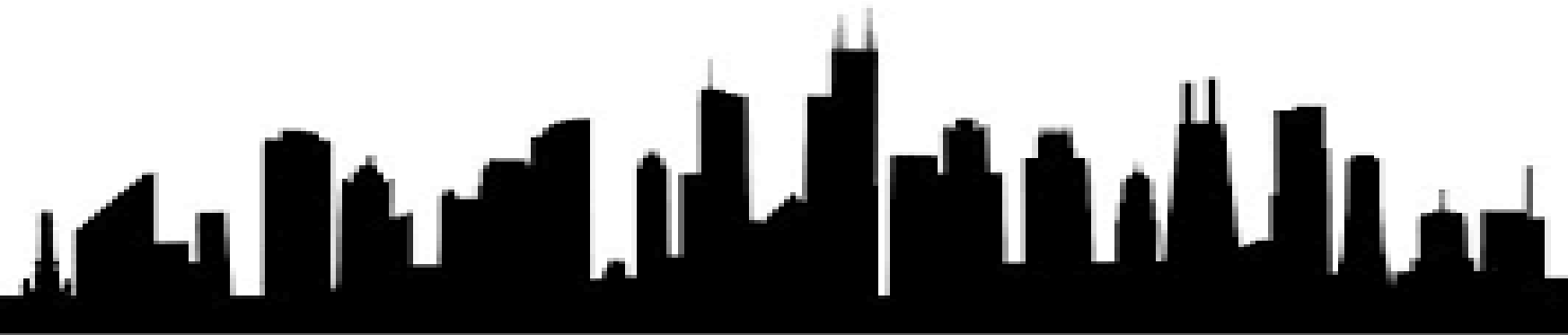
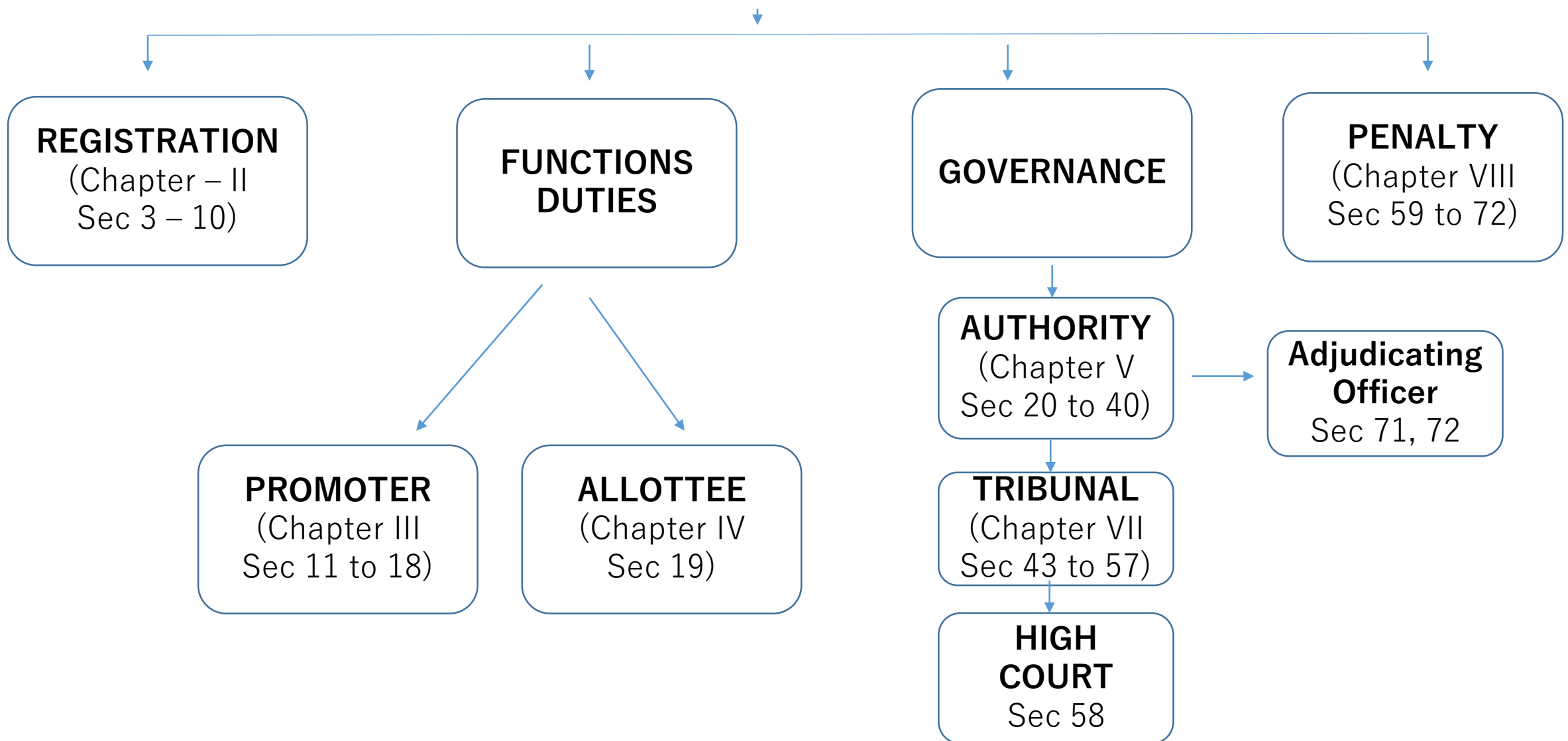


