased residential property in U.K. and claimed deduction under section 54, it was held that it was not necessary that residential property should be purchased in India itself. [**Mrs. Prema P. Shah, Sanjiv P. Shah v ITO (2006) 282 ITR (AT) 211 (Mumbai)**].

But, After the Amendment vide Finance (No.2) Act, 2014, exemption is no longer allowed on Investment in residential house outside India.

If Long Term capital gain is up to Rs. 2 Crores, the Assessee can acquire two residential house properties in prescribed time limit. However, the benefit of acquisition of two-house property is available once in a lifetime. (As Amended by Finance Act 2019 w.e.f A.Y. 2020-2021)

d. Whether Investment made in new house property prior to the date of transfer of old house property is eligible as deduction under section 54 or 54F?

Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs Bharti Mishra (supra) has observed that sub-section 4 of section 54F prescribes appropriation of sale consideration of original asset towards provision of new asset made within one year before the date of transfer of original asset, two years from the date of transfer or construction of new in-house property, within three years from the date of transfer of original receipt but the Act does not prescribe any condition as to the date of commencement of construction of house property which may be commenced even before the date of transfer of original receipt. Similarly, the Hon'ble Karnataka High Court in the case of Commissioner of Income Tax vs J.R. Subramanya Bhat reported in 165 ITR 571 (Kar.) expressed similar view and had held that investment made towards construction of house property prior to the date of transfer should also be eligible as deduction for the purpose of section 54 of the Act.

Accordingly, respectfully following the ratio laid down by the Hon'ble Delhi High Court and the Hon'ble Karnataka High Court as aforementioned, we are of the view that provisions of section 54F do not prescribe any condition as to the date of commencement of construction of new house property, meaning thereby that the construction of house property may be commenced even before the date of transfer of original asset. However, it should be completed within three years after the date of the transfer of the original asset.

In the case of Tarun Jalali V. DDIT (ITAT Delhi) it was held that

On the basis of this case, we find that the construction of house property was completed within three years from the date of transfer and accordingly, we are of the view that the Assessee is eligible for exemption u/s 54F in respect of the two disputed amounts viz. Rs. 12 lakhs paid on 20.06.2008 and Rs. 14,91,697 paid on 22.08.2008 which were expended prior to the date of transfer of original asset.

Whether the Assessee is eligible to claim deduction under section 54 in respect of purchase of more than 1 house property wherein the said purchases of more than 1 house was on account of more number of family members?

Yes as held in K.G Vyas V. Seventh Income tax Officer by Mumbai Tribunal *the mere fact that the Assessee had purchased them jointly either in the name of his wife or in the names of*

his sons would not materially affect or alter the factual position that he is the owner of all the four flats and that he is also living in them along with the members of his family. The fact that on a future date the Assessee may divide these properties among the members of his family is of no relevance or consequence for the purpose of allowing relief to the Assessee under Section 54, since the Assessee has fulfilled the conditions laid down under Section 54, namely, that he had purchased a house for his own residence by investing the sale proceeds of his former residential house in the purchase of these four flats. It can hardly be denied that considering the strength of the Assessee's family, with ten members, the accommodation acquired by the Assessee in the form of four flats in the same building is commensurate to his requirements. We are, therefore, inclined to accept the contentions of the learned counsel for the appellant and hold that the Assessee is entitled to full relief under Section 54

b) Capital gain on transfer of land used for agricultural purposes [Section 54B]:

Any capital gain (short-term or long-term), arising to an Assessee (only individuals), from the transfer of any agricultural land which has been used by the Assessee or his parents for at least a period of 2 years immediately preceding the date of transfer, for agricultural purposes, shall be exempt to the extent such capital gain is invested in the purchase of another agricultural land within a period of 2 years after the date of transfer to be used for agricultural purpose, provided the new agricultural land purchased, is not transferred within a period of 3 years from the date of its acquisition.

Section 54B is applicable only to individuals and not to any other Assessee this is because the section uses the expression used by "his or a parent of his" which clearly indicate that the "Assessee" refers to an individual. [CIT v Devarajalu (G.K.) (1991) 191 ITR 211 (Mad)]

c) Capital gain on transfer of long-term capital assets not to be charged on investment in certain bonds [Section 54EC]:

Any long-term capital gain, arising to any Assessee, from the transfer of any capital asset on or after 1-4-2000 shall be exempt to the extent such capital gain is invested within a period of 6 months after the date of such transfer in the long-term specified asset provided such specified asset is not transferred or converted into money within a period of 5 years from the date of its acquisition.

Exemption under section 54EC not available in respect of deemed capital gains on amount received on liquidation of a company: Section 54E (now section 54EC) permits reinvestment benefit, if the sale proceeds/capital gains on sale of long-term capital assets are invested in the manner required by the section. Where a shareholder is made liable for deemed capital gains on amount received on liquidation of a company, is he eligible for reinvestment benefit under section 54E (now 54EC)? It was held that section 54E (now 54EC) would have application only where there is an actual transfer and not in

a case, where there is only a deemed transfer. [CIT v Ruby Trading Co. Pvt. Ltd. (2003) 259 ITR 54 (Raj)].

Benefit under section 54EC, etc. available even on transfer of depreciable assets: Although as per section 50 the profit arising from the transfer of depreciable asset shall be a gain arising from the transfer of short term capital asset, hence short-term capital gain but section 50 nowhere says that depreciable asset shall be treated as short-term capital asset. Section 54E [or say 54EC or 54F, etc.] is in independent provision which is not controlled by section 50. If the conditions necessary under section 54E are complied with by the Assessee, he will be entitled to the benefit envisaged in section 54E, even on transfer of depreciable assets held for more than 36 months. [CIT v Assam Petroleum Industries (P.) Ltd. (2003) 131 Taxman 699 (Gau). See also CIT v ACE Builders Pvt. Ltd. (2005) 144 Taxman 855 (Bom)].

On the same analogy benefit under section 54EC or 54F shall be available in the case of depreciable asset if these are held for more than 36 months. (Now the period of holding is reduced from 36 to 24 months for determining Long Term Capital Asset)

AMENDMENTS IN THE FINANCE (NO.2) ACT, 2014:

Earlier due to Various Decision of Courts ceiling limit of Rs. 50Lakh was taken as per financial year. Because the words used in proviso to Section 54EC is “any financial year” and not “relevant financial year”.

This means that the Assessee cannot invest more than Rs. 50 lacs during one financial year under 54EC bonds but he can do so in two different financial years provided that the financial year falls within the six months’ time limit after the sale of assets. Reliance is placed on:

AspiGinwala v. Asstt. CIT [2012] 20 taxmann.com 75 (Ahd. - Trib.)

But, After the Amendment vide Finance (No.2) Act, 2014 The investment in capital gains bonds for section 54EC exemption is now being restricted to Rs.50 lakh both in the year of transfer of the capital asset and in the subsequent year, so that one can’t claim exemption of Rs.100 lakh for investments made in both the years.

The above amendment has taken effect from 01.04.2014

If Assessee takes any loan or advances on the security of Bonds/Units as specified in section 54EC then he shall be deemed to have converted the said bonds into money on the date on which such loan or advance is taken and capital gain exempted earlier shall be taxable to the Assessee in the year of such conversion

d) Capital Gain on transfer of asset, other than a residential house [Section 54F]:

Any long-term capital gain, arising to an individual or HUF, from the transfer of any capital asset, other than residential house property, shall be exempt in full, if the entire

net sales consideration is invested in purchase of one residential house within one year before or two years after the date of transfer of such an asset or in the construction of one residential house within three years after the date of such transfer. Where part of the net sales consideration is invested, it will be exempt proportionately.

The above exemption shall be available only when the Assessee does not own more than one residential house property on the date of transfer of such asset, exclusive of the one which he has bought for claiming exemption under section 54F.

Section 54 and 54F are comparable in many respects. Hence, the law and precedents relating to section 54 as to whether the house property on which investment is made is residential or not, the law relating to time limits, the precedent that construction could start earlier though completed within three years are all equally applicable for section 54F. Hence, for judicial decisions for section 54F, refer to the judicial decisions given under section 54.

Circular: No. 743, dated 6-5-1996.

Taxability of unutilized deposit under the Capital Gains Accounts Scheme, 1988 in the hands of the legal heirs of the Assessee

1. Under sections 54, 54B, 54D, 54F and 54G of the Income-tax Act, 1961, capital gain is not chargeable to tax if the amount of capital gain or net consideration has been utilized for specified purposes by the Assessee within the stipulated period laid down in the relevant section. These provisions also provide for the deposit in specified Banks, etc., of the amount of capital gain which is not utilized by the Assessee for the acquisition of new assets before the date of furnishing the return of income under section 139(1). The amount of capital gain already utilized for the acquisition/construction of new asset together with the amount deposited is deemed to be the cost of new asset and, consequently, this amount is not chargeable to capital gain in the year of transfer of asset. The provisions of sections 54, 54B, 54D, 54F and 54G further provide that if the amount deposited is not utilized wholly or partly for the prescribed purposes, within the period specified, the amount not so utilized shall be charged under section 45 as the income of the financial year in which the period of two/three years (as prescribed in the relevant section) from the date of transfer of the original asset expires.
2. A question has been raised regarding the taxability of the unutilized deposit amount in the case of an individual who dies before the expiry of the stipulated period.
3. The matter has been considered by the Board, and it is clarified that in such cases the said amount cannot be taxed in the hands of the deceased. This amount is not taxable in the hands of legal heirs also as the unutilized portion of the deposit does not partake the character of income in their hands but is only a part of the estate devolving upon them.

21.7 Redevelopment issues in case of Builders, Members, Landowner, Society, etc.,

REDEVELOPMENT FROM VIEWPOINT OF FLAT OWNER

DEVELOPMENT RIGHTS – WHO ARE ENTITLED – SOCIETIES OR MEMBERS?

In respect of Tenants co-partnership co-operative societies, which are of the nature of “Flat Owners Societies” in which the flats are acquired by the society from the builder on ownership basis and thereafter Society is formed, and land is conveyed to the society and individual members acquire ownership rights over the building and underneath the development rights.

This concept has been recognized under the Bombay stamp Act as on the conveyance in favor of the housing societies, stamp duty paid by the purchasers of flats on ownership agreements is deducted from the stamp duty payable on the market value of the property transferred in favor of the society as per proviso to article 25 of schedule 1 of the Bombay Stamp Act.

Circular No. F.N. 4 / 28 / 68 – WT DT. 10.0.1969 AND 27.01.1969 explaining the provisions of section 5(1)(iv), the Board clarify that flats vest with individual members of society.

I] Additional Area expected at Redevelopment

Liability of Income/Capital Gain Tax, if any, on: -

A. Additional area in the hands of individual members.

Ans. As per Section 54 of the Income Tax Act, 1961, if any residential property which was held for a period of more than 24 months is sold or given for redevelopment and the new flat is purchased or acquired within a period of 1 year before or 2 years after the sale or constructed within 3 years after the sale then capital gain arising on the transfer of the old flat will be exempt to tax u/s. 54 of the Income Tax Act, 1961 to the extent of the cost of such new flat.

