



# **Real Estate (Regulation and Development) Act, 2016 - Overview**

November 2017

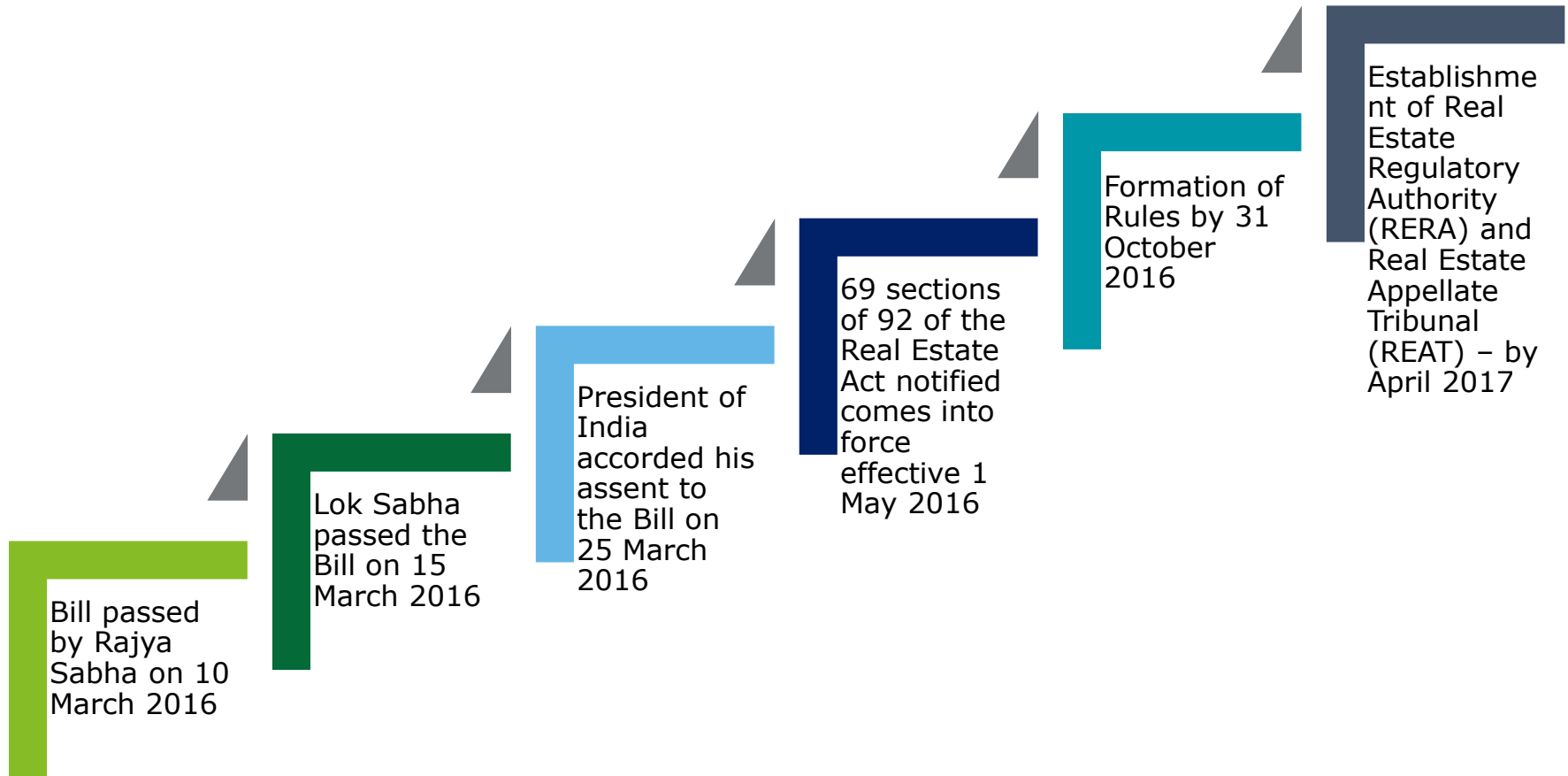
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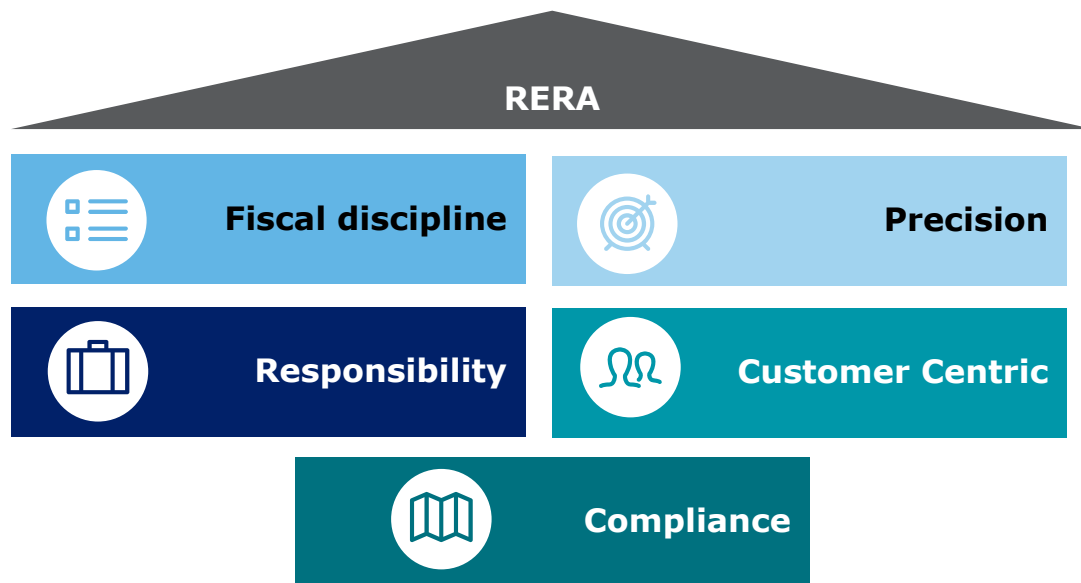