*The Real Estate
(Regulation and Development)
Act, 2016*

*Presented by :
Bharat Agarwal
Managing Partner
Acelegal™*



RERA



- Act received assent of president on **25/03/2016**.
- Commencement of Act w.e.f. **01/05/2016**.
- Sections notified on **01/05/2016** :
- **Sec 2** – Definition
- **Sec 20-39** – The Real Estate Regulatory Authority
- **Sec 41-58** – The Real Estate Advisory Authority Council & the Real Estate Appellate Tribunal
- **Sec 71-78** – Powers to adjudicate & Finance, Accounts, Audits & Reports
- **Sec 81-92** – Miscellaneous (delegation, powers, rules, regulations, applications, protection)

What not yet notified

- **Section 3 to 10** – Registration
- **Section 11 to 18** – Functions and duties of Promoter
- **Section 19** – Rights and duties of Allottee
- **Section 40** - Recovery of interest / Penalty / Compensation
- **Section 59 – 70** – Penalties
- **Section 79** – Bar of civil court jurisdiction
- **Section 80** – Cognizance of offence

- Rules and regulations yet to be framed by the State Government.
- Mumbai High Court in the case of ***Godrej & Boyce Mfg. Ltd. v. DCIT (2010) 328 ITR 81 (Bom.)*** held that section is ineffective till rules are prescribed.

Section	Time period from Commencement of Act w.e.f. 01/05/2016	Duties of Appropriate Government
84	6 months	Make rules for carrying out provisions of this Act.
20	1 year	<p>Establish an authority to be known as “The Real Estate Regulatory Authority”</p> <p>Authority to decide on to complaints of buyers and developers in 60 days time.</p>
20		Designate any officer preferably “Secretary” of the Department dealing with housing as “ Interim Regulatory Authority ”.
85	Within 3 months of establishment	Interim Regulatory Authority - Formulate regulation concerning their day to day functioning

Definitions

Section 2

Carpet Area

Sec 2(k)

means net usable floor area of an apartment

Includes	Excludes
Area covered by the internal partition walls of the apartment.	Area covered by external wall
	Areas under services shafts
	Balcony or Verandah area
	Exclusive Open Terrace area

Real Estate Project [Sec 2(zn)]

Means	Purpose	Includes
Development of a building	Selling all or some of the apartments or plots or building	Common Areas
Building consisting of apartment		Development works
Converting an existing building into apartment		All improvements and structures thereon
Development of land into plots or apartments		All easement, rights and appurtenances belonging thereto

Common Area [Sec 2(n)]

Land (for the phase)

+

Stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits, n basements, terraces, parks, play areas, open parking areas and common storage spaces

+

Accommodation for Society

+

Central services, water tank, ducts

+

All community and commercial facilities

+

all other common use area

Rate of interest [Sec - 2(zd)]



- (i) In case of default : R % of Allottee = R % of promoter
- (ii) From the date of Receipt till date of refund

Promoter - Sec 2(zk)

- “for the purpose of selling” – Apartment, Plot, Building, Redevelopment
- Land Owner – POA holder of “Land Owner”
- Non working Partner ?
- Government Department
- Society
- Contractor