In the case of redevelopment, the new flat to be acquired is treated as constructed for the purpose of Section 54. Thus, if the new flat is acquired by the owner within a period of 3 years from the surrender of the original flat then the capital gain arising from the sale of the original flat can be claimed to be exempted u/s. 54 of the Income Tax Act.

If the new flat is not acquired by the owner within a period of 3 years then the Assessing Officer, at his discretion, can disallow the same at any time during the assessment.

However, the allotment of a flat or a house by a cooperative society, of which the Assessee is the member, is also treated as construction of the house [Circular No. 672, dated 16-12-1993]. Further, in these cases, the Assessee shall be entitled to claim exemption in respect of capital gains even though the construction is not completed

within the statutory time limit. [Sashi Varma v CIT (1997) 224 ITR 106 (MP)]. Delhi High Court has applied the same analogy where the Assessee made substantial payment within the prescribed time and thus acquired substantial domain over the property, although the builder failed to hand over the possession within the stipulated period. [CIT v R.C. Sood (2000) 108 Taxman 227 (Del)].

Hence, relying upon the above judgments, even if in the case of development, the new flat is acquired by the owner after a period of 3 years from the surrender of the old flat, an Assessee can claim exemption u/s. 54.

If the new flat acquired to claim exemption u/s. 54 is sold within a period of three years from the date of purchase, then the capital gain exemption claimed earlier would become taxable in the year the new flat is transferred.

Thus, in your case, the Receipt of extra carpet area over and above the existing area could be claimed as exemption u/s. 54 of the Income Tax Act, 1961.

Further, we would like to state that under the definition of “Transfer” according to Sec 2(47) Income Tax Act, 1961, transfer, in relation to a capital asset, includes sale, exchange, or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law.

An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. Hence, the acquisition of a new flat would be considered as an exchange and would be considered as transfer for the purpose of capital gain.

Argument could not be made that no cost is incurred by any member for the acquisition of the new flat and hence capital gain cannot be computed and the case does not fall within the ambit of Section 55(2). The member is forgoing his rights in the old flat. And hence, it would be considered as the cost of acquisition of the new flat.

However, if the residential flat is held for a period of less than 24 months then the receipt of extra area by the individual members would be taxable in the hands of the individual members.

B. Cash compensation received upon surrender of entitled additional area, in part or full, by an individual member.

Ans. If the Individual member is surrendering a part of the existing area, then the Individual member would be liable to pay Capital Gain Tax. The sale consideration would be calculated as per Section 50C of the Income Tax Act, which is as follows:

“Where the consideration received or accruing as a result of the transfer by an Assessee of a capital asset, being land or building or both, is less than the value

adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer: (Inserted w.e.f. 1st April, 2017)

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer (Inserted w.e.f. 1st April 2017)

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.”

However, if the Individual member is surrendering a part of the additional area, then the Individual member would be liable to pay capital gain tax on the same. Because the consideration received in monetary terms as against exchange of old flat and not invested in residential flat as per section 54.

C. The Society for receiving amenities and facilities for the common use of its members and their families.

Ans. If the Society is receiving for amenities and facilities for the common use of its members and their families then the same is not taxable in the hands of the Society or the Individual members as there is no cost of acquisition of the same.

In deciding the case of JETHALAL D.MEHTA V. DY. CIT [(2005) 2 SOT 422 (MUM.)], Hon.

Income Tax Appellate Tribunal mainly relied upon Supreme Court decision in the case of CIT V. B.C.SRINVASA SHETTY 128 ITR 294 in which it was decided that if there is no cost no capital gain can be worked out hence amount received is to be treated as exempt receipt.

II] Corpus Money expected at Redevelopment

Liability of Income/Capital Gain Tax, if any, on: -

A. Corpus Money received by the Society from the Developer in lieu of surrender of part entitlement of FSI/Development Rights, such funds being invested by the Society to earn interest income to meet/subsidize the maintenance costs of its Redeveloped premises and property.

Ans. If at the time of Redevelopment, the Society was not in possession of unutilized FSI/Development Rights, then the Society would not be liable to pay any Capital Gain Tax on the receipt of the Corpus Money on surrender of a part of FSI/Development Rights.

Further, if the Society has unutilized FSI/Development Rights in its possession at the time of Redevelopment, then the receipt of the Corpus Money on surrender of the part of FSI/Development Rights would be taxable in the hands of the Society.

Also, in the case of (1) New Shailaja CHS v. ITO (ITA NO. 512/M/2007. BENCH B dated 2nd Dec, 2008 (mum.) and (2) ITO v. LOTIA COURT CO- OP. HSG. SOC. LTD. (2008) 12

DTR (MUMBAI)(TRIB) 396 it was held that where the Assessee, a Co-op. Hsg. Soc. Ltd. Became entitled, by the virtue of Development Control Regulations, to Transferable development Rights (TDR) and the same was sold by it for a price to a builder, the question arose whether the transaction of sale receipt could be taxed. It was held that though the TDR was a Capital Asset, there being no 'cost of acquisition' for the same, the consideration could not be taxed. The same is held in the cases of NEW SHAILAJA CHS LIMITED (ITA NO. 512/MUM./2007), OM SHANTI CO-OP. HSG. SOC. LTD. (ITA NO.2550/MUM./2008) & LOTIA COURT CO-OP. HSG. SOC. LTD. (ITA NO. 5096/MUM./2008).

Further, in the case of MAHESHWAR PRAKASH 2 CHS LTD. 24 SOT 366 (MUM.), it was held that the Assessee-society acquired the right to construct the additional floors by virtue of DCR, 1991 which could not be available to the Assessee on expenditure of money. Prior to DCR, 1991, no society had any right to construct the additional floors, so it was not a tradable commodity. Suddenly by virtue of DCR, 1991, the right was conferred by the Government on the Assessee. Such rights exclusively belonged to the building owned by society. It could not be transferred to any other building.

Similarly, similar rights belonging to other societies could not be purchased by the Assessee for the purpose of constructing additional floors in its own building. Therefore, such rights had no inherent quality of being available on expenditure of money and, therefore, the cost of such assets could not be envisaged. Hence, the said view was fully justified in terms of the decision of the Apex Court in the case of B.C. Shrinivasa Shetty.

Therefore, the right acquired by the Assessee did not fall within the ambit of section 45 itself. The amended provisions of section 55(2) were also not applicable, since such right was not covered by any of the assets specified in section 55(2)(a).

Therefore, the money` received by the Assessee from the developer was not chargeable to tax under section 45. Therefore, the impugned orders passed by the lower authorities were to be set aside.

B. Corpus Money received by the Society from the Developer (as described in A above) and subsequently distributed to its members. Whether such incomes enlisted above at A & B, if taxable, shall be treated as Capital Gains or deemed to be income earned in the year of receipt.

Ans. As per Maharashtra Co-op. Societies Act, 1960, a Co-operative Society cannot distribute the corpus funds to its Individual member, it can only declare dividends.

However, the declaration of Dividends has lots of restrictions and formalities.

C. Liability of Income Tax, if any, on interest income arising from investment of such Corpus Money by the Society in the Co-operative/other Banks.

Ans. If the Society receives an interest income from a Co-operative bank, then the same is exempt from tax. And, if the interest income is received from other banks than the same is taxable and the Society must pay tax on the same.

However, as per Hon'ble Tribunal Judgment in the case of ITO v. Sagar Sanjog C.H.S. Ltd., ITA Nos. 1972 to 1974 and 2231 to 2233/ Mum./ 2005(BCAJ) it was held that the interest income earned out of the fund money invested went to reduce the maintenance. According to the tribunal, the interest would have been taxable, had there been surplus left after it being adjusted against the maintenance expenses. The tribunal also noted that there was nothing on record to suggest that the interest income would be given to members on dissolution of the Society.

Thus, even the interest received from other than Co-operative Bank and spent on Society's work then the concept of Mutuality will apply and is not liable to tax, but this view is not free from litigation.

III] Rent for Temporary Alternative Accommodation including Deposits, if any:

Rental allowance may be received by individual members in the event of need for Relocation during Redevelopment. Such amounts may be utilized in part or in full towards rent paid for alternative premises or may remain entirely unspent if the member already has his/her own alternative accommodation. Such allowance may be received for about three years, either together in one tranche in advance or in installments on a staggered basis.

Liability of Income Tax, if any, on such Rental Allowance, including Deposits, if any, received by the individual members.

Whether such income, if taxable, shall be treated as income earned in the year of receipt (if received on a staggered basis) or entirely as income in one year (if received fully in advance)

Ans. To get the old building redeveloped, the existing structure of the old building is required to be demolished and hence, it is necessary to vacate the same. To facilitate redevelopment and to compensate the flat owners for the hardship to be faced by them in this regard, the Developer might offer them Rent compensation which they would be paying for the temporary accommodation during the period of redevelopment.

The Rent Compensation provided by the developer to the owner should be expended by the owners for the purpose of their temporary accommodation and other expenditure related thereto.

If the actual rent paid by the flat owners is less than the Rent compensation received by them from the redeveloper then the excess of such amount received will be taxable under the head Income from Other Sources, otherwise, the Rent compensation received by the flat owners from the redeveloper is not taxable.

The Rent Compensation given to the Individual Members shall be taxable in the year of receipt if the Rent Compensation is received on a staggered basis and the whole is not spent by the Individual Members on their alternative accommodation.

However, if the Rent Compensation is given to the Individual Members in one tranche in advance, then the Rent Compensation received by the Individual Members would be taxable on a proportionate basis if the same is not spent on alternative accommodation.

IV] Hardship Allowance/ Compensation for Inconvenience.

Members opting not to be temporarily relocated during the Redevelopment may receive "Hardship Allowance" from the Developer.

Members agreeing to be temporarily relocated during Redevelopment may receive "Compensation for Inconvenience" from the Developer.

Liability of Income Tax, if any, on such Allowance/ Compensation and if taxable, mode of computation i.e. whether as income in the year of receipt or whether on a staggered basis as received.

Ans. Along with extra area and Rent compensation, the redevelopers also offer lumpsum amount to the flat owners in addition to extra area and compensation.

In the case of **CIT V. B.C.SRINVASA SHETTY 128 ITR 294** in which it was decided that if there is no cost no capital gain can be worked out hence amount received is to be treated as exempt receipt.

Hence, the Hardship Allowance and the Compensation for Inconvenience is not taxable in the Hands of the Individual Members as Hardship Allowance and Compensation for Inconvenience can't be worked out in monetary terms and have no cost. Since there is no cost of acquisition, as per Income Tax Act, 1961, the receipt would be treated as a Capital Receipt and thus, is exempt from tax.

V] Reimbursement of Expenses from Developer.

Liability of Income Tax, if any, on the Society/ individual members for Reimbursement from Developer of Expenses such as Stamp Duty, Fees of Consultants (Architect, Lawyers, Chartered Accountants, etc.) cost of updating members and holding General Body meetings, Administrative Expenses towards the Redevelopment Process, etc. incurred/ to be incurred.

Ans. Anything amount which is reimbursed by the Developer is not taxable either in the hands of the Society or the Individual Members, provided that the entire amount of reimbursement is been spent on the expenses it is reimbursed for.

Thus, if excess amount is reimbursed by the Developer than the amount which is actually spent for the purpose than the excess amount would be taxable on the receipt of the same.

