



Real Estate (Regulation and Development) Act, 2016

Need for change

April 2017

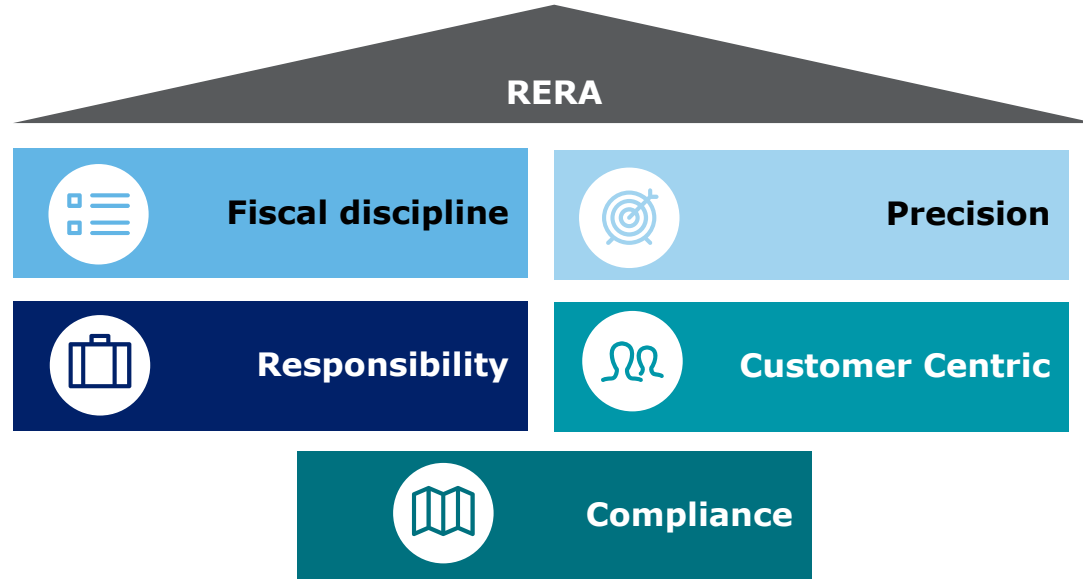
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 - Liquidity – Cash flow planning
 - Registration – Project registration with RERA
 - Sales & Marketing – Increase in project launch time
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RERA – Overview