Obligations of Promoters



Prior to Sale	During Construction	Post Completion
Registration of project	Quarterly Updates of project	Formation of Society
Advertisement	Alteration / amendment – 2/3 rd consent 	Conveyance of Land 
Sale in prescribed form	Escrow Account (70%) <ul style="list-style-type: none">- Cost of construction- Cost of land	Rectify Structure for 5 years



Registration

Section 3, 4

Applicability

- Promoter
- Construction for the purpose of marketing / sale
- Area of land > 500 Sq. mtrs **OR**
- No of Apartment > 8
- OC not received

No registration required in following cases [Sec 3(2)]

- Where the area of land does not exceed 500 sq. mtrs ; or
- No. of apartments does not exceed 8 inclusive of all phases.
- Where the promoter has received completion certificate for a real estate project prior to commencement of this Act
- 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

Issues :

- Whether apply only to under construction project or developed project as well.
- In case of DA – whether land owner liable under RERA?
- Existing projects and existing DAs – Whether amendment required?

Case of Development Agreement

Existing Development Agreement	New Development Agreement
Revenue Sharing	Revenue Sharing
- Covered in Promoter	- Can be structured
Area Sharing	Area Sharing
- On case to case basis	- Can be structured

Query :

- (i) Whether Land Owner liable to be registered under RERA ?
- (ii) In case of delayed construction, whether Land Owner also liable ?
- (iii) Whether Land Owner also liable to maintain Escrow Account?

Affidavit from Promoter [Sec.4(D)]



1) Title :

- Legal title to the land along with legally valid documents ;
- The land is free from encumbrances ;
- In case of encumbrances – details of encumbrances ;
- Time period for completion of project ;
- Section 16 : Insurance for title of land and building mandatory.

2) Escrow Account [Sec.4(D)(D)]:

- 70% of *amount realised* from the allottees ;
- Deposit in separate bank account ;
- Cover *cost of construction* and land cost ;
- Withdrawal in proportion to % of completion of project ;
- After it is certified by CA, Engineer and Architect ;
- Promoter to get account audited within 6 months after the end of FY by CA.



Issues :

- Whether Escrow account can be used for refund on cancellation of booking?*
- Whether interest on loan, administrative expenses, selling expenses can be paid from Escrow?*
- If a partner retires by taking area how will escrow account work since no money received by firm?*
- If contractor given flats in exchange of construction then how will escrow account work?*
- How will escrow work where loan received earlier is settled through conversion into booking of flat?*

Effect of lapse of registration

- Remaining development work by Competent Authority.
- Or by Association of Allottees – 1st right of refusal.
- In any other manner determined by authority.

Existing Project

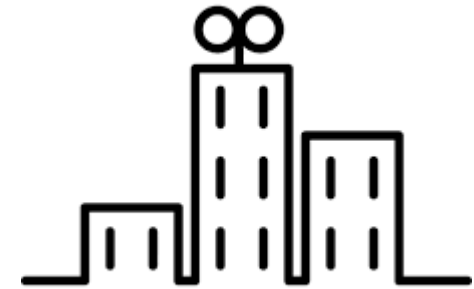
- To make an application to the Authority for registration
- Within a period of 3 months
- From the date of commencement of the Act.



Issues related to Existing project :

- Existing project: Entire Area sold, OC pending, minor construction pending, minor revenue pending. Whether liable to register ?*
- Existing Project: Do not wish to sell balance area till OC. Past area sold, revenue pending from past sales, construction pending. Whether required to register?*
- Project completed 70%. Sold 25%, Additional floors construction permission obtained. Will result in downward revision of percentage completion. What happens to money already withdrawn from Escrow Account on basis of higher percentage completion earlier?*

Phase –wise



- **Phase [Sec 3(2)(c) Explanation] :**
 - Every phase a stand alone real estate project,
 - Promoter shall obtain registration under this Act for each phase separately.
- Registration of project phase-wise.
- Completion certificate to be obtained phase-wise.
- Common area include land for that phase.

Issues

- (i) How common amenities like club house, garden etc. to be provided in Phase-wise project?*
- (ii) Obtaining OC for each phase, conveyance of each phase?*

Force majeure [Sec – 9]

- A case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.
- Only “Hand of God” covered.
- “Hand of Government / Court” not covered.

Force Majeure

- **Extension of project by maximum 1 year**

- due to war, flood, draught, fire, cyclone, earthquake, other natural calamities.

- **Stay / stop work of construction**

- By any court order, lack of availability of construction material


- Not considered as reason for delayed construction.