# RERA – Overview

# The Build up to the Real Estate Act



# Fundamentals of the Act



## Uniform regulatory environment

**Commercial and residential projects including plotted development**

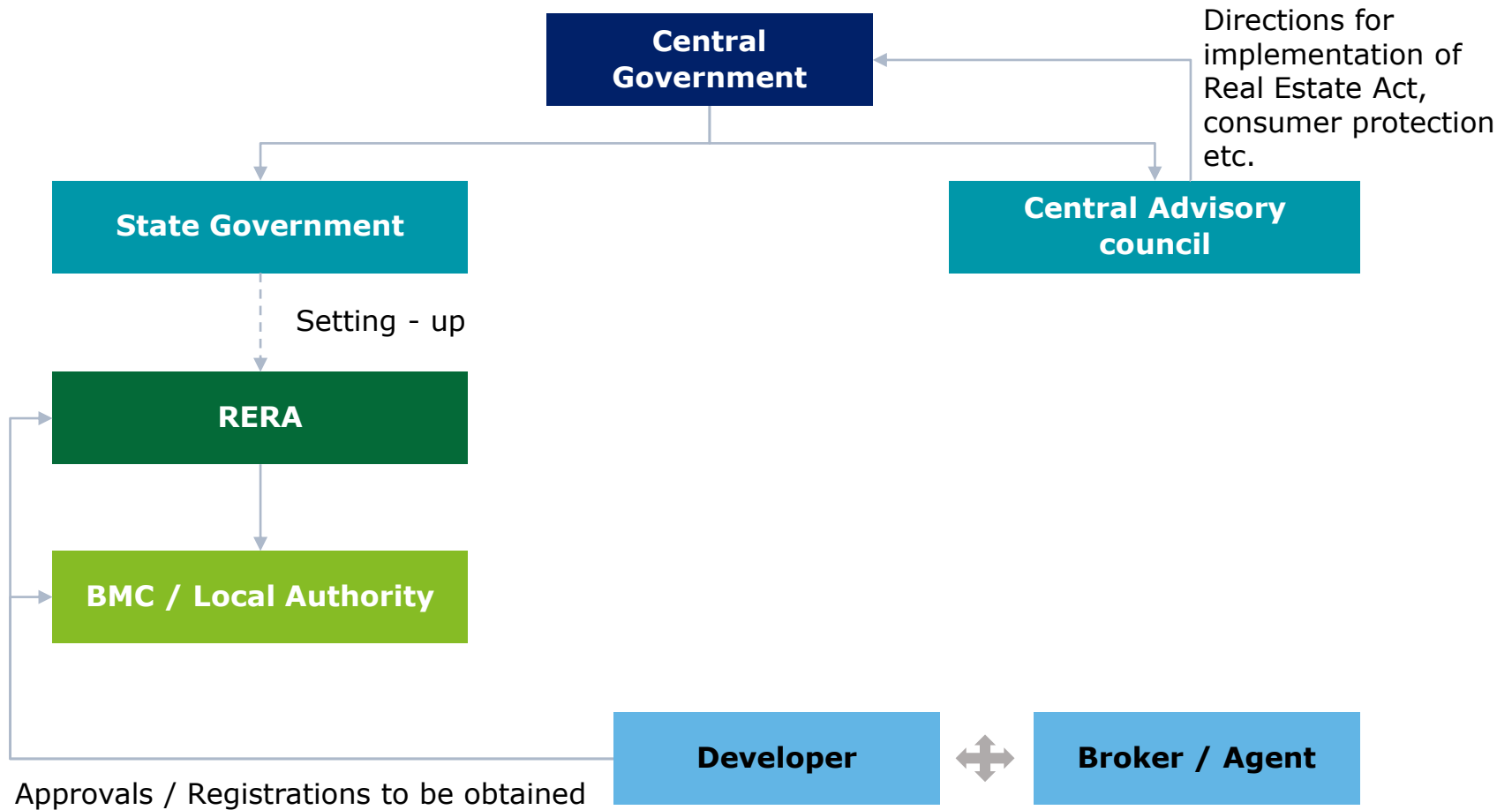
**Land under development more than 500 sq. meter / No. of Units exceed 8**

**Projects which do not have Completion Certificate before commencement of Act**

**Renovation or repair or redevelopment projects not involving Marketing, Advertising, Selling & New Allotment need not be registered**

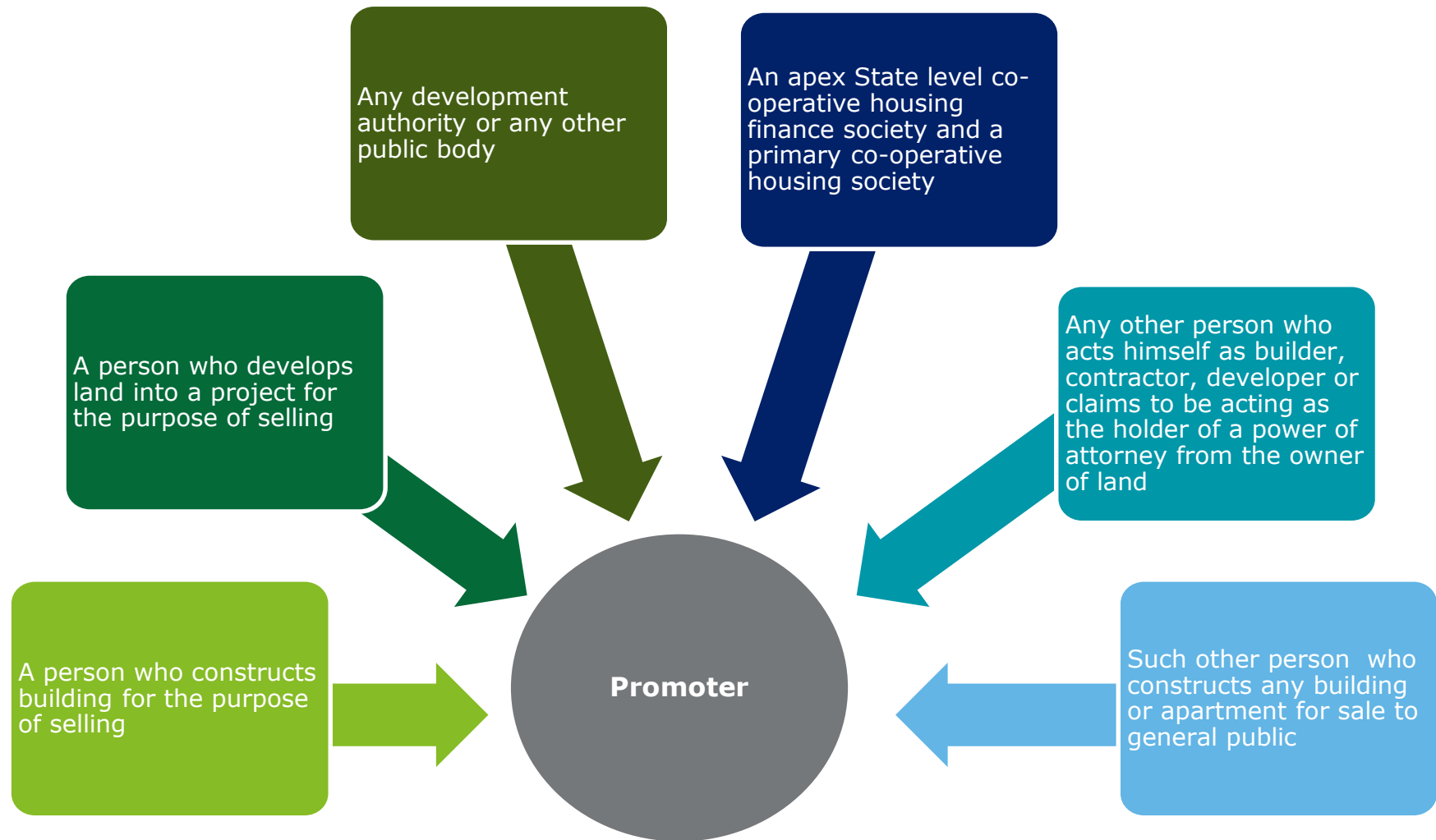
**70% of the amount realized to be deposited in separate bank account. To be utilized only to cover the cost of construction and land cost**

# Governing Bodies



# Promoter and Investor perspective

# Whom does it apply to – The Promoter





# Co-Promoter

Co-Promoter means and includes any person(s) or organisation(s) who, under any agreement or arrangement with the promoter of the real estate project is allotted or entitled to a share of total revenue generated from sale of apartments or share of the total area developed in the real estate project.

The liabilities of such co-promoters shall be as per the agreement or arrangement with the promoters, however for withdrawal from designated bank account, they shall be at par with the promoter of real estate project.