However, in the case of a Society, if excess amount is reimbursed to a Society by the Developer than actually spent by the Society, and the excess amount so received is been used by the Society for payment of expenses which are for the welfare of the Society or the Individual Members than the excess amount received by the Society would not be taxed and hence, would be exempt. Otherwise, the excess amount received by the Society would be taxable.

VI] Liquidation & Disbursement of Existing Sinking Fund.

Liability of Income/Capital Gain Tax, if any, on the Society/ individual members upon liquidation and disbursement to existing members (with permission from Registrar/any other authority) of existing, unutilized Sinking Fund (generated by annual contributions from members and bank interest earned thereon.) prior to induction of new members arising from saleable portion of Redeveloped premises.

Ans. In our view, the Sinking Fund is to be used on the property itself either for the purpose of development or Heavy Repair.

However, if the Registrar gives permission, then the Sinking Fund could be distributed amongst the Individual Members, which again has several restrictions.

This distribution of Sinking Fund after the permission of the Registrar would be taxable in the hands of the Individual Members to the extent of interest in such a fund. The

distribution of the principal amount would not be taxable in the hands of the Society or the Individual Members.

VII] TDS on receipt.

Whether tax shall be deducted at Source (TDS) from Corpus Money, Allowances, Compensations, Reimbursement of Fees of Consultants and other Expenses, Rent for Temporary Alternative Accommodation and Deposits or any other form of receipt in the hands of the Society/ its individual members.

Ans. As per the Income Tax Act, 1961, no TDS is to be deducted on the amount reimbursed by the Developer to the Society or the Individual Members or on other items such as Corpus Money, Allowances, Compensations, Reimbursement of Fees of Consultants and other Expenses, Rent for Temporary Alternative Accommodation and Deposits or any other form of receipt.

However, when the Society makes payments such as Professional Fees, Contractor, etc, the Society is to Deduct Tax at Source at the rate given below and pay the same to the Income Tax Department and file the Quarterly Returns:

Contractor	1% in the case of individual/HUF
	2% in the case of others u/s 194C
Rent 10% u/s 194I Professional Fees	10% u/s 194J Commission & Brokerage 5% u/s 194H

VIII] Tax Planning (Saving) Instrument.

A. Recommendation of an umbrella of designated schemes, funds, securities, etc. under which the Society/ its individual members may invest taxable proceeds, if any, to minimize the impact of Income/ Capital Gain Tax.

Ans. In our view, whether there would be any capital gain tax liability arising on account of such transactions of Redevelopment, is not free from litigation, in view of the fact that various litigations are going on in various courts in our country and the issue would finally be settled when the Supreme Court decides the matter.

It is also to be noted that even the Supreme Court changes its view from time to time depending on the frequent amendments in the Income Tax Laws.

Further we would like to state that Income Tax Department have filed appeal before Hon. High Court and, if the court allows them against the Assessee, then the same would be taxable for the Society otherwise till now it is tax free. Even assuming that Hon High Court decide the case against the Assessee then Assessee will be liable to pay tax with interest but no penalty can be charged in view of decision of Supreme Court decided in the case of Reliance Petro products Pvt. Ltd. Vs. CIT (2010) 322 ITR 158 (SC) on the principle that if Assessee give all particulars of income in return and claim certain

wrong deduction due to ignorance of highly technical law then that will not attract penalty u/s 271(1)(c)/270A of the Income Tax Act, 1961.

Further we would like to say that based on the above, till now the Corpus received by the Society and the individual members is tax free but in case the High Court decides the case against the Society then to be on the safer side and to avoid litigation with the Income Tax Department, we suggest that recipient can invest the same in Specified Bonds to claim exemption u/s. 54EC of the Income Tax Act. One can earn interest by investing in the Bonds for 5 yrs which would be an added benefit. The interest so earned would be taxable.

IX) Restructuring of Society.

- A. *Whether the composition of the Society may need to be restructured in any manner to facilitate minimization of the tax liability.***
- B. *Whether admission of new members (from saleable portion.) in the existing Society or their Accommodation as an independent new Society would have any bearing on the tax liability of the Society/its individual members.***

Ans. No, the composition of the Society need not be restructured in any manner to facilitate minimization of the tax liability.

The admission of the new members to the existing Society or their accommodation to the new Society would not make much difference to the tax liability of the Society or its Individual Members.

However, it would be advisable to admit the new members to the existing Society because due to an increase in the number of Members of the Society, the fixed charges or expenses of the Society like maintenance, etc would be distributed amongst the Members.

REDEVELOPMENT FROM THE VIEWPOINT OF LAND OWNER

When a Joint Development Agreement is entered between Landowner and Developer to develop a land, The Landowner shall provide land to Developer for development of project and in consideration of this, the Developer can provide specified developed area to Landowner or he can give money as well as developed area to the landowner as per terms agreed between them.

Point of Taxation in the hands of Landowner and Valuation

Earlier, i.e. before assessment year 2018-19 there was dispute between Assessee (landowner) and income tax department for taxation of joint development agreement wherein income tax department levied taxes in hands of landowner at the time of execution of agreement with developer. However, the landowner preferred to pay tax after receiving his share of the developed area. This was causing lot of hardship to

landowner because there was no cash flow at the time of JDA. To remove the considerable hardship faced by landowners and to end the existing dispute an amendment was brought in the Finance Act, 2017 for taxation of JDA which are discussed as under: -

The finance act 2017 has inserted sub section 5A to section 45 which is effective from 01.04.2018 i.e. AY 2018-19 (definition of the said section is already discussed in Chapter IV)

As per the provision of Section 45(5A) the capital gain tax will accrue in the hands of the landowner (being Individual/ HUF) when they get their share of developed land with completion certificate from competent authority. Sale consideration in hands of Landowner will be the Valuation of his Developed Portion workout by Stamp Authority for working of stamp duty as on date of issuing completion certificate. This amount will further increase by the amount of monetary consideration received or receivable under JDA.

Example: -

Mr. A (Individual) was owner of 10-acre land which was purchased by him in the year 2005. During the financial year 2017-18 he entered into JDA with developer wherein it is agreed that developer shall give ten lakh rupees and 1000 sq. fit developed area in consideration of land. On 07.07.2019 a project completion certificate was issued and on that date the stamp duty value of 1000 sq. fit is Rs. 30,00,000/- Now tax-ability in the hands of Mr. A will be as follows: -

The gain will be taxed in AY 2020-21 and for this purpose sale consideration of land will be Rs. 40,00,000/- (Rs.30 Lakh Stamp Value of Developed Area and Rs.10,00,000/- monetary consideration received under JDA). Mr. A will be allowed benefit of the cost of land against sale consideration and balance gain will be taxable in his hands as capital gain in AY 2020-21. If the land was long term capital asset. Then the benefit of Indexation will also be allowable to Landowner, and he can avail exemption u/s 54, 54EC, 54F etc.

Thus Landowners will be required to pay tax in respect of their share of developed area along with monetary consideration as agreed in JDA, only after obtaining completion certificate from the competent authority.

However, if the landowner is other than individual or HUF, then taxation will govern by old proviso of law. Generally, it depends upon the drafting & conditions of agreement. But generally, gain will be taxable in the year when the Possession of property transferred to developer for development.

Nature of Gain

The nature of gain depends upon the classification of assets by the landowner. If the Land is classified as Capital Asset (Investment) in books of account. Then the gain will be capital.

However, if the Land is classified as Stock in trade, then the gain will be Business Income and will be taxable in the year when Risk & Reward of Land is transferred to the Developer, which may be the year when the JDA was executed.

Thus, the tax treatment will depend upon the treatment of land in books of Landowner.
TDS liability

Section 194IC deals with TDS in respect to an agreement governed by sub-section (5A) of section 45.

Sec 194IC is reproduced for our ready reference

194-IC. Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon.

Thus, as per the above provision the developer is required to deduct 10% TDS on Monetary consideration payable to Landowners while making payment or crediting consideration in Landowners account maintained in his books of account whichever is earlier.

REDEVELOPMENT FROM THE VIEWPOINT OF DEVELOPER

Chargeability of income depends upon Revenue Recognition. As the developer is dealing in the real estate business. Hence, the Income will be business Income and Guidance Note on “Recognition of Revenue by Real Estate Developer” is relevant for revenue recognition.

Guidance Note on “Recognition of Revenue by Real Estate Developers” is recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so.

As Per Section 145 of the IT Act, this refers to the method of accounting regularly employed by an Assessee as well as to the notification by the Central Government of the Accounting Standards to be followed by any class of Assessee or in respect of any class of income. Pursuant to the powers Under Section 145(2) notification dt. 25th Jan. 1996 was formulated. The notification does not prescribe a method of accounting for

any class of Assessee or classes of income as is evident from the reading of the said notification.

Thus, it is liberty of the Assessee that which method he wants to follow for revenue recognition.

(The method of accounting for real estate developers is discussed in Chapter III)

Direct Taxes Committee of ICAI made detailed representation to Central Board of Direct Taxes during the Direct Tax Workshop with CBDT which was followed by written representation to Chairman, CBDT on 31.03.2016 and Hon'ble Finance Minister, on 7.04.2016. On invitation by CBDT subsequently, the ICAI representatives met Joint Secretary (TPL-I) and Director (TPL-III) at North Block, New Delhi on 18th April, 2016 and 27th April 2016 and made detailed presentations on difficulties that would be faced by stakeholders on implementation of ICDS. The representations made by ICAI were considered positively by the Expert Committee on ICDS in meeting held on 12.05.2016 and ICAI was asked to prepare detailed FAQs and amendments to ICDS which were submitted on 20.05.2016. FAQ No. 15 deals with this situation which is as under:

Question 15: Since there is no specific scope exclusion for Real estate development activity and BOT projects from ICDS IV on Revenue Recognition, please clarify whether ICDS III and IV should be applied by real estate developers and BOT operators. Also, there is no specific exclusion for lease income in ICDS IV. Please clarify whether ICDS IV is applicable for lease income.

Answer: The Accounting Standards Committee has recommended that separate ICDS should be notified for real estate development activity, BOT projects and Leases. A draft ICDS on Leases was also published for public comments but not finally notified. Hence, pending notification of specific ICDS to deal with these revenue items, they shall continue to be governed by existing tax laws. It is clarified that ICDS III and ICDS IV do not apply to these business activities.

Thus, as per ICAI it is clarified that revenue recognition of real estate developers will be governed by old law. As per old law and judicial finding the developer can follow any method with consistency.

However, Recently Central Board of Direct taxes released draft ICDS on Real Estate Transaction on May 11, 2017, wherein real estate developer are required to compulsory follow the percentage of completion method for taxation with cooling period for old projects. Till date that ICDS is not notified. Therefore, we cannot comment on the same. Today's Law position can be changed as per the final ICDS comes in effect in Future.

Thus, the developer's Income will be taxable as Business Income.

The point of taxation will depend upon the method adopted by the developer. If the Project Completion Method is adopted, then income will be taxed in the year when the project gets

completed. And if we adopt the Percentage Completion Method, then income will be taxed in a phased manner as per the works completed in respective years.