- *Issue : Title issue after the project is halfway, stay by court, delay in possession, who is liable? Whether amounts to non disclosure and hence penalty? Force Majeure clause will not cover it.*

Allottee default – Sec 19

- Responsible to make necessary payments
- In the manner specified
- In time specified
- In the agreement for sale
- For delay in payment liable to pay interest

Section 15 : Assignment of Project (Majority rights & liabilities)

- (i) Consent of  2/3rd Allottee
Authority
- (ii) Intending Promoter to take over all obligations
- (iii) No extension to complete project.

Issue : Induction / Retirement of a partner in Developer firm whether hit by Section 15?

Section 13(2): form of “Agreement for Sale” to be prescribed separately

- Contents :

- Registration on receipt of 10% of cost of apartment / plot / building
- Project particulars
- Specification of Internal and External development works
- Payment Schedule
- Date of possession : Apartment / Plot
- Rate % in case of default
- *Issue : Need to mention the date of completion of the project. However, in the event of addition to the project due to pending FSI the said handing over date could extend. How to capture that in the sale deed.*

Impact of notified sections in the agreement for sale

Formation of Society :

- In absence of local laws
- Within a period of **3 months** of majority of allottees booked the plot / apartment / building.

Conveyance of land (Transfer of title) – Sec 17

Allottee	Association
Regd. Conveyance deed of Apartment	Redg. Conveyance deed of Common Area
Physical Possession of Flat	Physical Possession of Common Area
Title document of Flat	Title document of land and Plans
- As per local laws -> (MCS Act in Maharashtra)	
- Within 3 months from date of OC	
- In Maharashtra -> MOFA provisions shall apply being local law	

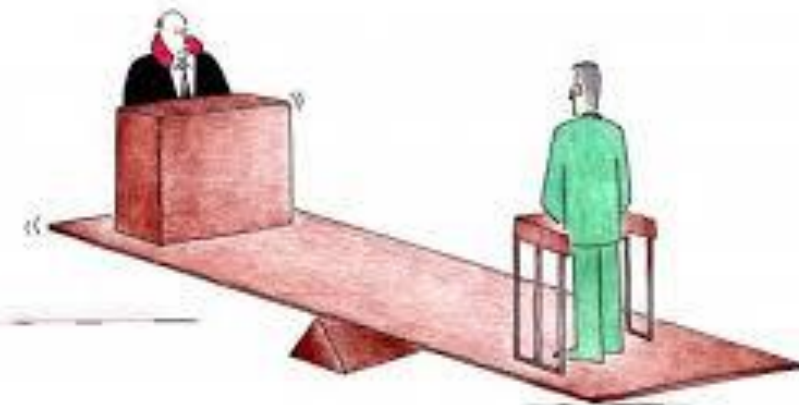
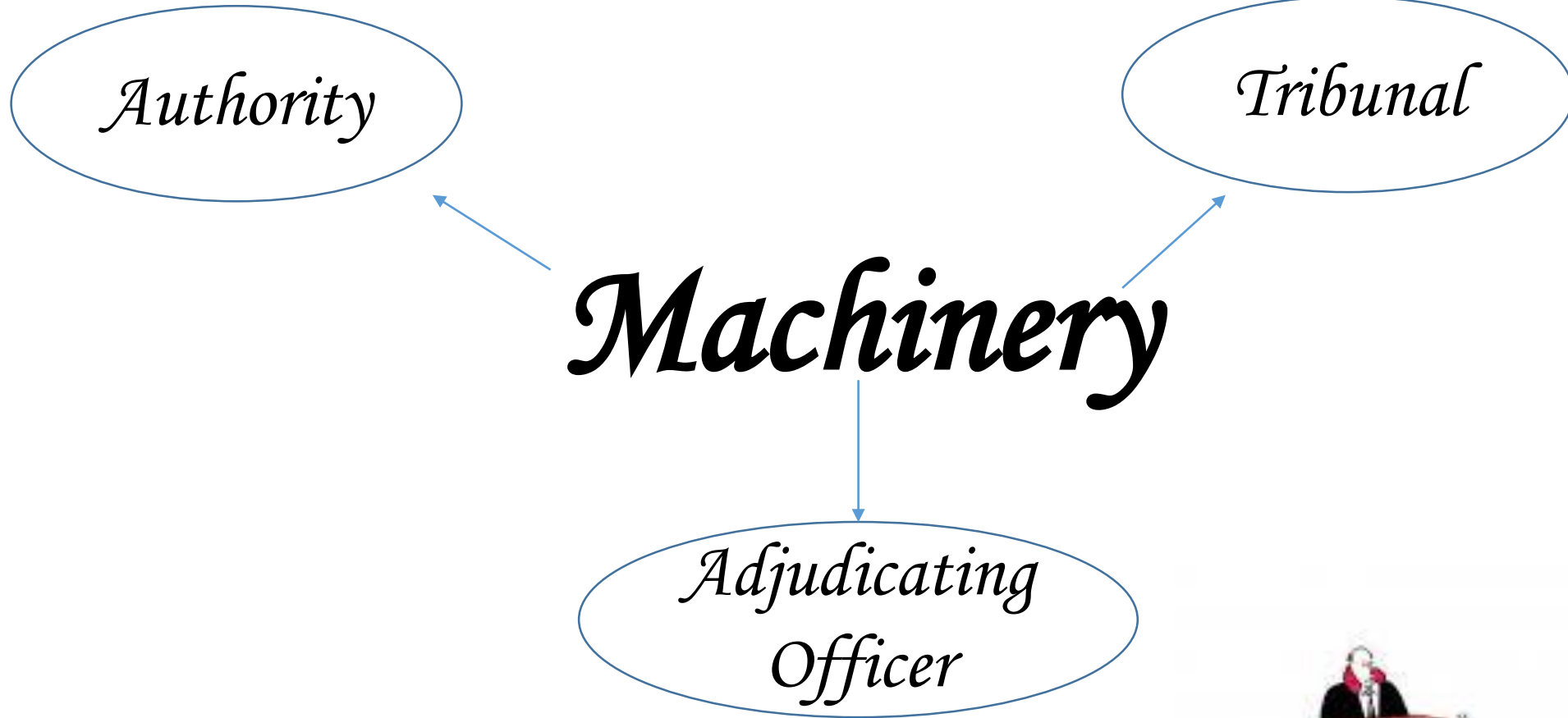
Real Estate Agents