## **Note:**

*The Act makes both the promoters and the landlord or any such parties which are beneficiary of a sale of a project and receive payments from allottees as Co-promoters and hence liable to adhere to the provisions of the Act and Rules and Regulations made thereunder.*

# Promoters - Responsibility

Project registration

Advertisement

Withdrawal – POC  
method

Website updation/  
Disclosures

Carpet area

Alteration in  
project – approval  
of 2/3 allottees

Project accounts -  
Audit

# Liability on promoter – few instances

If title of land is defective

Fails to complete or unable to give possession

Any false information to allottee in relation to sanctioned plan or in adherence to sanctioned plan

If promoter does not provide the information of sanctioned plan, stage wise time schedule of completion of project

In case project is assigned to third party without prior written consent

If promoter fails to refund the amount within 6 months from the termination of sale agreement in dispute due to defect in the apartment

# Investor perspective - Benefits

Accountability

Transparency

Corporate  
governance

Project completion  
time frame

Compliance

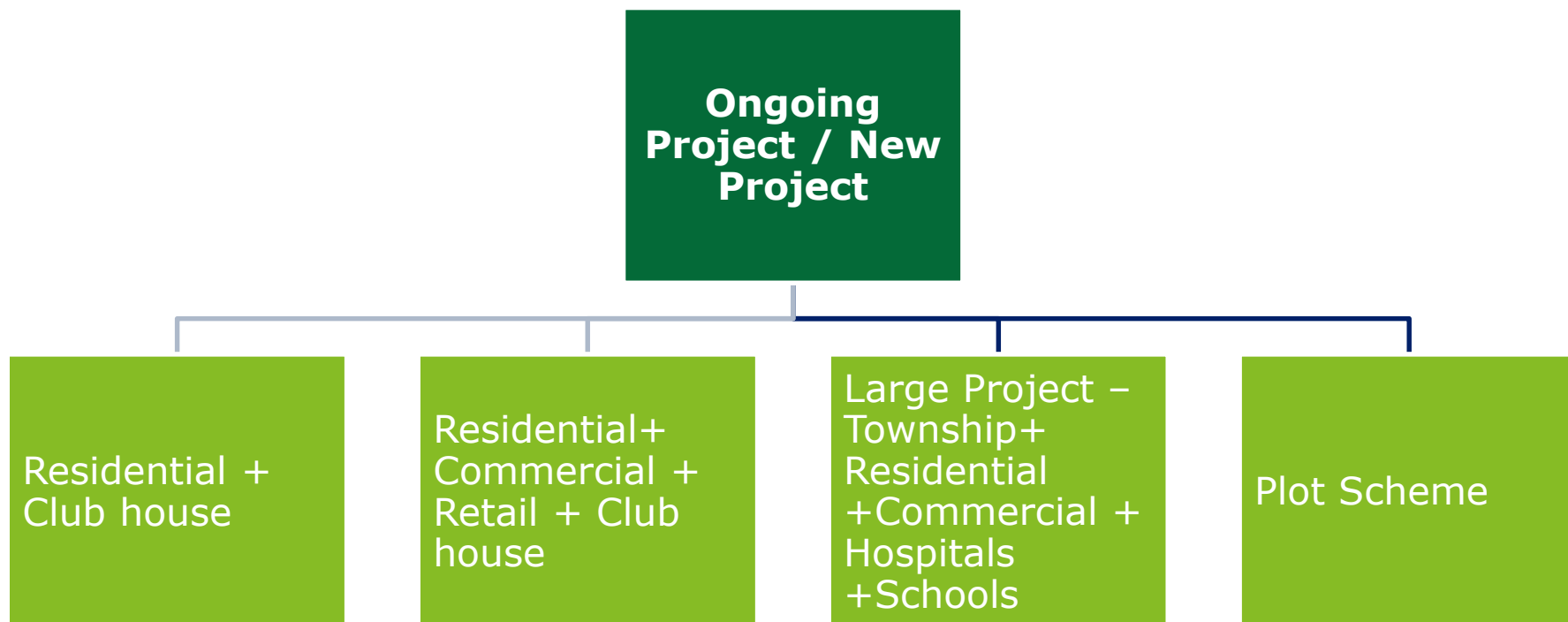
Financial discipline

Regulated  
environment

# Ongoing Projects and Monetary consideration

# Ongoing / New projects

For ongoing real estate project that have not received OC / CC (BU Certificate) are to be registered with RERA.



# Monetary consideration

## Conditions imposed on consideration for real estate projects

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graph TD; A[Conditions imposed on consideration for real estate projects] --> B[70%, of the amounts realized from the allottees shall be: deposited in a separate account to be maintained in a scheduled bank; Utilization only to cover the cost of construction and land cost; Withdrawal only after certification from an engineer, architect and a chartered accountant in practice certifying the withdrawal is proportionate to the percentage of completion of project Accounts of promoter needs to be audited within 6 months of the Financial Year end]; A --> C[Maximum advance / application fee that can be received by the Promoter, prior to executing a written agreement for sale is 10% of the cost of the apartment.]
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Utilization only to cover the cost of construction and land cost;  
Withdrawal only after certification from an engineer, architect and a chartered accountant in practice certifying the withdrawal is proportionate to the percentage of completion of project  
Accounts of promoter needs to be audited within 6 months of the Financial Year end

Maximum advance / application fee that can be received by the Promoter, prior to executing a written agreement for sale is 10% of the cost of the apartment.

# Form 3 - CA Certificate for registration of project and subsequent withdrawal of money

Sr. No.	Details to be certified	Estimated Cost in INR	Incurred Cost in INR
1	(i) Land Cost*		
	(ii) Development Cost / Cost of Construction*		
2	Total Estimated Cost of the Real Estate Project [1(i) + 1(ii) of Estimated Column]		
3	Total Cost incurred on the Real Estate Project [1(i) + 1(ii) of Incurred Column]		
4	Percentage of completion of construction work (As per Project Architect's Certificate)		
5	Proportion of the cost incurred on land cost and ____% of construction cost to the total estimated cost (3/2%)		
6(a)	Amount which can be withdrawn from the Designated Account  <b>(Total Estimated Cost * Proportion of Cost incurred)</b>		
6(b)	(Less) Amount withdrawn till date of the certificate as per the books of accounts and bank statement		
7	Net amount which can be withdrawn from the Designated Bank Account		



# Gujarat RERA Rules – Constituents of Land cost and construction cost

## Land Cost

- Acquisition Cost of Land or Development Rights, lease Premium, lease rent, interest cost incurred or payable on Land Cost and legal cost
- Amount of Premium payable to obtain development rights, FSI, additional FSI, fungible area and any other incentive under DCR from Local Authority or State Government or any Statutory Authority
- Acquisition cost of TDR (if any)
- Amounts payable to State Government or competent authority or any other statutory authority of the State or Central Government, towards stamp duty, transfer charges, registration fees etc; and
- Land Premium payable as per annual statement of rates (ASR) for redevelopment of land owned by public authorities.

## Construction cost

- Estimated Cost of construction as certified by the Engineer
- Actual Cost of construction incurred as per the books of accounts as verified by the CA
- On-site expenditure for development of entire project\*
- Payment of taxes, cess, fees, charges, premiums, interest, etc. to any statutory authority
- Interest payable to financial institutions, scheduled banks, NBFC or money lenders on construction funding or money borrowed for construction

\*excluding cost of construction as above including all costs directly incurred to complete the construction of the entire phase of the project registered.

# Clarification on CA Certificate – Gujarat RERA

## Indexed Cost of Acquisition

- To determine fair market value of the land - the acquisition cost shall be the **Indexed Cost of Acquisition**.