21.8 Some additional concepts with respect to Builders and Developers

In case of deduction u/s 80IB(10) can it be claimed even after the period of tax holiday as provided in said section in case of unsold stock held by the developer?

When construction is completed before 31.03.2008, but the sale of some flats take place in subsequent years, deduction u/s 80 – IB (10) can be claimed. Generally, in incentive provisions granting tax holidays, there is always a specification as to the number of years the tax holiday can be enjoyed. But, in Section 80 – IB (10), there is no specification as to the number of years the tax holiday is available.

DISCLOSURE IN THE COURSE OF SEARCH – WHETHER INCOME MUST BE TAXED ON COMPLETION OF THE PROJECT?

The conduct of search and seizure operation in a particular year does not lead to an inference that the undisclosed income detected as a consequence thereof has to be taxed in the assessment year relevant to the previous year in which search was conducted. In other words, accounting of profits has yet to be made on the basis of method of accounting followed by the Assessee.

It is held that Undisclosed income in the form of ‘on money’ stood established by seizure of document r/w statement recorded under s. 132(4); however in computing undisclosed income, expenditure incurred has to be allowed; income discovered has to be taxed in assessment years as per method of accounting followed by Assessee.

Dhanvarsha Builders & Developers (P) Ltd. vs. DCIT [(2006) 102 ITD 375 (Pune)] CONCEPT OF DEEMED RENT UNDER SECTION 23(5)

Where the property consisting of any building or land appurtenant there is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil

Analysis of Section 23(5)

- (a) This Section is introduced by the Finance Act 2017 w.e.f A.Y. 2018-19.
- (b) This section is applicable to real estate developers.

- (c) It provides notional rent on the unsold inventory lying with the developer as stock in trade and two years from the end of financial year in which completion certificate from the competent authority is obtained is lapsed.

21.9 Some additional concepts with respect to Capital Gains. Capital Asset

Definition of Capital asset is given under section 2(14) which is very wide in nature and covers the right in capital asset also. Only those items are not covered under capital assets which are specifically excluded from capital assets.

Some Amendment with respect to Definition of capital asset.

By the provision of “Sec. 2(14) Capital Asset”, Rural agriculture land was exempt from capital gain. For rural agriculture land, land must be satisfied with certain conditions laid down in section

2(14). The finance minister amended these conditions through the Finance Bill 2013-14. For, Simplicity we discuss effect of this amended in two parts.

- A. Criteria for being rural agricultural land prior to 01/04/2013
- B. Criteria for being rural agricultural land after to 01/04/2013

Criteria for being rural agricultural land prior 1-04-2013:

Prior to 01/04/2013 this section is applicable:

2(14)(iii) [Agricultural land in India, not being land situated-

- (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or
- (b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;]

Thus, if these conditions are satisfied then land will be agriculture land.

Land is situated in any place within the jurisdiction of a municipality or a cantonment board having a population of less than 10000.

The land is situated outside the notified distance from the jurisdiction of the municipality. Govt. can notify maximum distance of 8Km.

If this condition was satisfied, then land is rural agriculture land. And not liable for capital gain tax.

How to measure distance was not given in the definition. Therefore, it was taken by road. And the same view was followed in following judicial pronouncement.

- a. CIT V.LAL SINGH [2010] 195 TAXMAN 420 (PUNJ. & HAR.)
- b. CIT V. SANTINDER PAL SINGH [2010] 188 TAXMAN 54 (PUNJ. & HAR.)
- c. LAUKIK DEVELOPERS V. DY .CIT [2007] 105 ITD 657 (MUMBAI)

Criteria for rural agriculture After 1-04-2013:

After 01/04/2013 this section applies as follows:

As Per Section 2(14)" capital asset" means property of any kind held by an Assessee, whether or not connected with his business or profession, but does not include-

(iii) Agricultural land in India, not being a land situated

(A) In any area which is comprised within the jurisdiction of a municipality (whether known as municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand [according to the last preceding census of which the relevant figures have been published before the first day of the previous year]; or

(B) In any area within the distance, measured aially, -

(I) Not being more than two kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh: or

(II) Not being more than six kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakhs: or

(III) Not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation. —For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Thus, if these conditions are satisfied, then agriculture land will be considered as a rural agriculture land and accordingly, not liable for capital gain tax.

The land is situated in any within the jurisdiction of a municipality or a cantonment board having a population of less than 10000.

Distance of land from municipality and population limit.

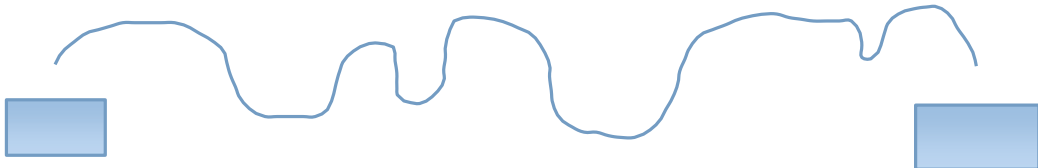
Distance	Population
Within 2 kilometers	10,000-1,00,000
2 kilometers – 6 kilometers	1,00,000-10,00,000
6 kilometers – 8 kilometers	More than 10,00,000

The distance from the Municipal Corporation measurement:

Such distance is to be measured on straight line aerially as crow flies. The shortest aerial distance must be considered. Such shortest aerial distance is defined as “A straight line distance between two places.” A human would travel further to get from one point to another due to obstacles or lack of roads or trails, but a crow can go in a straight line between them. Humans must follow roads which have their twists and turns. But, a crow does not have to face the barriers that humans face. Hence, we measure the straight-line distance between two places.

“The distance as the crow flies is a way to describe the distance between two locations without considering all the variable factors. As an example, traveling from California to Maine involves a rather indirect route around, over and through mountain ranges and so forth. The driving distance might be about 3,500 miles, but the distance as the crow flies is about 2,800 miles.

Human [By road]



Crow's flight straight line distance (aerial measurement)



This amendment applies in relation to assessment year 2014-15 and subsequent assessment years.

Effect of the amendment

- a) Distance from jurisdiction or municipality or cantonment board within which agricultural land is to be considered as urban land has been changed from uniformly 8 kms to within 8 kms depending on population of municipality or cantonment board.

- b) Distance to be measured straight line aerially as crow flies and not by road method which was used by courts in various decision. This amendment overcomes the above court decisions which say that distance should be measured by road.
- c) More land will be covered under the urban land because aerially distance covered more area.

Earlier, only notified areas were covered under the distance criteria but from now any area will be covered under the distance criteria.

TRANSFER IS A PRE-REQUISITE FOR TAXING CAPITAL GAIN BECAUSE CAPITAL GAIN IS CHARGEABLE IN THE YEAR WHEN ASSET IS TRANSFER:

Capital gain arises only when there is a transfer of capital asset. If the capital asset is not transferred or if there is any transaction which is not regarded as transfer, there will not be any capital gain. However, w.e.f. AY 2000-2001 section 45(1A) has been inserted to provide that in case of profits or gains from insurance claims due to damage or destruction of property, there will be capital gain on such deemed transfer although no asset has been actually transferred in such case.

Judicial pronouncements — whether a transaction constitutes transfer or not?

- *Where an Assessee gives up the right to claim specific performance for purchase of immovable property it is relinquishment of a capital asset and thus transfer:*

The Assessee had entered into an agreement to purchase certain property. Both parties reserved the right to specific performance of the agreement. Nearly four years thereafter, again another agreement was entered into in the nature of deed of cancellation, by which the Assessee agreed for termination of the earlier agreement and allowed the owner of the land to sell the said property to any person and at any price of his choice. As a consideration for this, the Assessee was paid a sum of Rs. 6,00,000 apart from being refunded the advance of Rs. 40,000. The question that arose for consideration was as to whether the amount of Rs. 6,00,000 received by the Assessee from the vendor could be treated as capital gains in the hands of the Assessee.

K.R. Srinath v Asstt. CIT (2004) 268 ITR 436 (Mad)

- *There is no transfer in family settlement:*

*Where a family settlement/ arrangement is arrived at in order to avoid continuous friction and to maintain peace among the family members, the family arrangement is governed by the principles which are not applicable to dealing between strangers. So, such bona fide realignment of interest, by way of effecting family arrangements among the family members would not amount to transfer. **CIT v A.L. Ramanathan (2000) 245 ITR 494 (Mad)** In this case, the court followed the decision of the Supreme Court in general law laid down in the case of **Kale v Deputy Director of Consolidation (1976) AIR 1976 SC 807.***

- Giving up the right to obtain conveyance of immovable property amounts to transfer of a capital asset:

Where the Assessee had paid the earnest money and acquired right to obtain conveyance of immovable property, such earnest money paid shall be cost of acquisition of such right and if such right is given up, there is a transfer of a capital asset and the compensation received for giving up such right is the consideration price. CIT v Vijay Flexible Container (1990) 186 ITR 693 (Bom)

- In case of litigation pending, no capital gain tax unless the case is decided:

The AO held that the income accrues on the date when an enforceable debt is created in favour of the Assessee. However, the Court held to consider the issue as to whether the income would accrue even when the very existence of the income is under doubt and a subject matter of litigation. Further, the subject matter of litigation cannot be a subject matter of tax avoidance.

ITO v. M/s. S. P. BUILDERS, CIT(A) XII/ 12(3)(4)/ IT – 184/07-08. PIECEMEAL TRANSFER
In AJAI KUMAR SHAH JAGATI V ITO (1995) 55 ITD 348 (DEL.) AND M/S G. G. DANDEKAR MACHINES WORKS LTD V. JCT, ITA NO. 181/MUM/2001, BENCH – F, DATED 28TH FEBRUARY, 2007, possession of only a part of property was transferred against proportionate consideration received during the relevant assessment year. It was held that capital gains arising only on the said proportion amount of consideration could be charged in the relevant year and not on the entire consideration stipulated in the sale agreement.

CAPITAL ASSETS CAN EITHER BE SHORT-TERM CAPITAL ASSET OR LONG-TERM CAPITAL ASSET

Short-term capital asset: A capital asset held by an Assessee for not more than 36 months immediately preceding the date of its transfer is known as a short-term capital asset. The criteria of 36 months have been reduced to 24 months in the case of immovable property being land, building, and house property, from FY 2017-18. For instance, if you sell house property after holding it for a period of 24 months, any income arising will be treated as long- term capital gain provided that property is sold after 31st March 2017.

Long-term capital asset: It means a capital asset which is not a short-term capital asset. In other words, if the asset is held by the Assessee for more than 24 months or 12 months, as the case may be, such an asset will be treated as a long-term capital asset. The reduced period of aforementioned 24 months is not applicable to movable property such as jewelry, debt- oriented mutual funds etc. They will be classified as a long-term capital asset if held for more than 36 months as earlier. Some assets are considered short-term capital assets when these are held for 12 months or less. This rule is applicable if the date of transfer is after 10th July 2014 (irrespective of what the date of purchase is).

Key Changes

Time limit of qualifying as a long-term capital asset in case of unlisted share and units of mutual funds (other than equity-oriented funds) is now reduced from 36 months to 24 months.

Thus, the period of holding of a capital asset is relevant for determining whether capital asset is short-term or long-term.