- Any person ;
- Who negotiates or acts on behalf of one person ;
- In a transaction of transfer of plot/ building / apartment ;
- In a real estate project ;
- By way of sale to another person ;
- Receives remuneration / fees / any other charges for his services
- Whether as commission or otherwise ;
- Includes a person who introduces buyers and sellers to each other for negotiation for sale / purchase ;
- Includes property dealers / brokers / middlemen.



Good points...It's cheap, it's well located.
The bad points...Granted, it's small and you'll have to
fight the dog for it.

- Real Estate Agent is required to register himself.
- To be registered only for incomplete project and not for OC received flats.
- Can only facilitate sale of registered project.
- Liable for any false / misrepresentation.
- Penalties / Liabilities of Agent can be mitigated only if he can prove that he communicated to his client on the basis of information provided by the Developer.
- *Issue : Whether liable for delay in construction by promoter?*



Authority

- **Composition** - Chairperson + 2 whole time members
- **Applicant** – Any person - For violation / contravention of provisions of this Act / Rules / Regulations
- **Against** - Any Promoter Allottee / Real Estate Agent



Functions of Authority :

- **Regulatory** – to register and regulate real estate projects and agents.
- **Promotion** - creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project.
- **Adjudicate** – Any complain received from the aggrieved person.
- **Investigate** – Make inquiry in relation to affairs of ay promoter / allottee / real estate agent. Powers as that of Civil Court under CPC.
- **Administration** – Publish and maintain a website of records for public viewing of all real estate project which are registered and include information for which registration is granted.
- **Issue Directions** – to Promoters / allottees / real estate agents from time to time.

Tribunal

- Quasi Judicial
- **Composition** – Chairman + 1 Judicial Member

1 Administrative to Technical Member.

- Chairman should be High Court Judge.

- Judicial Member - shall have held judicial office for 15 yrs / Advocate having experience of 20 years



- **Applicant** - Any person aggrieved by any direction / decision / order made by the Authority / by an adjudicating officer
- **Filing of appeal** – within 60 days of receipt of order / direction by aggrieved person.
- **Appeal to be dispose off** – within **60 days** of receipt of appeal.
- If not disposed off – reason to be recorded in writing.