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

RERA Changes

Promoter – Increased responsibility & compliances

Liquidity – Cash flow planning

Registration – Project registration with RERA

Sales & Marketing – Increase in project launch time

Operational Transformation – Project Management, Design, Sales and Marketing

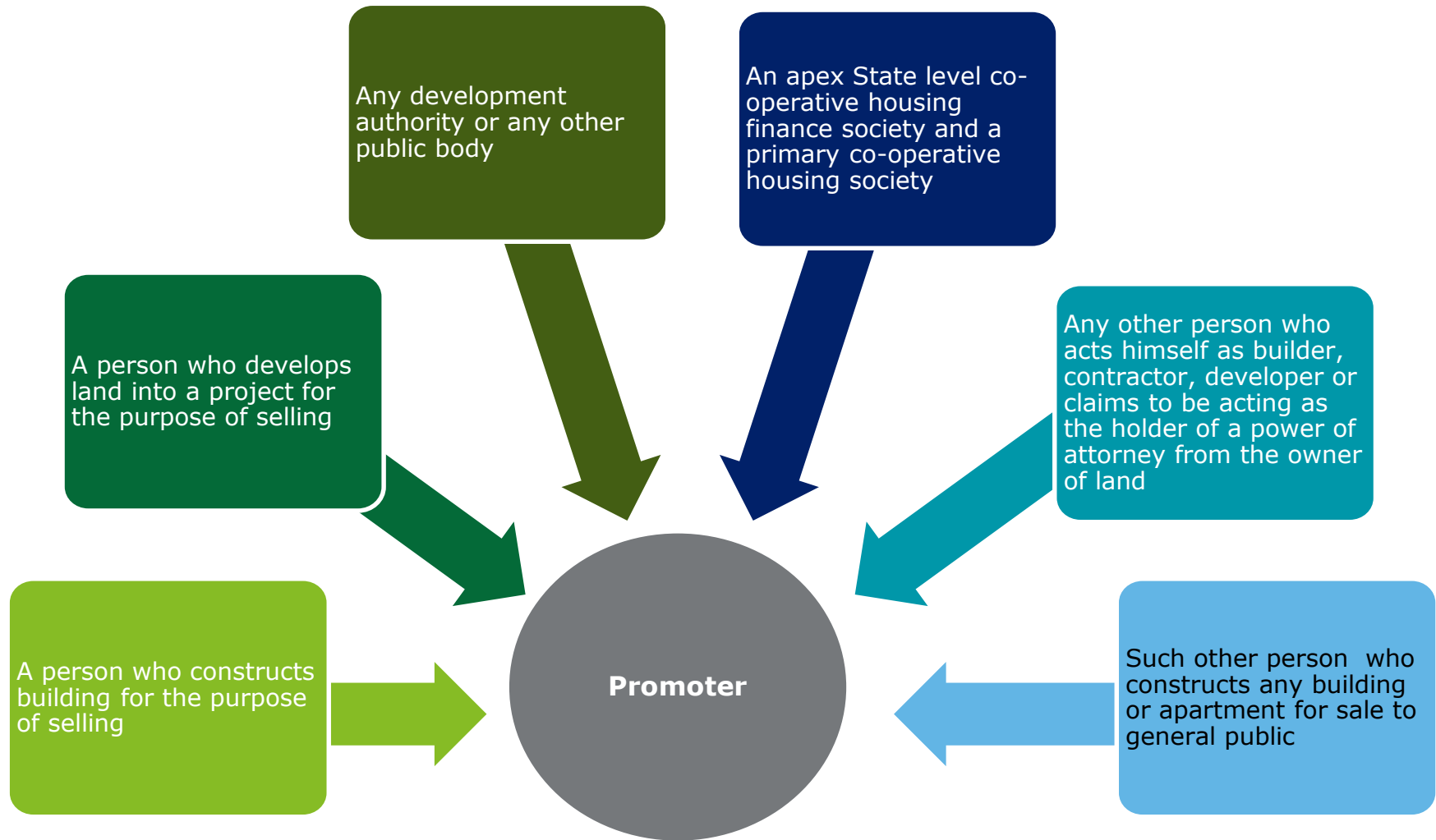
Other Compliances

Way Forward

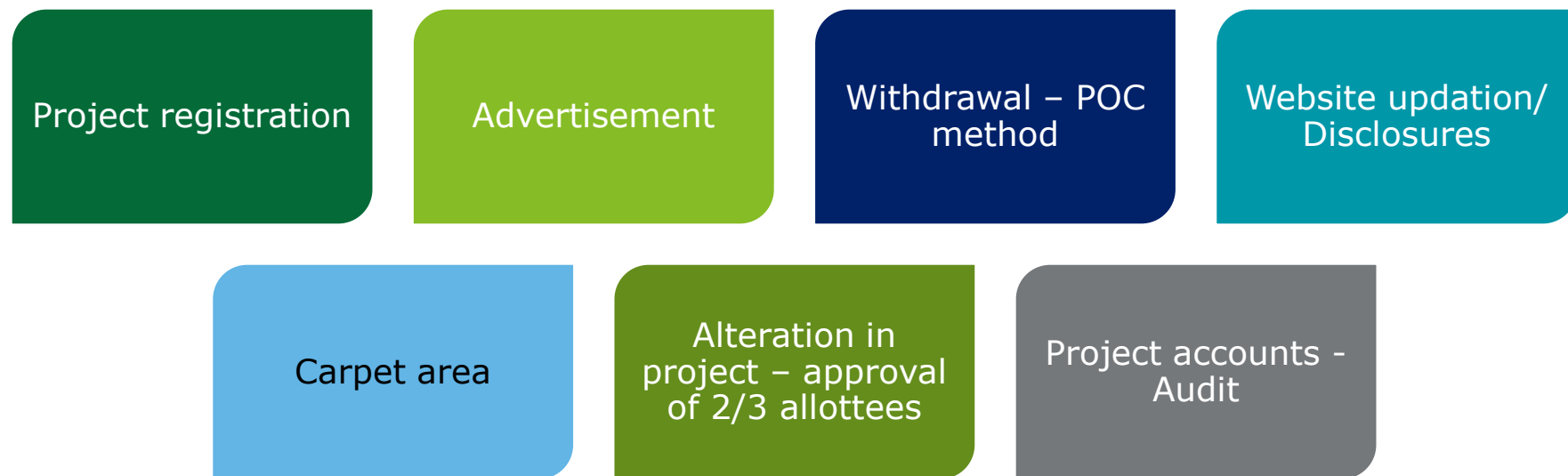


Promoter - Increased responsibility & compliances

Whom does it apply to – The Promoter



Promoters - Responsibility



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

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

Maharashtra RERA Rules – Fine payable for compounding of offence (Notified)

Offence

Money to be paid for compounding of offence

Offence 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 which may extend upto 10%.

Offence under section 64 – where promoter fails to comply with orders / directions of REAT

5% of the estimated cost of the real estate project which may extend upto 10%.

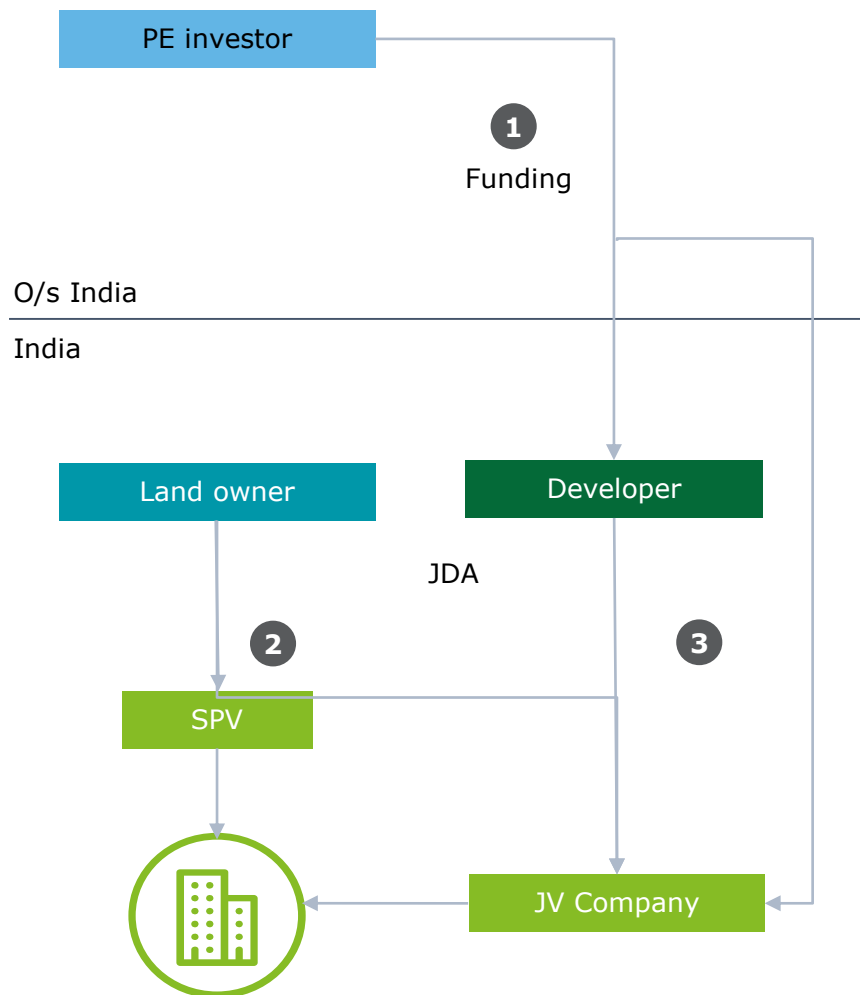
Offence under section 66 - where real estate agent fails to comply with orders / directions of REAT