Inclusion of certain period for computing the period of holding of an asset:

Case	Inclusion of period
Property acquired in any mode given under section 49(1) (e.g. by way of gift will, etc.)	Include the holding period of the previous owner also.

Judicial decisions for determining the period of holding

Property constructed on a land purchased earlier: In case of property is constructed on a site purchased earlier, the question arises whether the period of holding the asset, i.e., the property, should be reckoned from the date of completion of the construction of the property or from the date of acquisition of the land.

The correct position is that the asset consists of two components: (1) Land and (2) Building. When the property is sold, the period of holding has to be reckoned separately for the land and the building. The consideration received can also be split into two parts relating to each component.

In **CIT v Vimal Chand Golecha (1993) 201 ITR 442 (Raj)**, the land was purchased in 1962, and building was constructed thereon in the accounting years relevant to assessment years 1968-69, 1969-70 and 1970-71. The building was sold in 1970. It was held that the gains attributable to land were assessable as long-term capital gains. The gains attributed to the building were, however, short-term capital gains. A similar decision was made in the cases of **CIT v Lakshmi B. Menon (2003) 264 ITR 76 (Ker)** and **CIT v C.R. Subramanian (2000) 242 ITR 342 (Kar)**.

Agreeing with the above Rajasthan High Court view, it has been held that land can be considered a separate capital asset even if a building is constructed thereon. Thus, where the land is held for more than a prescribed period, the gains arising from the sale of the land can be considered as long-term capital gains even though the building thereon, being a new construction, is held for a period less than the prescribed one.

CIT v Dr. D.L. Ramachandra Rao (1999) 236 ITR 51 (Mad) **CIT v Citibank N.A. (2004) 260 ITR 570 (Bom)**

In the above cases, the burden will be on the Assessee to satisfy how much of the sale proceeds should be apportioned for the land and how much of the sale proceeds pertain to the structure.

CIT v Estate of Omprakash Jhunjunwala (2002) 254 ITR 152 (Cal)

Period of holding of share in the co-operative housing society: While computing the capital gain tax in case of transfer of his shares by a person who is a member of cooperative housing society, the relevant date would be date on which the member acquires the shares in the cooperative housing society and the date on which member had sold his shares therein. Thus, where the Assessee acquired shares in the society on 6-9-1979 and was allotted flat on 15- 11-1979. He was given possession of a flat in October 1981 and sold the shares of the society along with the flat, on 4-12-1982, the capital gains arising from the sale were long term capital gains, shares having been held for more than 36 months.

CIT v Anilben Upendra Shah (2003) 262 ITR 657 (Guj)

Similarly, the Assessee became a member in Venus Apartments (Galaxy Co-operative Housing Society). He was allotted a flat in the building of the society by resolution dated 4-11-1980, passed by the managing committee of the society. On the date of allotment, i.e., 4-11-1980, the property was under construction and came to be completed on 12-9-1983. Physical possession was handed over to the Assessee on 12-9-1983. On 30-4-1984, the flat was sold by the Assessee for consideration of Rs. 3,75,000. The Assessee worked out long-term capital gains at Rs. 1,59,395. The Assessing Officer did not accept the stand of the Assessee that the Assessee had become the owner of the property as per resolution dated 4-11-1980.

According to the Assessing Officer the Assessee had held the property for a period of less than 36 months and as such was liable to short-term capital gains tax, it was held that the Assessee in the present case was allotted a share by the co-operative housing society on 4-11-1980, and the sale of the same took place on 30-4-1984, i.e., after a period of 36 months. The Tribunal was therefore justified in holding that the capital gains arising were long-term capital gains and the Assessee was entitled to deduction from such gains as per law.

CIT v Jindas Panchand Gandhi (2005) 279 ITR 552 (Guj)

Right to acquire any house property: Where a flat is booked with a builder under a letter of allotment or an agreement for sale, this would represent only a right to acquire a flat and if such right is acquired more than 36 months back, it becomes a long-term asset. However, when the possession of the flat is taken, the period of holding would once again commence from the date of the possession of the flat as the small right to acquire a flat merged into larger right and small right upon a merger would lose its existence.

COST OF ACQUISITION

The cost of acquisition of an asset is the value for which it was acquired by the Assessee. Expenses of capital nature for completing or acquiring the title of the property are includable in the cost of acquisition.

Judicial decision on cost of acquisition:

Cost of acquisition of an asset acquired from the previous owner in any mode given u/s 49(1): In this case, the cost of acquisition is taken as the cost to the previous owner, and it is this cost which will have to be indexed. For the purpose of indexation, the year in which the asset was first held by the Assessee (not the previous owner) is to be considered. The indexation will be done as below:

Cost of acquisition to the previous owner X (Multiply) CII of the year of transfer/CII of the year in which the asset is first held by the Assessee

However, in the case of **Mrs. Pushpa Sofat (2002) 81 ITD 1 (Chd)(SMC)**, the indexation of cost was allowed from the date of acquisition of the asset by the previous owner and not the date when the asset was acquired by the Assessee from the previous owner under any mode given under section 49(1).

Now, the **Hon'ble Bombay High Court** also has taken the same view in case of **CIT V/S Manjula J. Shah [2012]204TAXMAN691(Bom HC)** that under any mode given under section 49(1) indexation will be allowed from the date when previous owner acquired property.

21.10 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

[illegible]

Study Material: Project Completion in Real Estate - Legal Framework, Certifications, and Liabilities

22.1 Introduction

Real estate development in India operates within a complex legal framework where multiple certifications and approvals mark the completion of a project. This study material focuses on the critical aspects of project completion in real estate, including NOC's from different authorities, Occupancy Certificates (OCs), Completion Certificates (CCs), architect certifications under respective statutes and under the Real Estate (Regulation and Development) Act, 2016 (RERA), and various other final approvals required across different states in India.

The completion of a real estate project represents a significant milestone that triggers various legal, financial, and regulatory implications for all stakeholders involved. Understanding when a project is legally, practically, physically considered "**complete**" is crucial for developers, investors, planning authorities, tax authorities, professionals, government agencies and Allottees alike, as it determines the transfer of rights, revenue generation, obligations, and liabilities among parties.

It is essential to note that in India, land falls under the concurrent list of the Constitution, allowing both central and state governments to legislate on the subject. Consequently, while RERA provides a central framework, each state has enacted its own rules and regulations, leading to variations in implementation across different regions. This study material specifically compares the provisions across six major states: Maharashtra, Gujarat, Uttar Pradesh, Karnataka, Tamil Nadu, and West Bengal.

In order to determine whether the development work in a project has been completed, it is necessary to ascertain whether all the development works in the project have been completed which include both the external development works and internal development works in the project. In other words only once all the development works in the project have been completed and the completion/occupancy certificate has been obtained, the Project/building has provision for water, sanitation and electricity, it can be said that the development work of a project has the completed.

22.2 Objective and Importance of this Chapter

Objectives:

- 1) To understand the legal framework governing project completion in the real estate sector across India with specific reference to six major states
- 2) To distinguish between various completion-related certifications (OC, CC, architect's certification) and their significance under different laws
- 3) To analyze the liabilities and risks faced by various stakeholders when a project remains incomplete
- 4) To examine the interplay between RERA and other laws such as the Insolvency and Bankruptcy Code (IBC), banking regulations, and local development control regulations
- 5) To identify landmark judicial pronouncements that have shaped the interpretation of project completion requirements

Importance:

For CA professionals, this knowledge is crucial as it impacts:

- 1) **Financial Reporting and Compliance:** Recognition of revenue, capitalization of costs, and disclosure requirements differ based on project completion status
- 2) **Tax Implications:** Completion status affects taxation under GST, income tax, and various state taxes
- 3) **Due Diligence:** When advising clients on real estate investments, understanding completion status is essential for risk assessment
- 4) **Insolvency Proceedings:** Knowledge of completion status is vital when dealing with distressed real estate assets under IBC
- 5) **Client Advisory:** CAs often advise developers, banks, and investors on regulatory compliance related to project completion
- 6) **Financial Planning:** Project completion timelines directly impact cash flows and financial forecasting

22.3 How to Read and Understand

This study material is structured to provide both theoretical understanding and practical application of the concepts related to project completion in real estate. To derive maximum benefit:

- 1) **Build a Conceptual Foundation:** Begin with understanding the basic definitions and distinctions between various certificates and approvals

- 2) **Grasp the Legal Framework:** Study the hierarchy of laws - from central legislation (RERA) to state-specific rules and local body regulations
- 3) **Apply to Specific States:** Note the variations in implementation across the six states covered in this material
- 4) **Understand Stakeholder Perspective:** Examine the implications of project completion from the viewpoint of different stakeholders
- 5) **Connect with Case Laws:** The judicial interpretations provide practical insights into how these provisions are applied in real-world scenarios
- 6) **Reference Checklists and SOPs:** Use these as practical tools when advising clients

It is recommended to cross-reference the provisions of RERA with state-specific rules and local development control regulations to gain a comprehensive understanding of the requirements in a particular jurisdiction.

22.4 Applicable Acts, Rules, and Regulations

Central Legislation

- 1) **Real Estate (Regulation and Development) Act, 2016 (RERA)**
 - (i) Section 4: Registration Process of real estate projects
 - (ii) Section 11: Functions and duties of promoters
 - (iii) Section 14: Adherence to sanctioned plans and project specifications
 - (iv) Section 17: Transfer of title
 - (v) Section 18: Return of amount and compensation
 - (vi) Section 19: Rights and duties of allottees
- 2) **Insolvency and Bankruptcy Code, 2016 (IBC)**
 - (i) Section 7: Initiation of corporate insolvency resolution process by financial creditor
 - (ii) Section 8 & 9: Initiation by operational creditor
 - (iii) Section 14: Moratorium provisions
 - (iv) Section 238: Overriding effect of IBC
- 3) **Banking Regulation Act, 1949**
 - (i) Sections related to classification of NPAs
 - (ii) RBI regulations on provisioning for real estate exposures

4) **Companies Act, 2013**

- Sections related to financial statements and reporting

5) **Income Tax Act, 1961**

- Section 43CA: Special provision for full value of consideration for transfer of assets other than capital assets in certain cases
- Section 23: Annual value of house property
- Section 80-IBA: Deductions for affordable housing projects

State-Specific Legislation

Each state has its own sets of laws, primarily:

1) **State RERA Rules:** Each of the six states has notified its own rules under RERA

2) **State Town Planning Acts:**

- (i) Maharashtra Regional and Town Planning Act, 1966
- (ii) Gujarat Town Planning and Urban Development Act, 1976
- (iii) Uttar Pradesh Urban Planning and Development Act, 1973
- (iv) Karnataka Town and Country Planning Act, 1961
- (v) Tamil Nadu Town and Country Planning Act, 1971
- (vi) West Bengal Town and Country (Planning and Development) Act, 1979

3) **Development Control Regulations (DCRs):**

- (i) Development Control and Promotion Regulations (DCPR) in Maharashtra
- (ii) General Development Control Regulations (GDCR) in Gujarat
- (iii) Building By-laws and zoning regulations in other states

4) **Local Municipal Laws:**

- (i) Municipal Corporation Acts
- (ii) Municipal Council Acts
- (iii) Gram Panchayat Acts (for rural areas)