Adjudicating Officer (Sec. 71)

- **Adjudicate complaints in respect of matters :**
 - Obligations of promoter regarding veracity of the advertisement or prospectus (Sec. 12) ;
 - Adherence to sanctioned plans and projects specifications by the promoter (Sec. 14) ;
 - Return of amount and compensation if the promoter fails to complete / unable to give possession of plot / apartment / building ;
 - Rights and duties of the allottees.
- **Application to be dispose off** – within 60 days of receipt.
- If not disposed off – reason to be recorded in writing. →



Penalties On Promoter



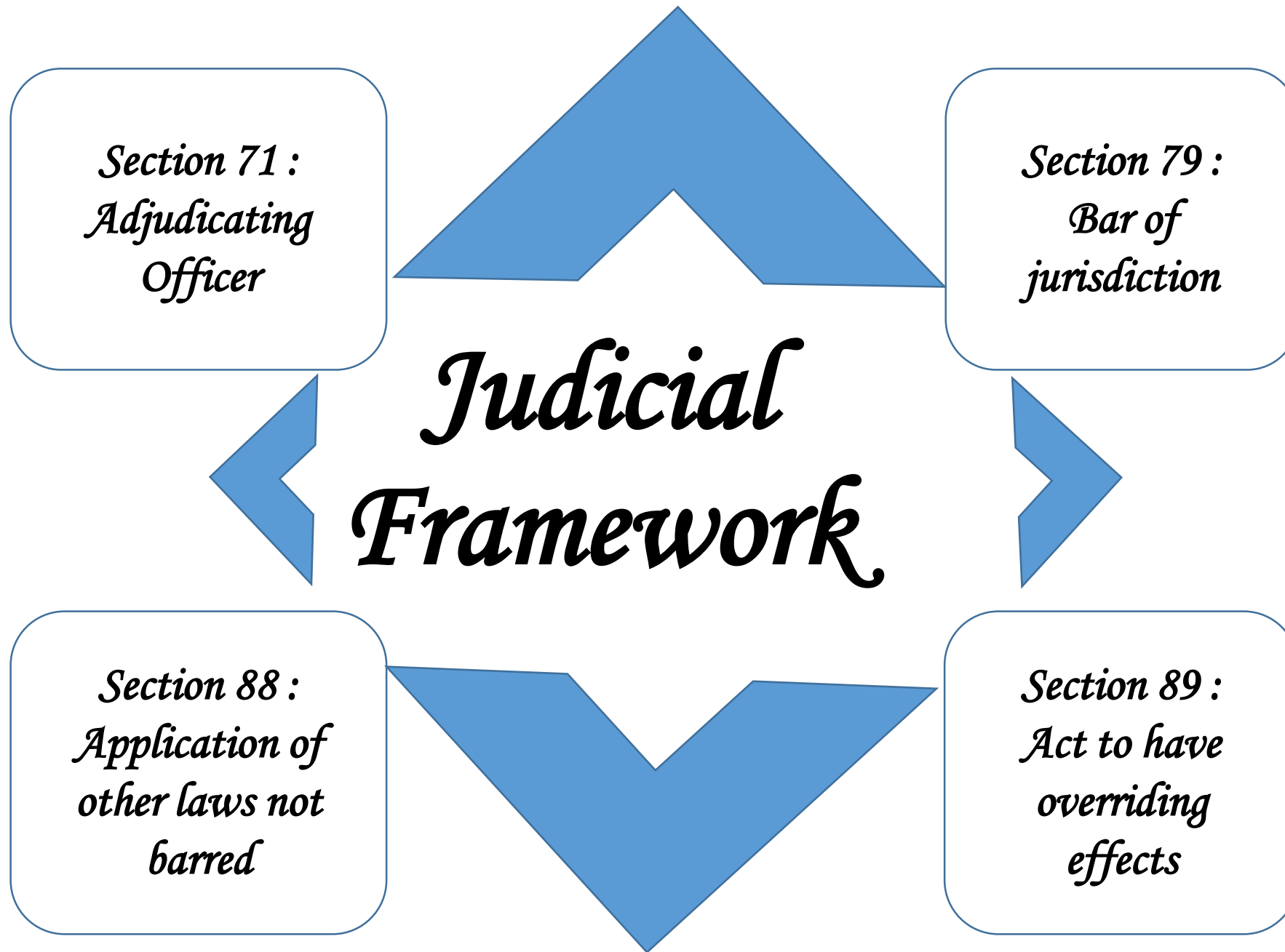
Section 59	Contravene – Section 3	10% of Project Cost
	Continues to Contravene	3 years imprisonment Or Further 10% of Project Cost Or Both
Section 60	Contravene – Section 4 (False Info)	5% of Project Cost
Section 61	Any other Contravention	5% of Project Cost
Section 63	Contravenes authority	5 % of Project Cost
Section 64	Contravenes Tribunal	3 years imprisonment Or Further 10% of Project Cost Or Both