## Rehab Cost

- All amounts payable to - slum dwellers, tenants, apartments owners or appropriate authority or Government or concessionaire which are not refundable

## Construction Cost

- **Any increase** due to execution of extra / additional items as certified by Engineer shall be allowed to be included in the on-site expenditure

## Interest Cost

- **Amount of interest** incurred on the borrowing done specifically for construction of Rehab component shall be included in the interest payable to financial institutions under the head Land Cost

# Clarification on CA Certificate – Gujarat RERA

## Separate Account under RERA

- The said account to be a 'No Lien' account.
- Excess amounts lying in such account can be put in fixed deposits with the same bank.
- Promoter and/or CA to obtain no lien / charge certificate in respect to such fixed deposits, from the bank once every **3 months**
- No end use restriction on the amount withdrawn from the separate account

## Cancellation amount , if any to be paid by Promoter

- shall be treated as cost incurred for the project and the same can be withdrawn to the extent of 70% of the amounts to be paid to allottee
- Compensation/interest paid shall be treated as cost incurred and entire sum required to be paid can be withdrawn

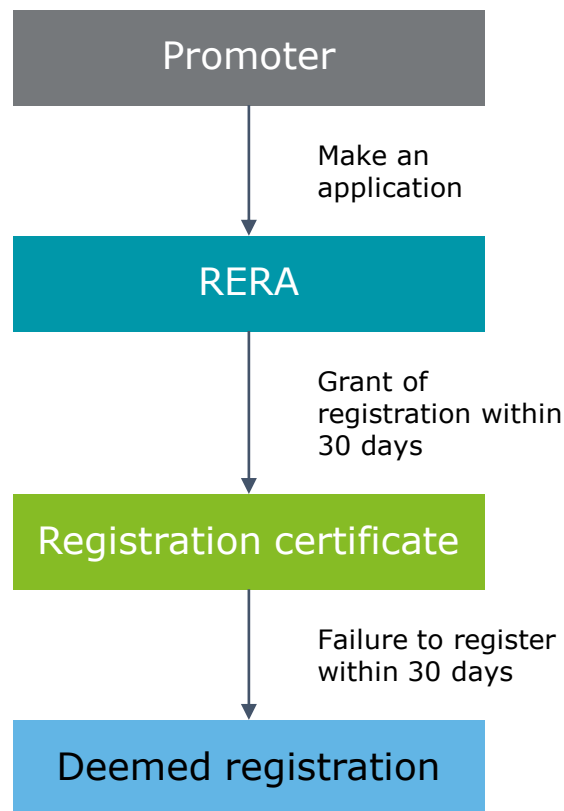
# Application Process

# Application process - Gujarat RERA

No project promotions / advertisements/ marketing permitted before registration.

Application for registration to disclose:

- Details of the promoters including its name, registered address etc.;
- **Details of the projects launched in past 5 years;**
- Certified true copy of the commencement certificate from the appropriate authority (each phase);
- Layout plan - whole project and each phase sanctioned by appropriate authority;
- Development works plan and proposed facilities;
- Sample agreements proposed to be signed with the allottees;
- Number and the carpet area of apartments in the project;
- Names and addresses of real estate agents, if any, for the proposed project;
- **Names and addresses of the contractors, architect, structural engineer, any other persons concerned with the development of the proposed project;**
- Declaration, supported by an affidavit, signed by the Developer or any person authorized by the developer, stating:
  - that the developer has a legal title to the land;
  - land is free from all encumbrances;
  - Approximate period for completion of project.
- **Audited financial statements including directors report, auditors report and cash flow statement for previous 3 years.**
- **Income Tax Returns Acknowledgement for previous 3 years**
- **Project Photographs**
- **Brochure of current project**



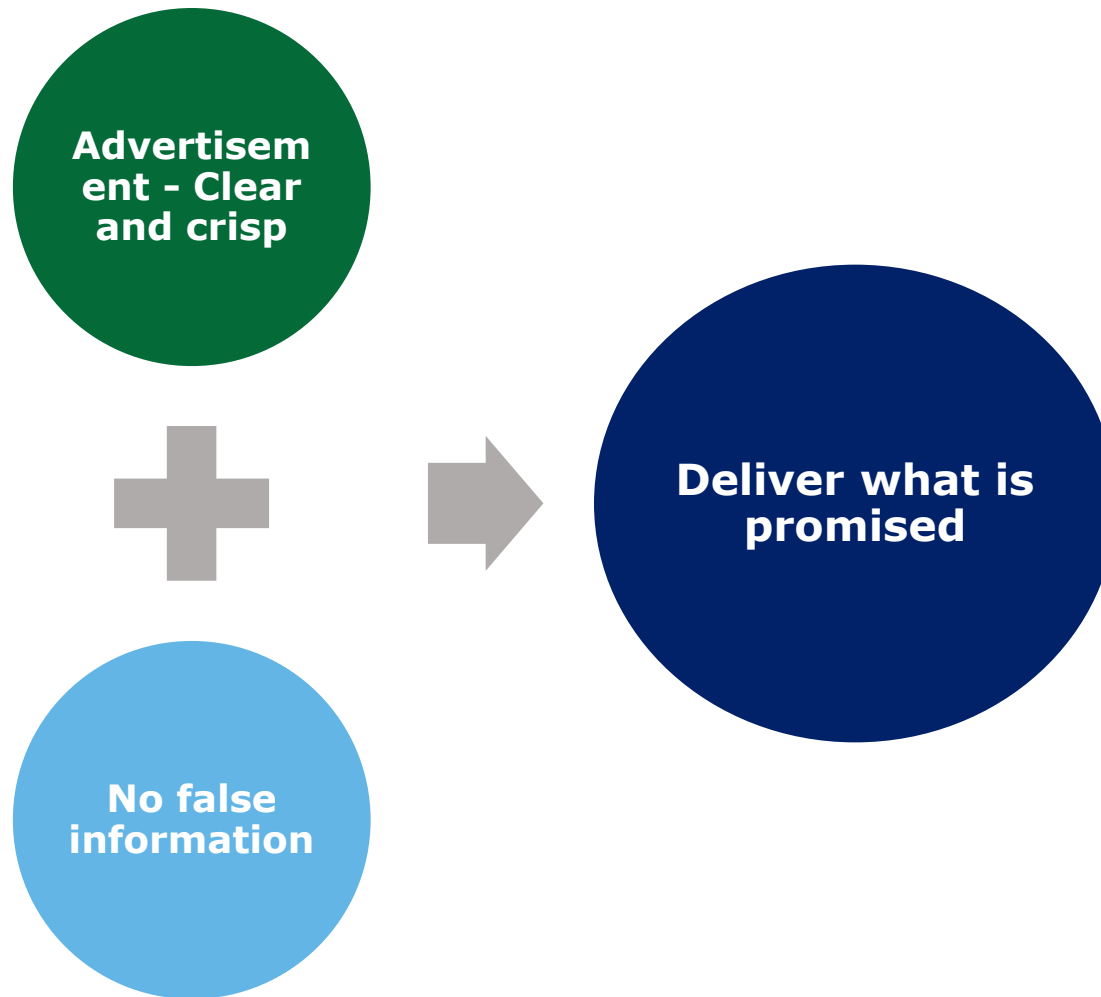
**Hard copies to be submitted – within 3 days to Branch office of Town planning department**

# Fees – Gujarat RERA

Project Type	Fees at the time of application for registration
Group Housing Project	Land is <1000 Sq. mtr. – Rs. 5 per Sq. mtr. Land is >1000 Sq. mtr. – Rs. 10 per Sq. mtr. Subject to maximum of Rs. 500,000
Mixed Project	Land is <1000 Sq. mtr. – Rs. 10 per Sq. mtr. Land is >1000 Sq. mtr. – Rs. 15 per Sq. mtr. Subject to maximum of Rs. 700,000
Commercial Project	Land is <1000 Sq. mtr. – Rs. 20 per Sq. mtr. Land is >1000 Sq. mtr. – Rs. 25 per Sq. mtr. Subject to maximum of Rs. 10,00,000
Plotted Development	Rs. 5 per Sq. mtr. Subject to maximum of Rs. 200,000

# Sales and Marketing

# Marketing and sale





# Real estate agent

Registration



Marketing



Unfair trade practice



**Promoter / developer to ensure that the agent appointed should be registered and provides only such services that are intended to be offered.**

# Penalty

# Penalties

If any promoter contravenes the provisions of registration - liable to penalty upto 10% of the estimated cost of project as determined by the Authority.