22.5. Provisions, Forms, Important Orders, Notifications, Circulars, Checklists, SOPs, and Case Laws

22.5.1 Understanding Project Completion under Various Laws

22.5.1.1 Project Completion under RERA

Under RERA, project completion is marked by several key milestones:

- 1) **Completion of Construction:** Physical completion of all structures as per sanctioned plans
- 2) **Provision of Common Areas and Amenities:** All promised common facilities must be functional
- 3) **Necessary Certifications:** Obtaining all regulatory approvals including OC/CC
- 4) **Conveyance of Title:** Transfer of common area - land and common areas in the building to association of allottees
- 5) **Architect's Certification:** Certification that the project has been completed as per the sanctioned plan and specifications

RERA mandates that the promoter must upload the following on the RERA website upon project completion:

- (i) Occupancy Certificate
- (ii) Completion Certificate (where applicable)
- (iii) Architect's Certificate (where applicable)
- (iv) Structural Engineer's Certificate (where applicable)
- (v) Any other approval that signifies project completion e.g., Fire NOC's, PCB COF-consent for Operation etc

22.5.1.2 Project Completion under Development Control Regulations

Under most DCRs, project completion is determined by:

- (i) **Adherence to Sanctioned Plans:** The construction must conform to approved plans
- (ii) **Structural Safety:** Compliance with structural safety standards
- (iii) **Building Services:** Installation and functionality of essential services
- (iv) **Environmental Compliance:** Adherence to environmental conditions
- (v) **Fire Safety:** Compliance with fire safety norms

22.5.1.3 Role of Occupancy Certificate (OC) and Completion Certificate (CC)

Important Note: In many states across India, the terms Occupancy Certificate (OC) and Completion Certificate (CC) are used interchangeably, leading to confusion among stakeholders. Some states issue only one certificate that serves both purposes, while others maintain distinct certificates with different legal implications. CA professionals must understand the specific terminology and requirements in the jurisdiction they are dealing with.

Occupancy Certificate (OC):

- (i) Certifies that the building is fit for occupation from safety, structural stability, and essential amenities perspective
- (ii) Issued by local municipal authorities, development authorities or housing boards or special authorities in some cases.
- (iii) Prerequisite for legal occupation and utility connections (water, electricity, sewage)
- (iv) May be partial (for completed portions) or full (for entire project)
- (v) Required for property tax assessment in most jurisdictions

Completion Certificate (CC):

- (i) Certifies that the construction has been completed according to the approved/sanctioned plans and specifications
- (ii) Confirms compliance with building bylaws, zoning regulations, and development control regulations
- (iii) Documents that all conditions of approval have been satisfied
- (iv) Often a prerequisite for releasing the developer from certain obligations
- (v) Required for registration of conveyance deed in many states

Understanding OC and CC Variations:

Parameter	Variations Across States
Terminology	a) Some states use "Building Use Permission" (Gujarat) b) Some use "Occupancy-cum-Completion Certificate" (parts of Maharashtra) c) Some use "Habitation Certificate" or "Fitness Certificate"
Issuing Authority	Varies between Municipal Corporations, Urban Development Authorities, Industrial Development Authorities, Planning Authorities, or Special Planning Authorities depending on location
Sequence	a) In some states, CC precedes OC

	b) In others, OC is issued first followed by CC c) In many, a single certificate serves both purposes
Validity	a) Some states require periodic renewal of OC b) Others grant permanent OC subject to compliance with ongoing requirements
Partial Issuance	a) Some states allow part-OC for completed towers/wings b) Others insist on completion of entire project including amenities

Practical Implications for Different Stakeholders:

Stakeholder	Implications of OC/CC
Developers	a) Release of construction-linked payments b) Reduced liability for delay penalties c) Legal right to demand full payment
Allottees	a) Assurance of safety and habitability b) Legal validity for occupation c) Eligibility for property tax and utility connections
Banks/Financial Institutions	a) Final disbursement of loan amounts b) Conversion from construction finance to term loans c) Reduction in risk assessment parameters
CA Professionals	a) Triggers for revenue recognition b) Compliance certification requirements c) Tax implications for developers and buyers

22.5.1.4 Architect's Certification under RERA

RERA places significant emphasis on certification by architects at various stages of the project lifecycle. While each state has different form numbers and specific requirements, the fundamental purpose and importance of architect's certification remain consistent across jurisdictions:

Certification at Project Registration Stage:

- a) Certification of project plans and specifications
- b) Confirmation that plans conform to applicable building bylaws and development control regulations

- c) Verification that all approvals have been obtained for commencement of the project
- d) Declaration of project timeline and construction schedule

Certification During Construction Phase:

- a) Periodic certification of percentage of work completed (typically quarterly)
- b) Verification that construction is proceeding as per sanctioned plans
- c) Documentation of any deviations or modifications from original plans
- d) Assessment of quality of materials used and workmanship

Certification at Project Completion Stage:

- a) Comprehensive certification that the project has been completed as per sanctioned plans and specifications
- b) Verification that all promised amenities and facilities have been provided
- c) Confirmation that structural safety norms have been complied with
- d) Assessment of quality of construction and adherence to specifications

The architect's certification serves multiple purposes:

- 1) **Legal Compliance:** Meeting statutory requirements under RERA
- 2) **Quality Assurance:** Independent verification of construction quality
- 3) **Consumer Protection:** Assurance to Allottees regarding promised deliverables
- 4) **Financial Discipline:** Supporting stage-wise fund release from project accounts
- 5) **Dispute Prevention:** Creating documented evidence of project status at various stages

CA professionals should note that architect's certification has significant financial implications, as it often triggers:

- a) Revenue recognition milestones
- b) Construction-linked payment schedules
- c) Separate bank account management requirements
- d) Compliance reporting to regulatory authorities

22.5.2 Liabilities and Risks for Stakeholders in Incomplete Projects

22.5.2.1 For Developers/Builders

Under RERA:

- a) Penalty up to 10% of project cost for non-compliance

- b) Revocation of registration of the project
- c) Imprisonment up to 3 years for major violations
- d) Blacklisting for future projects

Under IBC:

- a) Initiation of insolvency proceedings by Allottees as financial creditors
- b) Personal guarantees of promoters can be invoked
- c) Management control can be taken away by resolution professional

Under Banking Regulations:

- a) Classification of loan as NPA leading to credit rating downgrade
- b) Invocation of personal and corporate guarantees
- c) Enforcement of security under SARFAESI Act

Other Liabilities:

- a) Consumer complaints for deficiency in service
- b) Civil suits for specific performance or damages
- c) Criminal liability for cheating in serious cases

22.5.2.2 For Landowners

Under RERA:

- a) Joint liability with developers if registered as co-promoters
- b) Restitution of land if development agreement is terminated
- c) Encumbrance on land due to third-party rights created

Under Joint Development Agreement (JDA):

- a) Potential loss if developer abandons project
- b) Litigation with allottees who have invested in the project
- c) Disputes over entitlements if project is stalled

22.5.3.3 For Investors

Financial Risks:

- a) Capital locked in incomplete projects
- b) Diminished returns on investment
- c) Potential write-offs in case of project failure

Legal Risks:

- a) Reduced legal recourse if not registered as allottees under RERA
- b) Subordination to Allottees' claims under IBC
- c) Challenges in enforcement of investment agreements

22.5.3.4 For Allottees

Under RERA:

- a) Right to withdraw from project and claim refund with interest
- b) Right to compensation for delay
- c) Right to take over project completion through association of allottees

Under IBC:

- a) Status as financial creditors allows initiation of insolvency proceedings
- b) Representation in committee of creditors
- c) Claims for refund treated as financial debt

Other Rights:

- a) Consumer disputes redressal forum for deficiency in service
- b) Civil remedies for breach of contract
- c) Interest on delayed possession as per agreement or RERA rate

22.5.3 Is OC/CC Full Compliance Under RERA?

RERA sets a higher benchmark for project completion than merely obtaining OC/CC:

Beyond OC/CC Requirements:

- 1) **Promised Amenities:** All amenities and facilities mentioned in the agreement must be provided
- 2) **Quality of Construction:** The quality must match what was promised
- 3) **Adherence to Specifications:** Materials and specifications should conform to what was agreed
- 4) **Legal Formalities:** Formation of society/association and execution of conveyance deed
- 5) **No Financial Encumbrances:** Property should be free from all encumbrances

What RERA Guarantees:

- 1) **Timely Delivery:** Project to be completed within declared timeline

- 2) **Quality Assurance:** Construction as per specifications
- 3) **Title Clarity:** Clear and marketable title to be transferred
- 4) **Financial Transparency:** Project accounts to be maintained separately
- 5) **Adherence to Plans:** Construction as per sanctioned plans

22.5.4 Important Judgments and Orders

22.5.4.1 Supreme Court Judgments

- 1) **Pioneer Urban Land and Infrastructure Ltd. vs. Union of India (2019)**
 - a) Established Allottees as financial creditors under IBC
 - b) Clarified interplay between RERA and IBC
 - c) Held that remedies under RERA and IBC are concurrent
- 2) **Forum for People's Collective Efforts vs. State of West Bengal (2021)**
 - a) Struck down West Bengal's separate HIRA Act
 - b) Established supremacy of central RERA
 - c) Reinforced uniform application of RERA principles
- 3) **Newtech Promoters vs. State of UP (2021)**
 - a) Clarified conditions for project extensions
 - b) Established that "force majeure" must be interpreted strictly
 - c) Reinforced consumer rights for timely completion

22.5.4.2 High Court Judgments

- 1) **Neelkamal Realtors vs. Union of India (Bombay High Court)**
 - a) Upheld constitutional validity of RERA
 - b) Clarified retrospective application to ongoing projects
 - c) Established principles for project registration
- 2) **M3M India Pvt. Ltd. vs. State of Haryana (Punjab & Haryana High Court)**
 - a) Interpretation of completion regarding phased development
 - b) Clarified that OC for one phase doesn't mean completion of entire project
 - c) Established need for separate registration for phases

22.5.4.3 RERA Authority Orders

- 1) **Maharashtra RERA Order in Lavasa Corporation Case**
 - a) Established principles for handling projects under insolvency
 - b) Clarified rights of allottees in projects under CIRP
 - c) Set precedent for coordination between RERA and NCLT
- 2) **UP RERA Order in Jaypee Infratech Case**
 - a) Detailed treatment of Allottees' claims
 - b) Established compensation norms for delayed possession
 - c) Set guidelines for project completion through third parties

22.5.5 Checklists and SOPs

22.5.5.1 Checklist for Verifying Project Completion Status

- 1) **Documentation Verification:**
 - a) Sanctioned plans and amendments
 - b) OC/CC status (full or partial)
 - c) Architect's completion certificate
 - d) Structural stability certificate
 - e) Environmental compliance certificate
 - f) Fire NOC
 - g) Lift operation certificate (if applicable)
 - h) Water and sewage connection approvals
 - i) Electricity connection approval
- 2) **Physical Verification:**
 - a) Completion of structure as per plans
 - b) Provision of common amenities
 - c) Functioning of essential services
 - d) Quality of construction
 - e) Compliance with specifications
 - f) Completion of landscape and external development

3) Legal Verification:

- a) Status of conveyance deed
- b) Formation of society/association
- c) Clearance of financial encumbrances
- d) Compliance with agreement conditions
- e) Status under RERA website

22.5.5.2 SOP for CA Professionals Advising on Project Completion

1) Pre-Completion Assessment:

- a) Review of project timelines
- b) Assessment of financial resources
- c) Analysis of pending approvals
- d) Evaluation of quality compliance
- e) Identification of potential hurdles

2) Completion Certification Process:

- a) Verification of architect's certificate
- b) Review of engineering reports
- c) Examination of authority approvals
- d) Audit of project accounts
- e) Certification of fund utilization

3) Post-Completion Compliance:

- a) Assistance in society formation
- b) Guidance on conveyance deed
- c) Audit of maintenance deposits
- d) Verification of sinking fund
- e) Compliance with tax obligations

22.6 FAQs

Q1. Is partial OC sufficient for considering a project complete under RERA?