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, which may extend upto 10%.

Offence under section 68 - where allottee fails to comply with orders / directions of REAT

5% of the estimated cost of the plot, apartment or building, which may extend upto 10%.

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. In case of JDA, is it mandatory to declare land owner as a Promoter specifically considering that the definition of "Promoter" include "a person who develops land into a project".
5. 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"?

Liquidity – Cash flow planning

Monetary consideration

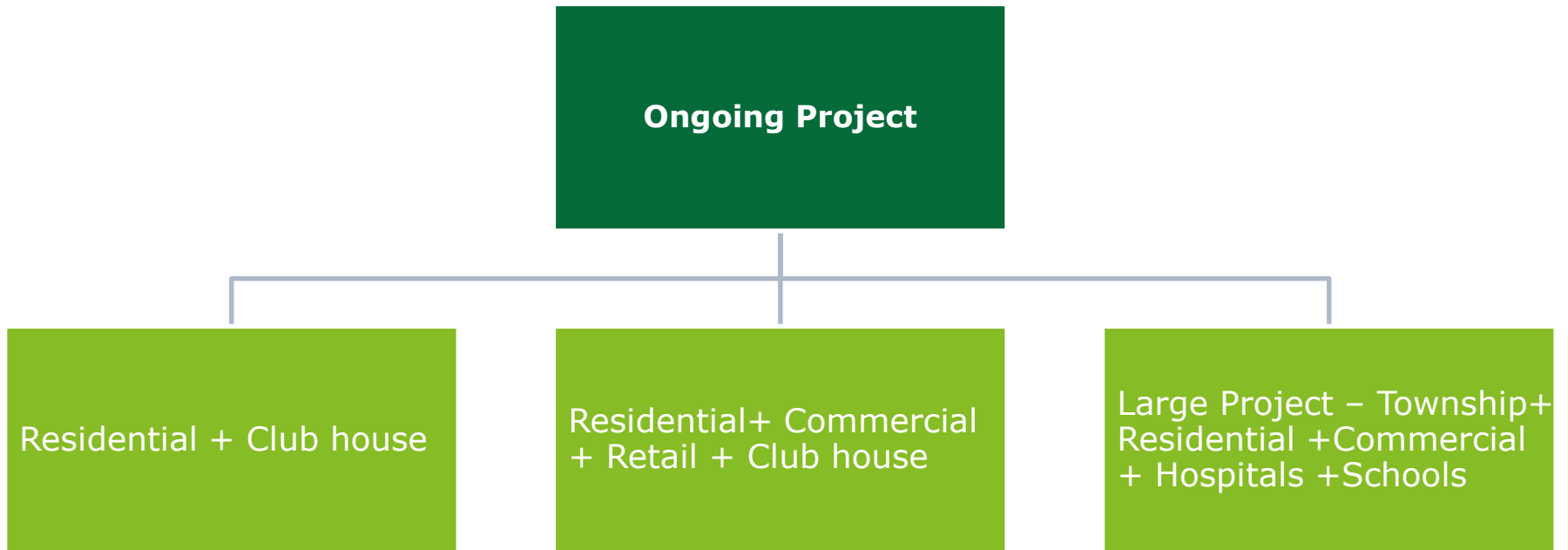
Conditions imposed on consideration for real estate projects

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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.

Determining Project Phase



As per notified Maharashtra Rules - "Phase of a Real Estate Project" may consist of a building or a wing of the building in case of building with multiple wings or defined number of floors in a multi-storeyed building/wing.

Notified Maharashtra RERA Rules – Ongoing projects

For ongoing real estate project in which all buildings/wings as per sanctioned plan have not received occupation certificate or the completion certificate (as the case may be) has not been issued, 70% of the amount to be realized from the allottees shall be deposited in such separate account.



In the event where the estimated receivables of the ongoing project is less than the estimated cost of completion of the project, then 100% of the amount to be realized from the allottees shall be deposited in the said separate account.