If any promoter does not comply with the orders, decisions or directions issued or violate the provisions of registration - punishable with imprisonment upto 3 years or with fine upto 10% of the estimated cost of the project, or with both.

If any promoter provides false information or contravenes the provisions of registration of real estate projects - penalty upto 5% of the estimated cost of the project.

If any promoter contravenes any other provisions of the Real Estate Act - penalty upto 5% of the estimated cost of the project as determined by the Authority

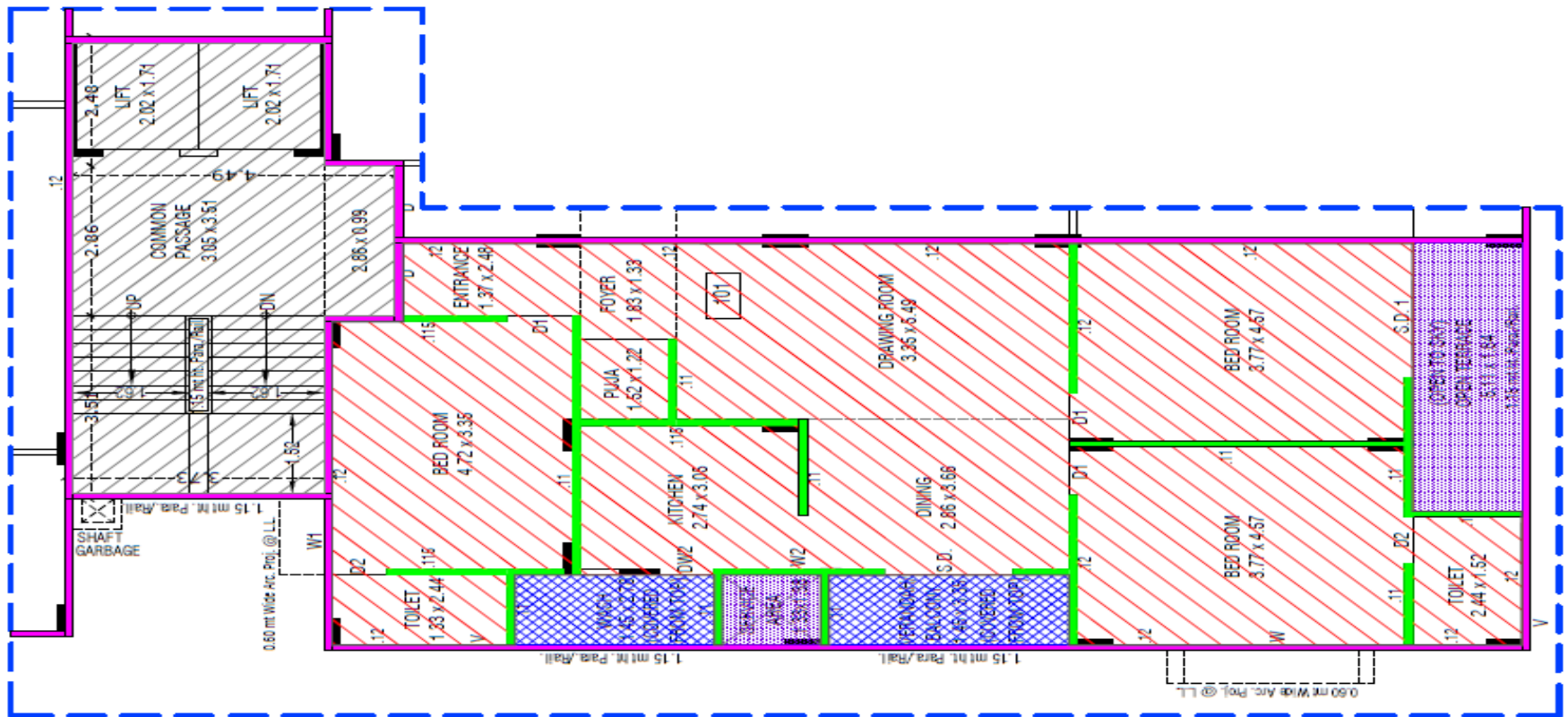
# Gujarat RERA Rules – Fine payable for compounding of offence

Offence	Money to be paid for compounding of offence
Imprisonment under sub section (2) of section 59 – where promoter fails comply with the orders decisions regarding registration of the real estate project	5% of the estimated cost of the real estate project
Imprisonment under section 64 – where promoter fails to comply with orders / directions of REAT	5% of the estimated cost of the real estate project
Imprisonment under section 66 - where real estate agent fails to comply with orders / directions of REAT	5% of the estimated cost of the plot, apartment or building, of the real estate project, for which the sale or purchase has been facilitated
Imprisonment under section 68 - where allottee fails to comply with orders / directions of REAT	5% of the estimated cost of the plot, apartment or building, as the case may be

# Practical aspects

# Calculation of Carpet Area

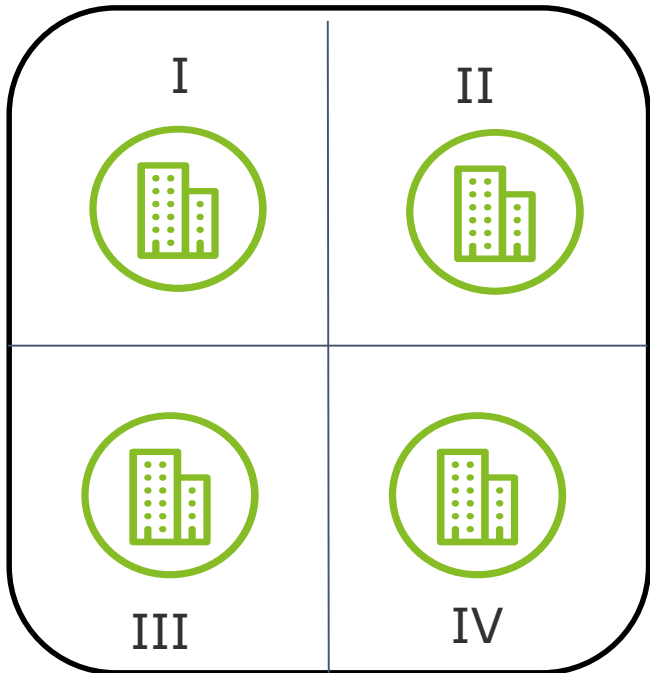
As per section 2(k) of RERA Act, 2016, Carpet Area means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.