Penalties



On Real Estate Agent		
Section 62	Contravention of Section 9 & 10	10,000/- per date Upto 5 % of Cost of Apartment
Section 65	Contravenes order of authority	Per day upto 5% of Cost of Apartment
Section 66	Contravenes Tribunal	1 year imprisonment Or 10% of Cost of Apartment Or Both

Allottee
Section 67
- Contravenes order of authority - Upto 5% of cost of Apartment



Section 79 : *Bar of Jurisdiction*

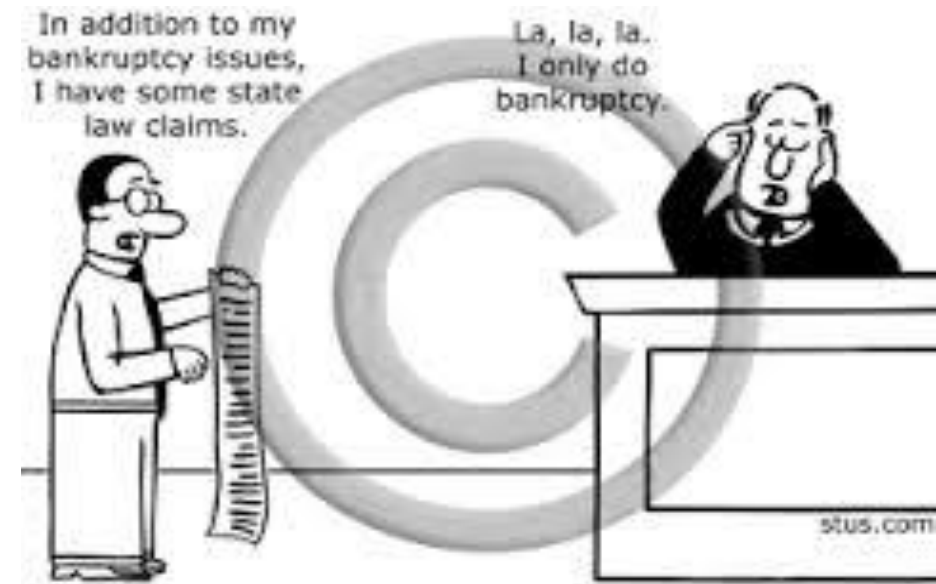
- **No Civil court shall have jurisdiction :**

- 1) To entertain any suit and any proceeding

- In respect of matter which the Authority / Tribunal / Adjudicating Officer is empowered to determine and

- 2) No injunction shall be granted **by any court** ;

- In respect of any action taken / to be taken in pursuance of any power conferred by / under the Act.



Section 88 : Application of other laws not barred

The Provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Section 89 : Act to have overriding effect

The Provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

RERA and Central Laws:

- 1. Contract Act - agreement between allottee and promoter.
- 2. Transfer of property Act- part performance, transfer of rights, etc.
- 3. Registration Act - mandatory registration after 10% collection.
- 4. Income tax impact – Project completion / Percentage completion
- 5. Service tax - Impact on DAs. Whether 70% escrow qualify as input service for credit?

RERA and State Laws:

1. MOFA- not repealed. Will run along with RERA in Maharashtra.
2. MCS Act - Deemed Conveyance
3. MLRC, BTAL etc.- For title records
4. DCRs - For alteration and amendments to plans, OC requirements, Deemed OC etc.
5. Maharashtra Stamp Act - On registration of agreement for sale and final conveyance.
6. MAOA - forming condominium.
7. VAT - certified project stage on website.

Role of Advocate, CA, Architect, Engineer

- Strong communication between the developer and Advocate (Title search + Vetting Advertisement), Architect (Certificate), Engineer and the Agent (Advertisement and communication).
- Committee Certification required for withdrawal of funds from escrow account.
- Represent before Authority, AO, Tribunal.
- Names to be registered : Contractor, Architect, Structural Engineer for each project or phase
- CA to audit collection and Utilization every FY within 6 month



Thank You

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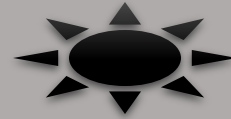
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