Project Cost - Funding analysis of ongoing phase

Particulars	Details
Project ABC (Ongoing Phase 1 + New Phase 2) - OC not received	5 acres
Estimated cost of Project ABC	Rs. 60 crores
Estimated cost of Phase 1	Rs. 30 crores
Phase 1	1 residential building (90%)+ club house (10%)
No. of floors (two flats per floor)	22 floors (44 flats)
Total floors completed	10 floors (20 flats)
No. of flats sold	15
Cost of flat	Rs. 1 crore
Total sale consideration received (70% of Rs. 15 crore)	Rs. 10.5 crores
Expenditure incurred on Phase 1 till date	Rs. 8 crores
Remaining funds left in project account (10.5 – 8)	Rs. 2.5 crores
Funds pending to be realized (for 15 flats)	Rs. 4.5 crores

Since the estimated receivables (Rs. 4.5 crores) is less than estimated cost of completion of project (Rs. 30 crores) – 100% of amount to be realized (Rs. 4.5 crores) to be kept in separate bank account

Notified Maharashtra RERA Rules - Withdrawal of amounts by Promoter deposited in separate account

The promoter to submit following 3 certificates to the Bank operating the separate account [Rule 5(1)(i)(b)]

- First from the project Architect certifying the percentage of completion of construction work of each of the building / wing of the project.
- Second certificate from the Engineer for the actual cost incurred on the construction work of each of the building / wing of the project.
- Third certificate from a CA for the cost incurred on construction cost and the land cost.

The CA to also certify the proportion of the cost incurred on construction and land cost to the total estimated cost of the project. The total estimated cost of the project multiplied by such proportion shall determine the maximum amount which can be withdrawn by the promoter from the escrow/ separate account.

The promoter shall be required to follow the aforesaid procedure at the time of every withdrawal from the separate account till Occupation Certificate in respect of the project is obtained. On receipt of *Completion Certificate* in respect of the project, the entire balance amount lying in the separate account can be withdrawn by the promoter.

Withdrawal of funds - % of completion

Particulars	Details
Total saleable area	5,000 Sq. ft.
Estimated Project Cost (This comprises land cost of Rs. 300 Lakhs and construction costs of Rs. 300 Lakhs)	Rs. 600 lakhs
Cost incurred till end of reporting period (This includes land cost of Rs 300 Lakhs and construction cost of Rs 60 Lakhs)	Rs. 360 lakhs
Total area sold till the date of reporting period	1,000 Sq. ft.
Total sale consideration as per agreements of sale executed	Rs. 200 lakhs
70% to be kept in separate bank account	Rs. 140 lakhs
% of completion of project ($360/600*100$)	60% of total project cost (including land cost)
Amount that can be withdrawn (60% of Rs. 140 lakhs)	Rs. 84 lakhs

Notified Maharashtra RERA Rules

What is included in Land cost and construction cost for ascertaining the cost of completion of % of the project

Land Cost

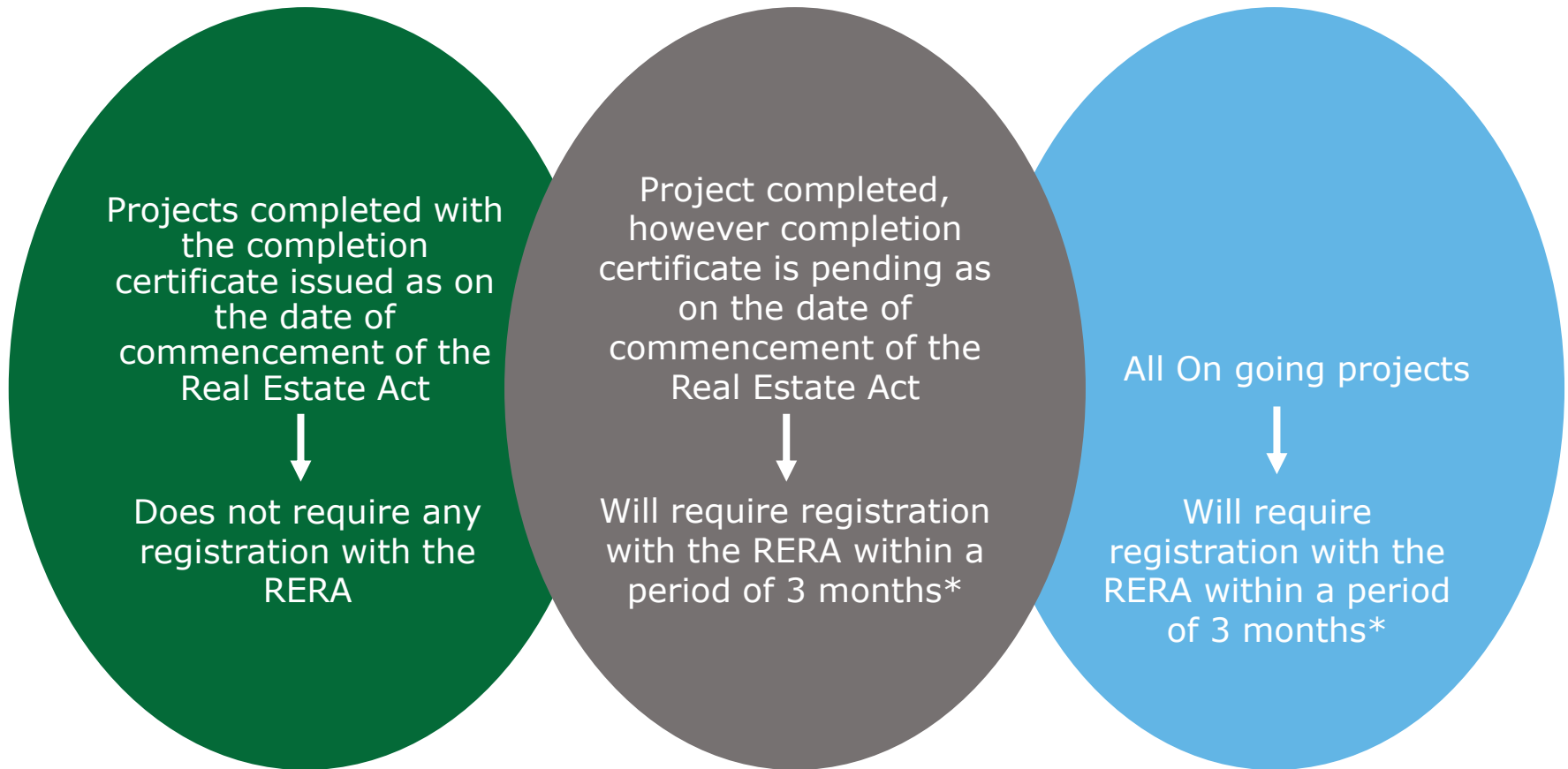
- The costs incurred by the Promoter for acquisition of ownership and title of the land parcels
- Premium payable to obtain development or redevelopment rights
- Amount paid for acquisition of TDR
- Premium for grant of FSI, fungible FSI
- Consideration payable to the outgoing developer to relinquish ownership and title rights over such land parcels
- Amounts payable to State Government or Competent Authority towards stamp duty etc.
- ASR linked premiums payable by Promoter