A: No, partial OC only allows occupation of completed portions but doesn't signify project completion under RERA. For full compliance, all promised amenities, facilities, and

common areas must be completed, and all necessary certifications must be obtained for the entire project.

Q2. Can a developer hand over possession without OC?

A: No, handing over possession without OC is not permitted under RERA and most state laws. Allottees should not take possession without verifying that valid OC has been obtained, as it certifies the safety and habitability of the building.

Q3. What happens if the project remains incomplete even after the RERA registration expires?

A: The developer must apply for extension with valid reasons. If not granted, the RERA Authority can revoke registration, impose penalties, and even assign the remaining development to another developer or the association of allottees.

Q4. Are landowners liable for non-completion of projects under RERA?

A: Yes, if landowners are registered as co-promoters under RERA, they share joint liability with developers for project completion. However, the extent of liability depends on the specific terms of the joint development agreement.

Q5. Can Allottees initiate insolvency proceedings against developers for non-completion?

A: Yes, following the Supreme Court judgment in Pioneer Urban Land case, Allottees are recognized as financial creditors under IBC and can initiate insolvency proceedings if the developer defaults on delivery obligations.

Q6. If a project has OC but some promised amenities are missing, is it considered complete?

A: No, under RERA, mere issuance of OC/CC does not constitute full compliance. All amenities and facilities promised in the agreement for sale or brochures must be provided for the project to be considered complete.

Q7. What is the difference between RERA extension and force majeure extension?

A: RERA extension is granted for ordinary delays with justified reasons, usually up to one year. Force majeure extension applies to extraordinary circumstances beyond the developer's control (like natural disasters, pandemics) and may be granted for the period of the force majeure event.

Q8. Can banks disburse home loan amounts without verifying OC status?

A: While it's not explicitly prohibited, prudent banking practice requires verification of OC before final disbursement. RBI guidelines on risk management in real estate exposures recommend verification of all necessary approvals before complete loan disbursement.

Q9. How does project completion affect GST applicability?

A: For under-construction properties, GST is applicable at specified rates. Once the project receives OC/CC, any sale of new units and their instalments become exempt from GST. This has significant tax implications for both developers and buyers.

Q10. What are the consequences if the built-up area or specifications differ from what was promised?

A: Under RERA, such deviations constitute violations. Minor variations (within limits prescribed by state rules) may be permitted, but significant differences entitle Allottees to compensation or even cancellation with refund and interest.

22.7 Glossary

1. **Occupancy Certificate (OC):** Certificate issued by local municipal authority confirming that the building is fit for occupation from safety and amenities perspective
2. **Completion Certificate (CC):** Certificate confirming that construction has been completed as per sanctioned plans and applicable building bylaws
3. **RERA:** Real Estate (Regulation and Development) Act, 2016 - Central legislation to regulate real estate sector and protect consumer interests
4. **Promoter:** As defined under RERA, includes developer, builder, colonizer, or any person who constructs or causes to be constructed a building for sale
5. **Allottee:** Person who purchases an apartment, plot, or building in a real estate project and includes subsequent purchasers
6. **Force Majeure:** Unforeseeable circumstances preventing fulfillment of a contract, recognized as valid grounds for project delays
7. **Commencement Certificate:** Permission granted by the local authority to begin construction after plan approval
8. **Conveyance Deed:** Legal document that transfers ownership of property from developer to buyer or association of allottees
9. **Development Control Regulations (DCR):** Rules that govern how land can be developed in a particular jurisdiction
10. **Floor Space Index (FSI):** Ratio of total buildable area to the size of the land
11. **CIRP:** Corporate Insolvency Resolution Process under IBC
12. **TDR:** Transferable Development Rights, which allow development potential to be transferred from one parcel to another

13. **Part OC:** Occupancy certificate issued for a portion of the project that is completed while other portions remain under construction
14. **Building Use Permission (BUP):** Term used in Gujarat, equivalent to Occupancy Certificate
15. **Intimation of Disapproval (IOD):** Initial approval of building plans before commencement certificate in Maharashtra

22.8 End of this Chapter – Outcome

After studying this chapter, CA professionals should be able to:

1. **Identify Project Completion Status:** Determine whether a real estate project is legally complete by examining various certificates and verifying compliance with RERA and other applicable laws
2. **Assess Stakeholder Risks:** Evaluate the legal, financial, and regulatory risks faced by developers, landowners, investors, and Allottees in cases of non-completion
3. **Compare Regional Requirements:** Navigate the variations in project completion requirements across the six states covered, adapting compliance strategies accordingly
4. **Apply Judicial Precedents:** Utilize landmark judgments to interpret complex situations related to project completion and stakeholder rights
5. **Provide Sound Advisory:** Offer professional advice to clients on:
 - a) Revenue recognition based on project completion status
 - b) Tax implications of completion certificates
 - c) Risk mitigation strategies for incomplete projects
 - d) Due diligence procedures for property transactions
 - e) Compliance requirements under multiple legal frameworks
6. **Handle Distressed Projects:** Address special situations like:
 - a) Projects under insolvency
 - b) Projects with partial completion
 - c) Projects with legal disputes
 - d) Projects requiring rehabilitation

This knowledge will significantly enhance the professional toolkit of CA practitioners operating in the real estate domain, enabling them to provide value-added services beyond traditional accounting and auditing functions.

22.9 Reference Material

Statutes and Rules

1. Real Estate (Regulation and Development) Act, 2016 and Rules thereunder
2. Insolvency and Bankruptcy Code, 2016
3. State-specific Town Planning Acts
4. Development Control Regulations of respective cities
5. Municipal Corporation Acts of respective states
6. Banking Regulation Act, 1949 and RBI guidelines on real estate exposures

Books and Publications

1. Guide to Real Estate Accounting and Taxation - ICAI
2. Handbook on RERA Compliance - ICAI
3. Real Estate Development Regulations in India: A Comparative Analysis
4. Project Finance and Real Estate Development
5. Legal Metrology for Real Estate Practitioners

Online Resources

1. Official RERA portals of respective states:
 - Maharashtra: maharera.mahaonline.gov.in
 - Gujarat: gujrera.gujarat.gov.in
 - UP: up-rera.in
 - Karnataka: rera.karnataka.gov.in
 - Tamil Nadu: tnrera.tn.gov.in
 - West Bengal: wbrera.wb.gov.in
2. Ministry of Housing and Urban Affairs: mohua.gov.in
3. ICAI Knowledge Gateway: kb.icai.org
4. National Real Estate Development Council: naredco.in
5. Confederation of Real Estate Developers' Associations of India: credai.org

Journals and Periodicals

1. The Chartered Accountant Journal - ICAI
2. RERA Case Law Journal

3. Real Estate Law Review
4. Journal of Property Law and Practice
5. Urban Development Law Quarterly

Note: This reference list is indicative and not exhaustive. CA professionals are encouraged to refer to the latest amendments, notifications, and circulars issued by relevant authorities as this is a rapidly evolving area of law and practice.

22.10 Self Appraisal

Sl No	Scale 1 – 3	1 (Low)	2 (Medium)	3 (High)
1	Attended full session			
2	Fully present and heard the speaker			
3	Understood the Topic, Subject			
4	Helpful to expand / Start Practice / advice			
5	Recommend to your friends/colleagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

AI in Real Estate Practice: Practical Applications for CAs

23.1 Introduction - AI in Real Estate

Artificial Intelligence (AI) has emerged as a powerful technology that is making real estate practice more efficient, accurate, and client friendly. In simple terms, AI refers to computer programs that can perform tasks which normally require human intelligence - like analysing documents, making predictions, or spotting patterns in data.

The Indian real estate market, valued at approximately USD 300 billion in 2024, faces numerous challenges including complex documentation, time-consuming regulatory processes, and extensive due diligence requirements. These are precisely the areas where AI tools can help Chartered Accountants and real estate professionals work more effectively.

Unlike traditional software that follows fixed rules, AI tools can learn from examples, adapt to new situations, and handle unstructured information like contracts, legal documents, and market data. These capabilities make AI particularly valuable for CAs working in real estate advisory, where analysing large volumes of information quickly and accurately is essential.

AI tools in real estate range from simple document readers that extract information from contracts to sophisticated systems that can help with property valuation, RERA compliance monitoring, and even predicting potential legal issues in real estate transactions.

23.2 Objective and importance of this chapter

This chapter aims to provide Chartered Accountants with practical knowledge about readily available AI tools that can be immediately applied to common real estate practice activities. The focus is not on complex technical concepts, but on specific applications that can help CAs:

1. **Save time on repetitive tasks:** Automate document review, data extraction, and routine compliance activities.
2. **Reduce errors:** Use AI tools to cross-check calculations, verify regulatory requirements, and ensure consistency in documentation.
3. **Provide better client service:** Deliver faster responses, more accurate analyses, and proactive insights about potential issues.

4. **Add new service offerings:** Expand your practice with technology-enhanced services such as AI-powered due diligence, automated compliance monitoring, and data-driven market analysis.
5. **Stay competitive:** As clients increasingly expect technology-enabled services, familiarity with AI tools becomes essential for retaining and growing your client base.

By the end of this chapter, you will have a clear understanding of specific AI tools that can be immediately incorporated into your real estate practice, with minimal technical expertise required.

23.3 Understanding AI tools for real estate - A simple guide

When approaching AI tools for real estate practice, think of them as specialized assistants that can help with specific tasks rather than complex technologies. Here's a straightforward way to understand and approach these tools:

1. **Focus on the problem, not the technology:** Start by identifying specific tasks in your real estate practice that are time-consuming, repetitive, or prone to errors. For example:
 - a) Extracting key terms from lease agreements
 - b) Checking RERA compliance requirements
 - c) Monitoring regulatory updates
 - d) Comparing property valuations with market benchmarks
 - e) Organizing case law references
2. **Think of AI tools in simple categories:**
 - a) **Document readers:** Tools that extract and organize information from contracts, agreements, and regulatory documents
 - b) **Legal research assistants:** Tools that search through case law and regulations to find relevant precedents
 - c) **Checklist automation:** Tools that create and track compliance requirements
 - d) **Valuation assistants:** Tools that analyze market data to support property valuation
 - e) **Client communication tools:** Automated systems that handle routine client queries
3. **Start with ready-to-use solutions:** Many AI tools are available as subscription services that require no technical expertise - just sign up and start using them through your web browser.
4. **Begin with a small project:** Select one specific area of your practice to try an AI tool - for example, using a document reader to extract information from a set of lease agreements.