- |   |                        |   |                             |
|---|------------------------|---|-----------------------------|
|  | EXTERNAL WALL/COLUMN   |  | OPEN TERRACE & SERVICE AREA |
|  | INTERNAL WALL/COLUMN   |  | BALCONIES, VERANDAH & WASH  |
|  | CARPET AREA UNDER RERA |  | COMMON AREA                 |
|   |                        |  | CARPET AREA LINE            |

# Phasing of projects

## Phasing of Township project divided for RERA purpose



1. Effective management of funding, withdrawals
2. Costs to be bifurcated by way of area / FSI
3. Promoters liability can be reduced in risk in terms of obtaining consents from allottees
4. Separate compliances under RERA – Separate Bank accounts
5. Separate Society formation per phase

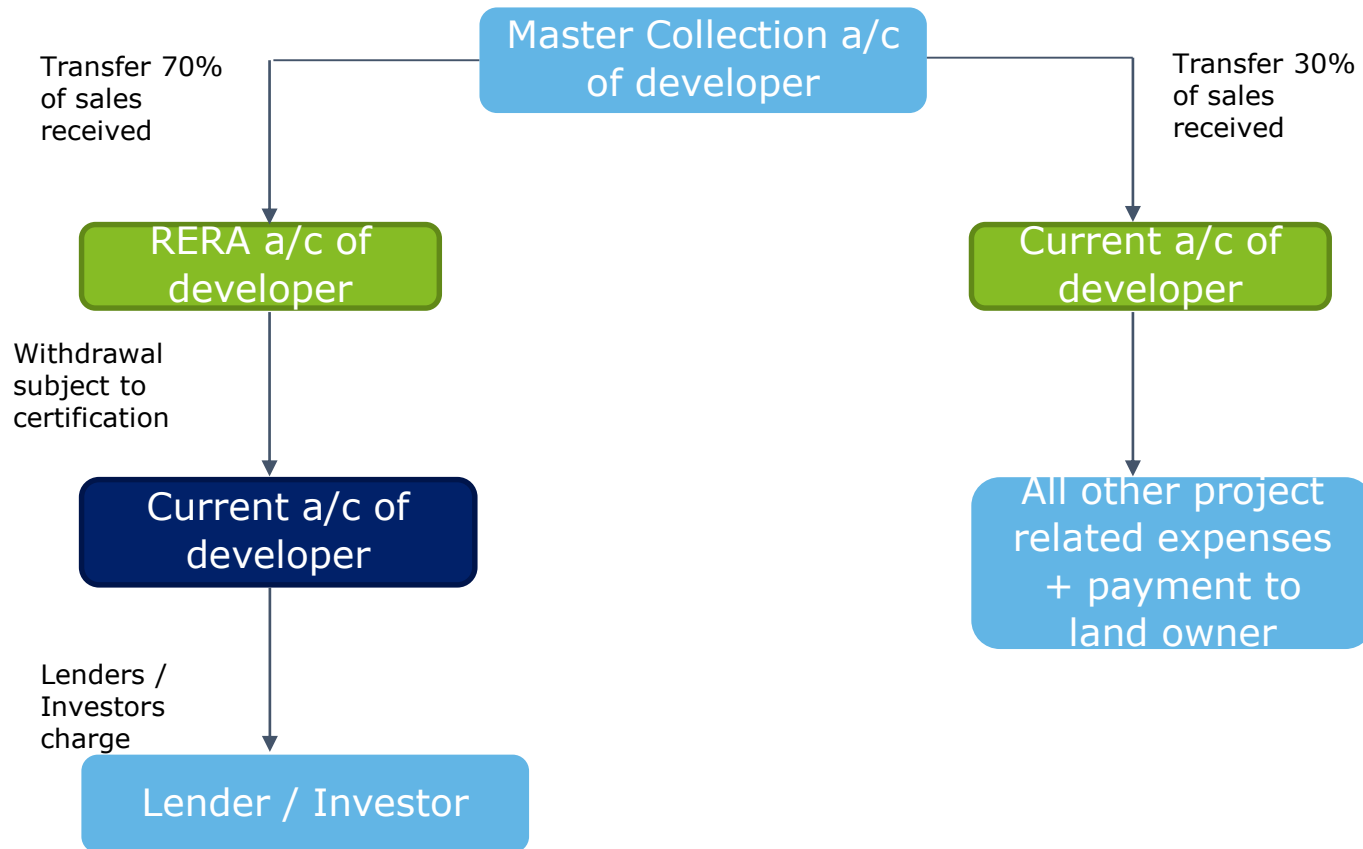
# Withdrawal of funds - % of completion

Particulars	From Developer Perspective		From Land owner perspective	
Total saleable area	5,000 Sq. ft.	5,000 Sq. ft.	5,000 Sq. ft.	5,000 Sq. ft.
Land Cost	Nil	Rs. 300 lakhs	Rs. 300 lakhs	Rs. 300 lakhs
Estimated Project Cost	Rs. 200 lakhs	Nil	Nil	Nil
Cost incurred till end of reporting period	Rs. 160 lakhs	Rs. 300 lakhs	Rs. 300 lakhs	Rs. 300 lakhs
Total area sold till the date of reporting period	2,500 Sq. ft.	2,500 Sq. ft.	3,500 Sq. ft.	3,500 Sq. ft.
Total sale consideration received	Rs. 300 lakhs	Rs. 300 lakhs	Rs. 450 lakhs	Rs. 450 lakhs
70% to be kept in separate bank a/c	Rs. 210 lakhs	Rs. 210 lakhs	Rs. 315 lakhs	Rs. 315 lakhs
% of completion of project	80% of total project cost (160/200*100)	100% of total project cost (300/300*100)	100% of total project cost (300/300*100)	100% of total project cost (300/300*100)
Amount which can be withdrawn	Rs. 160 lakhs (80% of Rs. 200 lakhs)	Rs. 300 lakhs (Entire amount of Rs. 210 lakh can be withdrawn)	Rs. 300 lakhs*	Rs. 300 lakhs*
Less – Amount already withdrawn	Nil	Nil	Rs. 300 lakhs	Rs. 300 lakhs
<b>Maximum net amount that can be withdrawn</b>	<b>Rs. 160 Lakh</b>	<b>Rs. 300 Lakh</b>	<b>Nil</b>	<b>Nil</b>
<b>Balance in separate bank account</b>	<b>Rs. 50 lakhs</b>	<b>Nil</b>	<b>Rs. 15 lakhs</b>	<b>Rs. 15 lakhs</b>