Construction cost

- All such costs, incurred by the Promoter, towards the on-site and off-site expenditure
- Payment of taxes, charges to any competent authority / statutory authority
- Principal sums, interest paid / payable to any financial institutions

Registration – Project registration with RERA

Ongoing Real Estate Projects



* From the date of notification of registration provisions under the Real Estate Act.

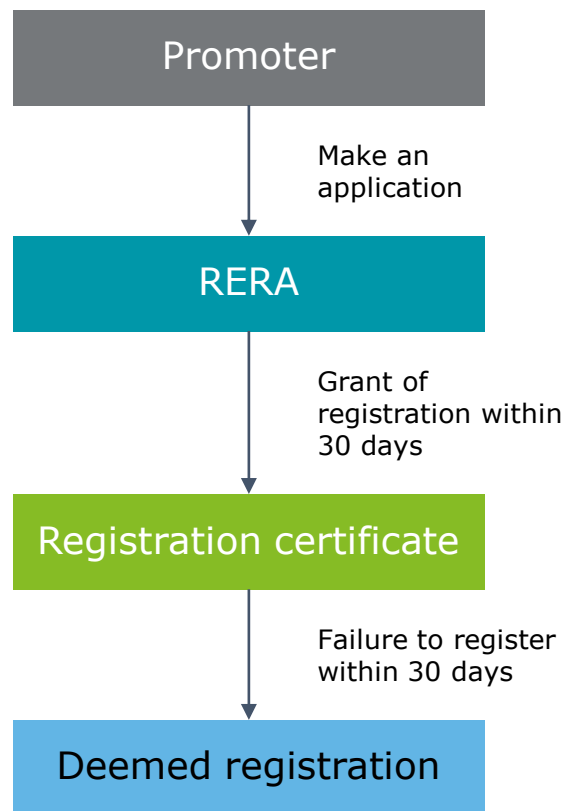
Prior registration of real estate projects

All real estate projects need to be registered with the **RERA** before the **Promoter advertise, market, book, sell or offer for sale, or invite persons** to purchase in any manner any real estate project, **or part of it**, in any planning area except if :

- The area of land proposed to be developed is < 500 Sq. m;
- The number of apartments proposed to be developed < 8;
- The Promoter has received completion certificate for a real estate project prior to commencement of the Real Estate Act;
- The project is only for the purpose of renovation / repair / re-development which does not involve re-allotment and marketing, advertising, selling or new allotment of any apartments, plot or building in the real estate project.

Each Phase is to be treated as standalone real estate project requiring fresh registration