5. Measure the results: Track how much time is saved, how accuracy improves, or how client satisfaction increases when using the AI tool compared to traditional methods.

With this approach, you can incorporate AI tools into your practice without needing to understand complex technical details or make large upfront investments.

23.4 Ready-to-use AI tools for key real estate activities

23.4.1 Land Identification and Acquisition

23.4.2 Project Planning and Development

23.4.3 Project Registration and RERA Compliance

23.4.4 Complaint Drafting and Case Management

23.4.5 Case Law Study and Legal Research

23.5 Step-by-step guide to implementing AI tools in your practice

23.5.1 Getting Started with AI Tools - A Practical Approach

1. Identify a specific pain point in your real estate practice

- a) Choose a repetitive task that consumes significant time
- b) Select an area where accuracy is critical
- c) Focus on a process that clients frequently request

2. Start with a free trial or small-scale implementation

- a) Most AI tools offer 7-30 day free trials
- b) Begin with a single project or client
- c) Use real but non-sensitive documents for initial testing

3. Compare results with traditional methods

- a) Run the AI tool alongside your normal process
- b) Document time savings and accuracy improvements
- c) Note any limitations or adjustments needed

4. Get team feedback

- a) Have colleagues try the tool on similar tasks
- b) Collect input on usability and results
- c) Identify training needs or process changes required

5. Develop a simple integration plan

- a) Create clear guidelines for when to use the tool
- b) Establish a process for reviewing AI outputs
- c) Develop client communication about the new approach

23.5.2 Sample Implementation Timeline

Week	Activity	Details
Week 1	Tool selection	Research 2-3 tools for your chosen task; Sign up for free trials
Week 2	Initial testing	Test tools with 3-5 real documents or cases; Compare results
Week 3	Team introduction	Brief team on the selected tool; Conduct basic training
Week 4	Controlled implementation	Use the tool for 1-2 client projects with close supervision
Week 5	Process documentation	Create simple guidelines for using the tool in your practice
Week 6	Client communication	Inform clients about new capabilities; Highlight benefits
Week 7-8	Expand usage	Gradually increase tool usage across more projects and clients

23.5.3 Practical Implementation Checklist

- a) Identify specific task for AI implementation
- b) Select appropriate tool based on feature comparison
- c) Establish budget and ROI expectations
- d) Sign up for trial or initial subscription
- e) Set up user accounts for relevant team members
- f) Conduct initial testing with sample documents
- g) Create simple guidelines for tool usage
- h) Develop process for reviewing AI outputs
- i) Design client communication about new capabilities
- j) Establish performance metrics to track benefits
- k) Schedule regular review of tool effectiveness

23.5.4 Common Implementation Pitfalls to Avoid

- a) **Starting too big:** Begin with a specific, well-defined task rather than attempting a complete practice transformation
- b) **Skipping verification:** Always review AI outputs, especially in early stages of implementation
- c) **Inadequate training:** Ensure all users understand both the capabilities and limitations of the tool
- d) **Ignoring process changes:** Adjust your workflow to integrate the tool effectively, not just add it on top of existing processes
- e) **Unrealistic expectations:** Understand that no tool is perfect - focus on overall efficiency gains rather than perfection Adjust your workflow to integrate the tool effectively, not just add it on top of existing processes
- f) **Unrealistic expectations:** Understand that no tool is perfect - focus on overall efficiency gains rather than perfection

23.6 FAQs for CAs about AI in Real Estate

23.6.1 Getting Started with AI Tools

Q1: I have no technical background. Can I still implement AI tools in my real estate practice?

A1: Absolutely. Most modern AI tools for real estate are designed with non-technical users in mind. They typically offer user-friendly interfaces similar to common software like Microsoft Office. Look for tools labelled as "no-code" or with "template-based" interfaces. Start with simple document management or analysis tools that require minimal setup, such as Legality for document processing or Legal Desk for standardized agreements.

Q2: What's the typical return on investment for AI tools in a CA's real estate practice?

A2: The ROI varies by tool and use case, but CAs typically report efficiency gains of 30-70% for specific tasks like document review, compliance checks, and standard document preparation. For example, a tool like Manupatra or Indian Kanoon can reduce legal research time from hours to minutes. Most practices see positive ROI within 3-6 months for subscription-based tools. Track time savings, error reduction, and client satisfaction to measure your specific ROI.

Q3: How much should I budget for implementing AI tools in my practice?

A3: Start small with a budget of ₹5,000-10,000 per month for your first tools. Many solutions offer tiered pricing based on usage, allowing you to scale as needed. For a mid-sized practice, a reasonable annual budget might be ₹1-2 lakh for a suite of specialized tools.

Prioritize tools addressing your most time-consuming tasks first, as these will deliver the fastest ROI.

23.6.2 RERA-Specific Applications

Q4: How can AI tools help with RERA compliance specifically?

A4: AI tools assist with RERA compliance in several ways:

- a) Automatic tracking of registration deadlines and renewal requirements using practice management software like XXXXXX
- b) Document generation for RERA submissions using templates from XXXXX
- c) Monitoring regulatory changes across different state RERA authorities using legal research platforms like XXXXX
- d) Creating standardized disclosure documents for project marketing
- e) Analysing project data for quarterly report preparation
- f) Comparing project details against RERA requirements to identify potential compliance gaps

Q5: Can AI tools help in preparing for or responding to RERA authority inspections?

A5: Yes, tools can help by:

- a) Creating comprehensive document repositories with Digi Locker or similar tools
- b) Generating audit-ready compliance reports
- c) Tracking all project modifications and approvals
- d) Maintaining chronological records of all submissions and communications
- e) Analysing previous inspection outcomes to identify focus areas
- f) Preparing standardized responses to common inspection queries

23.6.3 Practical Implementation Questions

Q6: How do I ensure the accuracy of AI tool outputs for legal or compliance matters?

A6: Always implement a verification process:

- a) Start with a parallel review period where both traditional methods and AI tools are used
- b) Randomly sample and verify at least 10-15% of AI outputs against manual checks
- c) Focus additional verification on high-risk or complex matters

- d) Document any errors or limitations identified
- e) Use multiple sources for critical decisions (e.g., cross-reference legal research from both XXX)
- f) Remember that AI tools are assistants, not replacements for professional judgment

Q7: What about data security and client confidentiality when using these tools?

A7: Take these precautions to maintain security and confidentiality:

- a) Verify the tool's privacy policy and data handling practices
- b) Choose India-based services where possible for better data localization compliance
- c) Use tools with ISO 27001 certification or similar security standards
- d) Implement appropriate access controls within your team
- e) Consider redacting sensitive client information before uploading to third-party tools
- f) Obtain client consent when processing their data through external platforms
- g) Review and update your own privacy policies to reflect tool usage

Q8: How do I train my team to effectively use these new tools?

A8: Implement a structured approach to training:

- a) Identify 1-2 "champion users" who will learn the tool thoroughly
- b) Utilize vendor-provided training resources (webinars, documentation, support)
- c) Start with simple use cases before moving to complex applications
- d) Create step-by-step guides specific to your practice workflows
- e) Schedule regular check-ins to address questions and share best practices
- f) Use real practice examples rather than generic demonstrations
- g) Track common mistakes and create focused training to address them

23.7 Glossary of Essential Terms

Term	Definition	Real Estate Application
Artificial Intelligence (AI)	Computer systems that can perform tasks typically requiring human intelligence	Automating document analysis, property valuation, compliance monitoring
Machine Learning	AI technology that allows systems to learn from data	Property price prediction, risk assessment, market

	and improve over time	trend analysis
Document Analysis	AI capability to extract, categorize, and understand information from documents	Contract review, title verification, RERA compliance checking
API (Application Programming Interface)	Connection that allows different software systems to communicate	Linking property databases with accounting systems or compliance tools
Cloud-based Software	Applications hosted on remote servers accessed via the internet	Practice management systems, document storage, client portals
Data Mining	Process of discovering patterns in large datasets	Identifying market trends, investor preferences, compliance patterns
OCR (Optical Character Recognition)	Technology that converts different document types into editable data	Digitizing land records, extracting information from paper documents
Workflow Automation	Technology that automates sequential tasks based on predefined rules	Standardizing document preparation, compliance tracking, client onboarding
Dashboard	Visual display of key information, metrics, and data points	Project status monitoring, compliance tracking, financial reporting
SaaS (Software as a Service)	Software delivery model where applications are provided over the internet	Most modern legal, accounting, and real estate practice tools
Template-based Systems	Software with pre-built formats that can be customized	Document generation, standard agreements, compliance checklists
Two-factor Authentication	Security process requiring two verification methods	Protecting sensitive client and project data in digital systems
User Permissions	Access controls determining what actions different users can perform	Managing team access to sensitive project or client information
API Integration	Connecting different software platforms to share data	Linking property management software with accounting systems

23.8 End of this chapter -- Outcome

By completing this chapter, participants should now:

- a) **Understand practical applications** of AI tools for specific real estate practice activities
- b) **Be familiar with actual available tools** in the Indian market that can be implemented immediately
- c) **Know how to select appropriate tools** based on their practice needs and client requirements
- d) **Have a step-by-step implementation plan** for introducing AI tools into their workflow
- e) **Recognize potential challenges** and have strategies to address them
- f) **Be aware of specific RERA-related applications** where AI tools can provide immediate benefits
- g) **Understand the security and privacy considerations** when implementing these technologies

This knowledge provides a foundation for modernizing your real estate practice with readily available tools. While the field of AI continues to evolve rapidly, the tools and approaches covered in this chapter represent practical solutions that can be implemented today without specialized technical expertise.

To build on this knowledge, participants should: a) Start with a pilot implementation of one tool from this chapter b) Join professional forums where CAs discuss technology adoption c) Follow regulatory developments related to digital compliance d) Regularly evaluate new tools entering the market e) Consider developing a "digital transformation roadmap" for their practice

23.9 Reference Material

Practical Guides and Resources

- a) "Guidance Note on Accounting for Real Estate Transactions (Revised 2012)" - Available at: kb.icai.org/pdfs/PDFFile5b28b00f579eb6.35674209.pdf
- b) Telangana RERA: rera.telangana.gov.in

Learning Resources

Real Estate Management Institute: remi.edu.in

Tool Directories and Reviews

- a) Software Suggest (India-focused software reviews): www.softwaresuggest.com
- b) G2 Business Software Reviews: www.g2.com
- c) Capterra India: www.capterra.in

23.10 Self Appraisal

S.No	Scale 1-3	1- Low	2- Medium	3-High
1.	Attended full session			
2.	Fully present and heard the speaker			
3.	Understood the Topic, Subject			
4.	Helpful to expand/Start Practice/advice			
5.	Recommend to Friends/Collagues			

Note

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

[illegible]



Committee for Members in Practice
The Institute of Chartered Accountants of India
ICAI Bhawan, Administration Block
Fifth Floor, A-29, Sector 62, Noida - 201 309
Contact No. 91-120-3045905

November | 2025 | P4021 (New)



CMP-002-1125