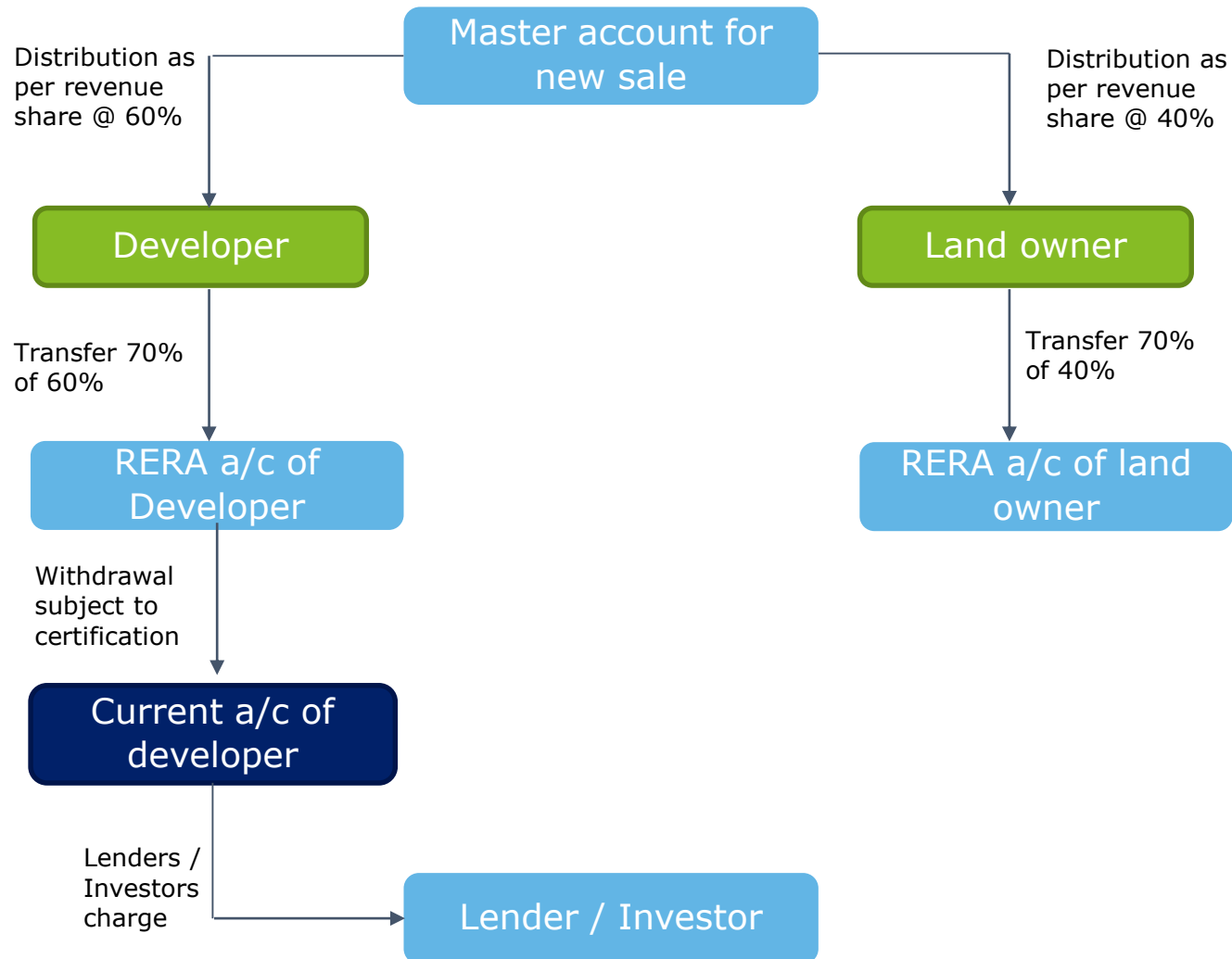
**\*Note** - The RERA provision restricts the land owner and developer to withdraw only upto estimated cost of project.



# JDA arrangement – Revenue Sharing Model



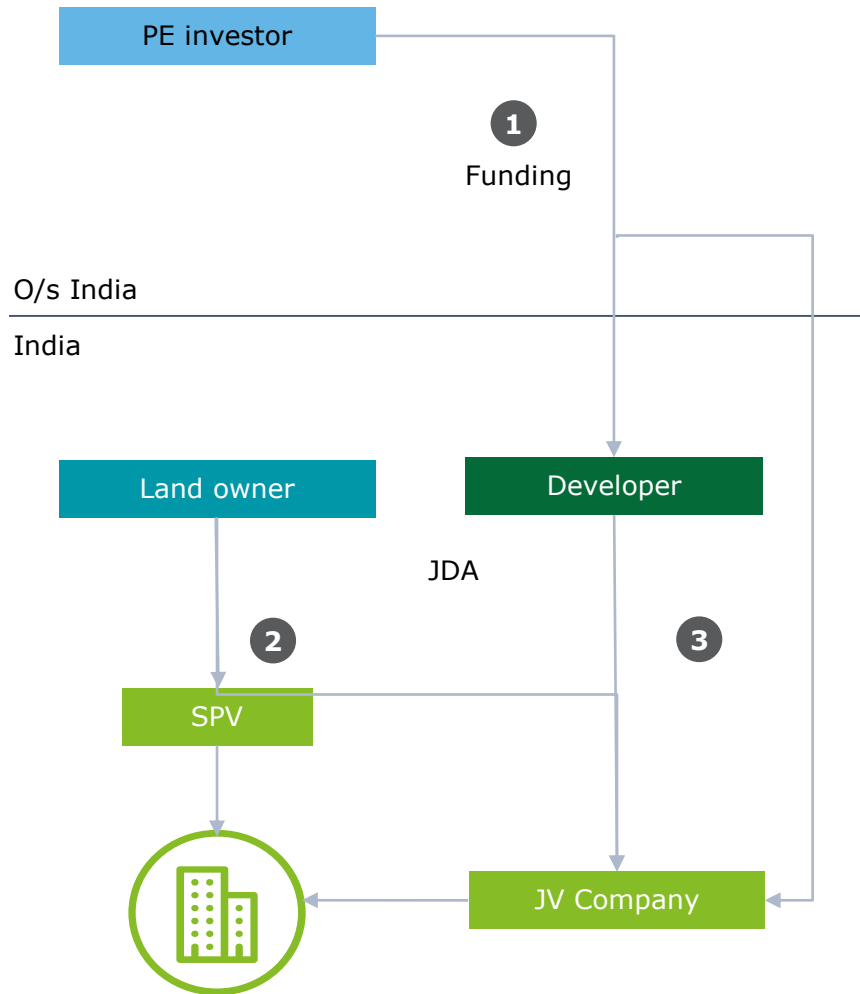
# JDA arrangement – Prevailing Revenue Sharing Model



# Due Diligence – Acquirer / Investor Perspective

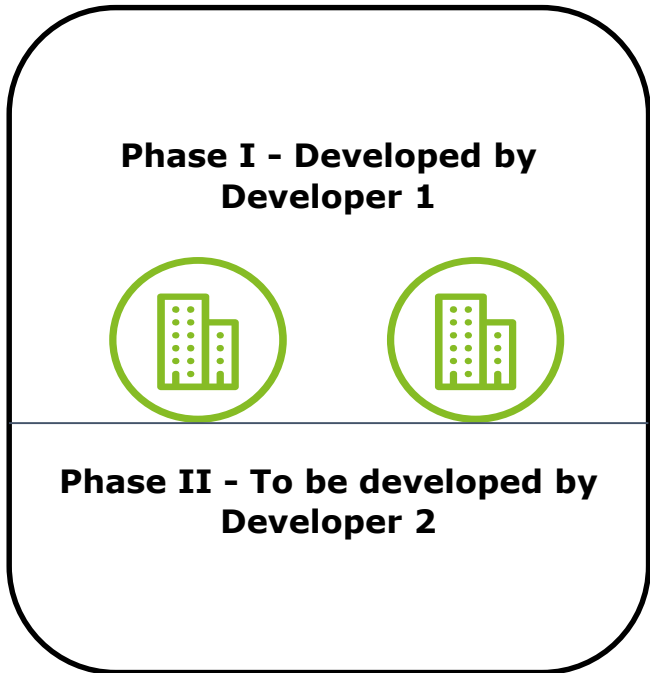


# Who is the "Promoter" – Open issues



1. Can PE investor be treated as "Promoter" for the purpose of RERA?
2. In case of a JDA, where the Developer further sub-contracts the construction work – whether SPV, Developer or the Contractor is the "Promoter"?
  - a. What if the contractor is appointed post the registration with RERA?
  - b. Is the sub-contractors default right to be borne by the person delegating the work? What if SPV is the "Promoter" and delegation is done by the developer?
3. In case of JV – whether either of the Landowner / Developer or the Investor would be treated as the "Promoter"?
4. There is a requirement that the "Promoter" to undertake that it has a legal title to the land. Thus, can only the land-owning SPV become the "Promoter"?