Application process



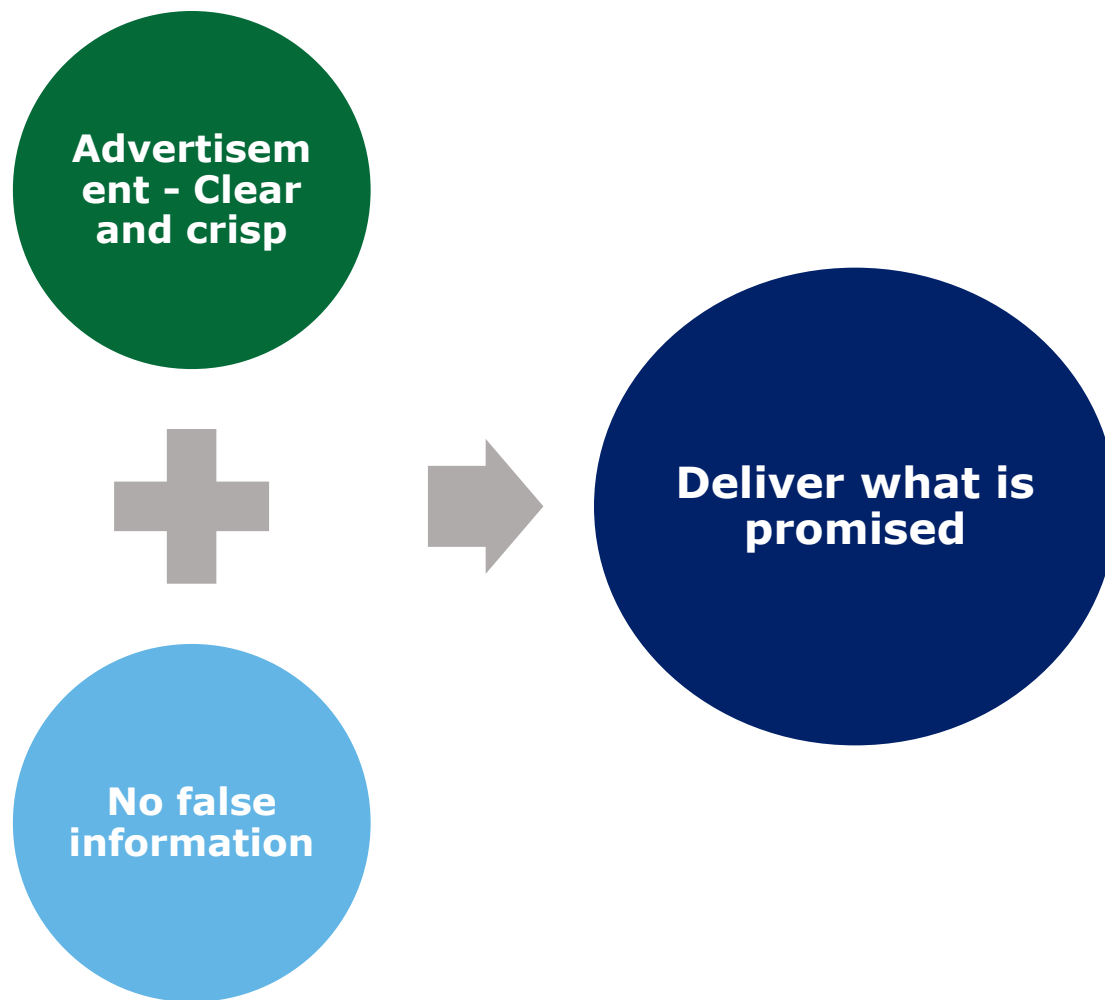
No project promotions / advertisements/ marketing permitted before registration.

Application for registration to disclose:

- Details of the enterprise including its name, registered address etc.;
- Details of the projects launched, in past 5 years including current status, details of cases pending, if any;
- 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.

Sales & Marketing – Increase in project launch time

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.

Open issues:

- **Is promoter / builder liable for unfair trade practices of an agent / unregistered and vice versa?**
- **Is marketing or publicity, not inviting sales, allowed viz. hoardings etc.?**

Agreement for Sale to include – RERA (Based on Model Agreement)



Promoter rights to the title to the land/
POA for development rights

Detailed Promoter representations on
land and construction of project

Registration details of Project by the
Promoter with RERA

Cancellation by Allottee / Compensation
by Promoter in case of default

Carpet area of flat/apartment sold and
confirmation by Promoter on final
carpet area allotted to allottee

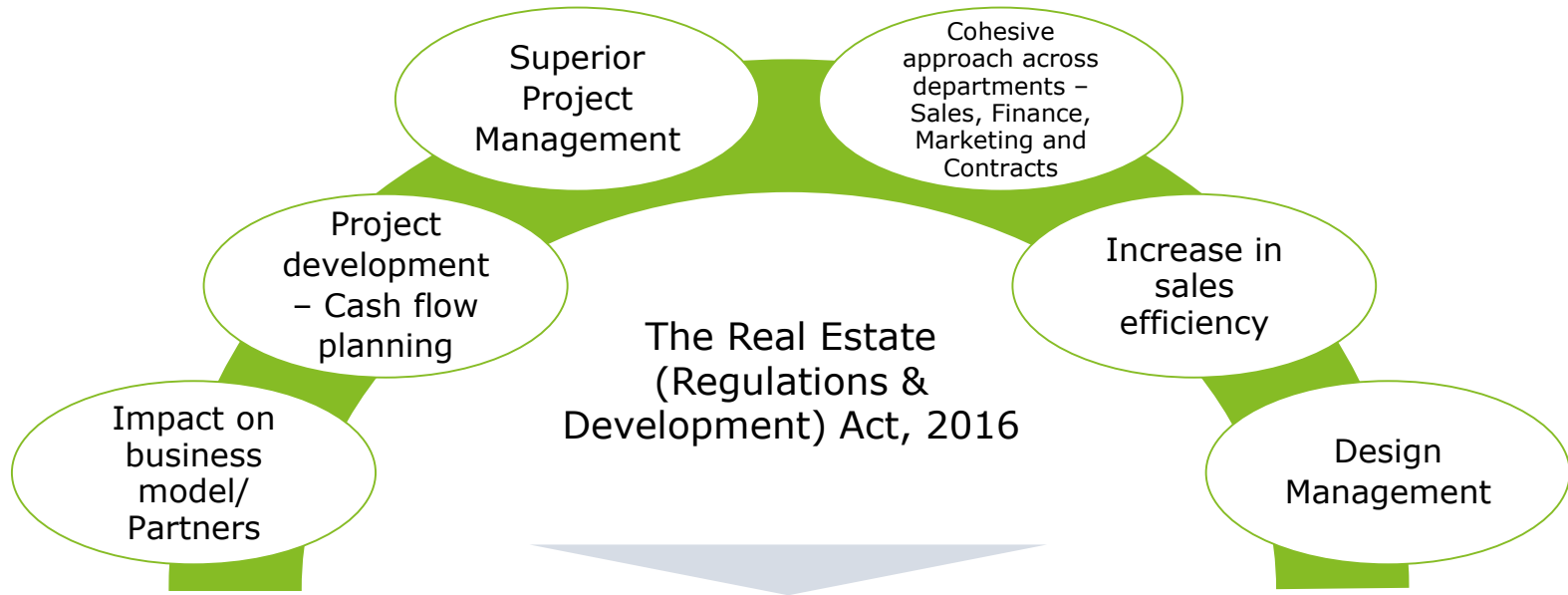
Time Schedule for completion of project
with specified date for handover of
possession to allottee

Sanctioned Plan, Layout and
Specifications agreed for construction

Execution of conveyance deed –
handover the possession of land and
building to society

Operational Transformation

Operational Transformation



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

Business process framework

The Company's processes can be depicted as follows. This would form the basis of identification of business cycles/ processes that will have an impact as per our assessment.

Business Development	Target Markets/ Asset Class	Pre Feasibility Study	Land lease/ buy / JDA	Financial Closure	FSI Determination	Sanction Plans/ Layout Approvals
Product & Service Innovation	Product Innovation & offerings	Design Management	Communication Management	Pricing and Schemes		
Planning & Reporting	Baseline schedule and budget	Impact Analysis of Revisions	Monitoring of Budget and Schedules	Project cash flow planning	Project details and MIS and review	
Supply Chain Management	Requisition	Contracts Management	Procurement Management	Inventory Management	Bill certification and payment	Equipment Management
Sales Management	Price approval and masters	Advertising	Broker Management	Sales & Customer agreements	Collections	Registration
	Formation of Society	Handover				
Corporate Shared Services	Financial Management/ Reporting	SAP Configuration	Cash Flow Management	Borrowings	Human Resources & Payroll	Legal & Regulatory

Direct impact
 No direct impact

Process redesigning for RERA compliance - Illustrative

Project Management

- Effective project scheduling management and project budgets
- Enhanced coordination amongst various stakeholders
- Contractor management/ liability
- Change Impact Analysis
- Delivery Management Capabilities
- SAP Configuration

Design Management

- Prioritise design management and design brief process
- Finalisation of FSI
- Various structures and space allocation like podium, clubhouse extra space etc

Project cash flow planning & Cash flow management

- Cash flow planning – Internal funds/ External financing/ cash flow from allottees
- Detailed MIS on planned v/s actual cash flows
- Monthly transfer of funds from escrow account – fund transfer request form to be approved by appropriate authority
- Withdrawal / utilization of funds to be supported by calculation as laid down in RERA and approved by appropriate authority

Sales Management

- Customer Relationship Management
- Change in payment schedule attached to the allotment letter
- Legal & Regulatory team to maintain a dashboard on registration status
- Flat registration details updated in SAP. Issuance of demand letters (exceeding 10%) subject to registration updated in SAP
- Legal & regulatory team to communicate the chargeable rate of interest for

Marketing & Advertisement

- Advertisement (any form/ manner) to be issued only after confirmation from Legal & Regulatory team on project been registered
- Advertisement / prospectus / communication to be based on details provided by project management team and verified by an independent person prior to compliant
- Show Flats and advertisement
- Broker Management

Way forward

Way forward

1

Conceptualization of phases and making application to Real Estate Regulatory Authority for registration of the projects

2

Aligning of agreements, transaction documents etc. in compliance with RERA

3

Impact Analysis - RERA readiness, project risk assessment and funding requirements