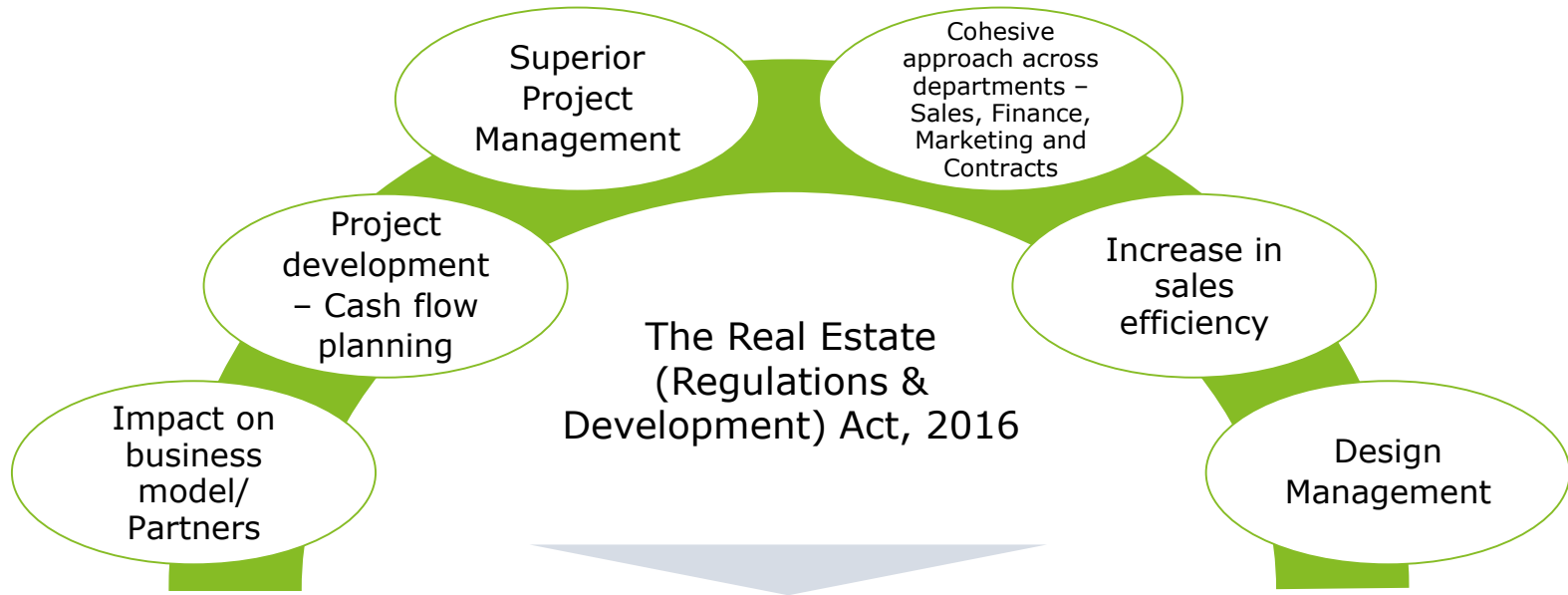
# Consent of the allottees



1. Would Developer 2 need to obtain consent of allottees in the buildings 1 and 2 for developing / change in sanctioned plan of the remaining site?
2. What if there is an entitlement of additional FSI which is due to land of Phase I and Developer proposes to utilise the same in Phase – II. Would consent of allottees of Phase I would be required?

*The Act puts an obligation on a promoter to obtain consent of each allottee, if he wants to change the building plans for the phase that is registered. If a subsequent phase has not been registered, the promoter can change the plans of the subsequent phases without obtaining consent of the allottees from current/ ongoing phases. However, if the subsequent phases are also registered, consent of allottees, of the concerned phases, would be needed as mentioned in Section 14 of the Act.*

# Operational Transformation



Awareness	Change & Readiness	Discipline	Monitoring
<ul style="list-style-type: none"> <li>Identifying key stakeholders</li> <li>Impact Analysis, Workshops and discussions</li> </ul>	<ul style="list-style-type: none"> <li>Conducting health check</li> <li>Changes to ERP</li> <li>Compliance focused</li> </ul>	<ul style="list-style-type: none"> <li>Changes to process</li> <li>Co-ordinated approach across functions</li> </ul>	<ul style="list-style-type: none"> <li>Changes to control environment</li> <li>MIS and score cards</li> <li>Performance Management</li> </ul>

# Conclusions from the rulings of MahaRERA

What you disclose at registration and uploaded on RERA website is what you should advertise, commit and sell

Disputes between contractors / suppliers / landowners are civil disputes and not to be taken before MahaRERA

Buildings that are completed and people staying (irrespective of OC) prior to April 2017 do not need to be registered

Prefer to settle matter amicably with complainant before taking the matter forward

Carefully draft agreement with customers, keep clauses for wilful default by customer, cancellation without promoter's default, refund of money only on execution of cancellation deed

# Conclusions from the rulings of MahaRERA

Development Agreements / JDA should have clauses about responsibility for RERA registration and co-operation by other party

Disclose all relevant information in the registration application

Possession date should be realistic

Disclose layout of the project on the land area which is already secured

Draft of the Agreement for sale to cover important clauses mentioned in the model RERA agreement



# Frequently Asked Questions (FAQs) - MahaRERA

Sr. No.	Questions	Solutions
1.	<p>(a) In JOA project wherein land owners share of revenue is say 40% &amp; developers as 60%, the 70:30 maintainable will also be applicable for land owners share?</p> <p>(b) What if the developer has already obtained a takeout funding?</p> <p>(c) Cost of land includes premium &amp; TDR payable which may be misutilized by Developer</p>	<p>Such land owners are Co-promoters. Their liabilities and responsibilities have been detailed in MahaRERA order available on the MahaRERA website.</p>
2.	<p>Whether one building's part can be registered in phase development? In such phase manner when society can be formed?</p>	<p>Phase is defined in the Rules. Society has to be formed once 51% of allottees have booked their apartment in the phase.</p>
3.	<p><b>If a promoter has sold entire stock and there is no receivable from any customer, in that case if there is no completion certificate then does the promoter have to register his project with MahaRERA ?</b></p>	<p><b>No, if the building work is complete and building is occupied</b></p>
4.	<p>Open parking can't be sold as per RERA. How will they be allotted to the customer ?</p>	<p>The legal entity of the allottees (society/association etc.) will allot.</p>

# Frequently Asked Questions (FAQs) - MahaRERA

Sr. No.	Questions	Solutions
5.	Does the term 'allottee' include secondary sales?	As per section 2(d) an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent. The Act doesn't include rental projects, lease / leave and License deals.
6.	I want to register an Ongoing Project comprising of one tower, wherein I have received Part OC for the building. I want to register only those floors for which OC has not been registered as ongoing project. In this case, what do I enter as land area for these floors?	The land area on which the complete project is being developed shall comprise as land area for this project.
7.	If project is mortgaged by developer but it is not disclosed on website what is the solution?	Complaint can be filed by interested person for incorrect disclosure and violation of section 4 of the Act.
8.	(a) In ongoing project the agreement with purchaser after 1st May 2017 is to be prepared as per MOFA OR RERA OR BOTH? (b) If the buyer has already paid stamp duty before 1.5.2017 and executed agreement then under which Act is the agreement with buyer?	Agreement entered prior to 1st May 2017 will be as per MoFA. All agreements post 1st May, 2017 have to be in accordance with the model form of agreement of MahaRERA.

# Scope for Chartered Accountants under RERA

# Scope for Chartered Accountant

Registering a Real Estate Projects with RERA

Certification at the time of withdrawal

RERA Due Diligence

Representation services before authorities

Audit under RERA

Advise on Escrow Mechanism

Promoter level structuring





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