4

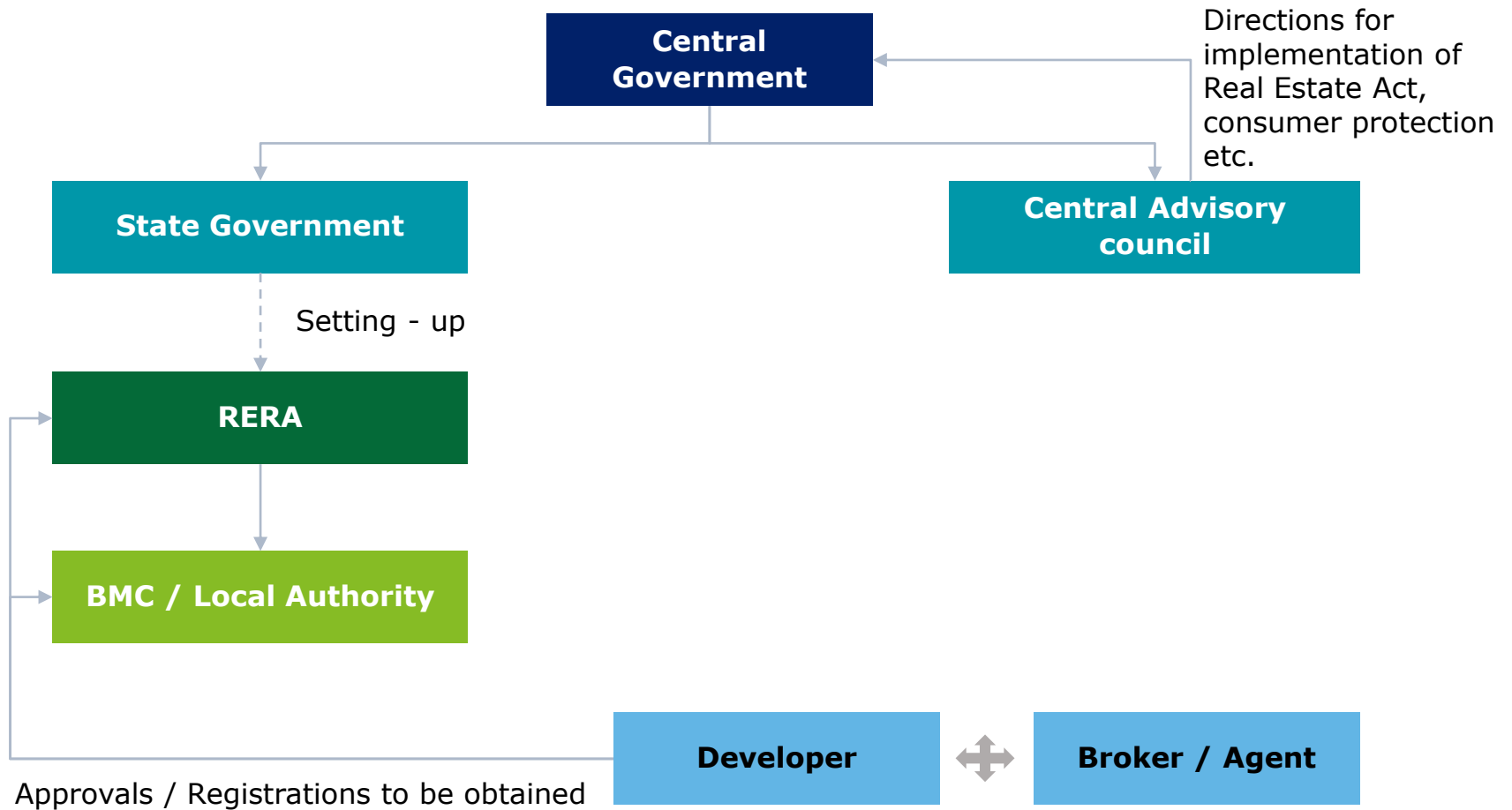
Operational transformation

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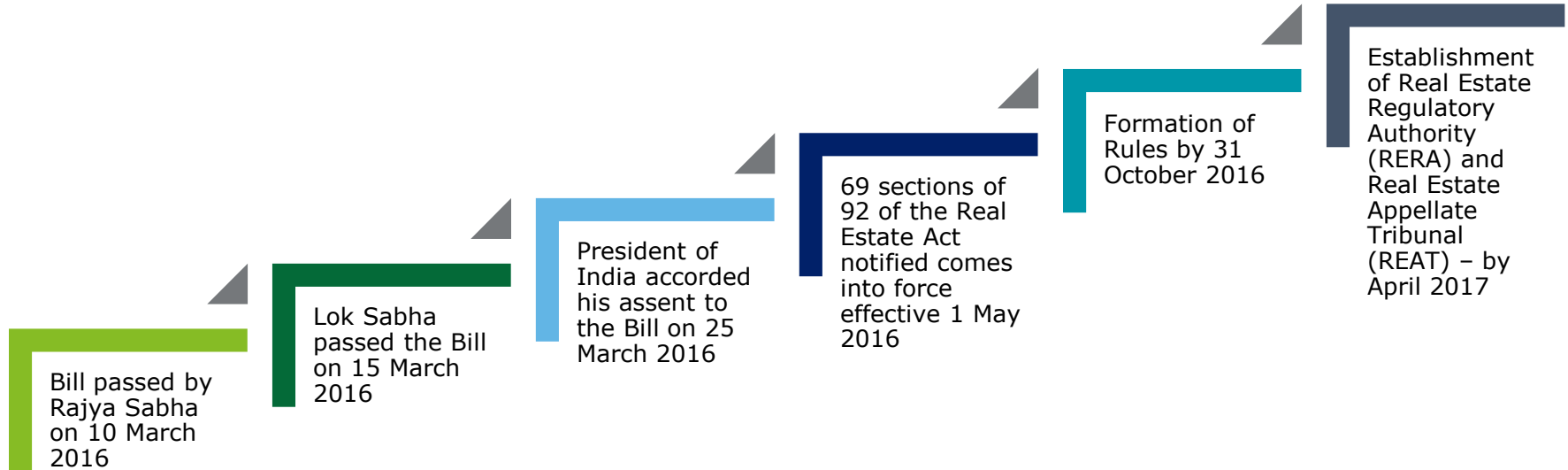
Certification requirement, process compliance audits

Annexure

Governing Bodies



The Build up to the Real Estate Act



Notified Sections – 69 of 92:

- Sections that provide operative framework under the Real Estate Act are notified.
- Sections with respect to registration of projects with RERA and having practical implications on developers are yet to be notified

Key objectives

Two main objectives

- Ensuring efficiency and transparency in the real estate sector;
- Protecting consumer interest by promoting fair play in the sector; and
- Encourages timely delivery of projects.

The Real Estate Act envisages achieving the said objectives by:

- Establishing the **Real Estate Regulatory Authority (RERA)** for regulation and promotion of the real estate sector;
 - Registration of the real estate project; and
 - Registration of the real estate agents
- Ensuring sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers in the real estate sector;
- Establishing the **Real Estate Appellate Tribunal (REAT)**.



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