

# REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016



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# INTRODUCTION

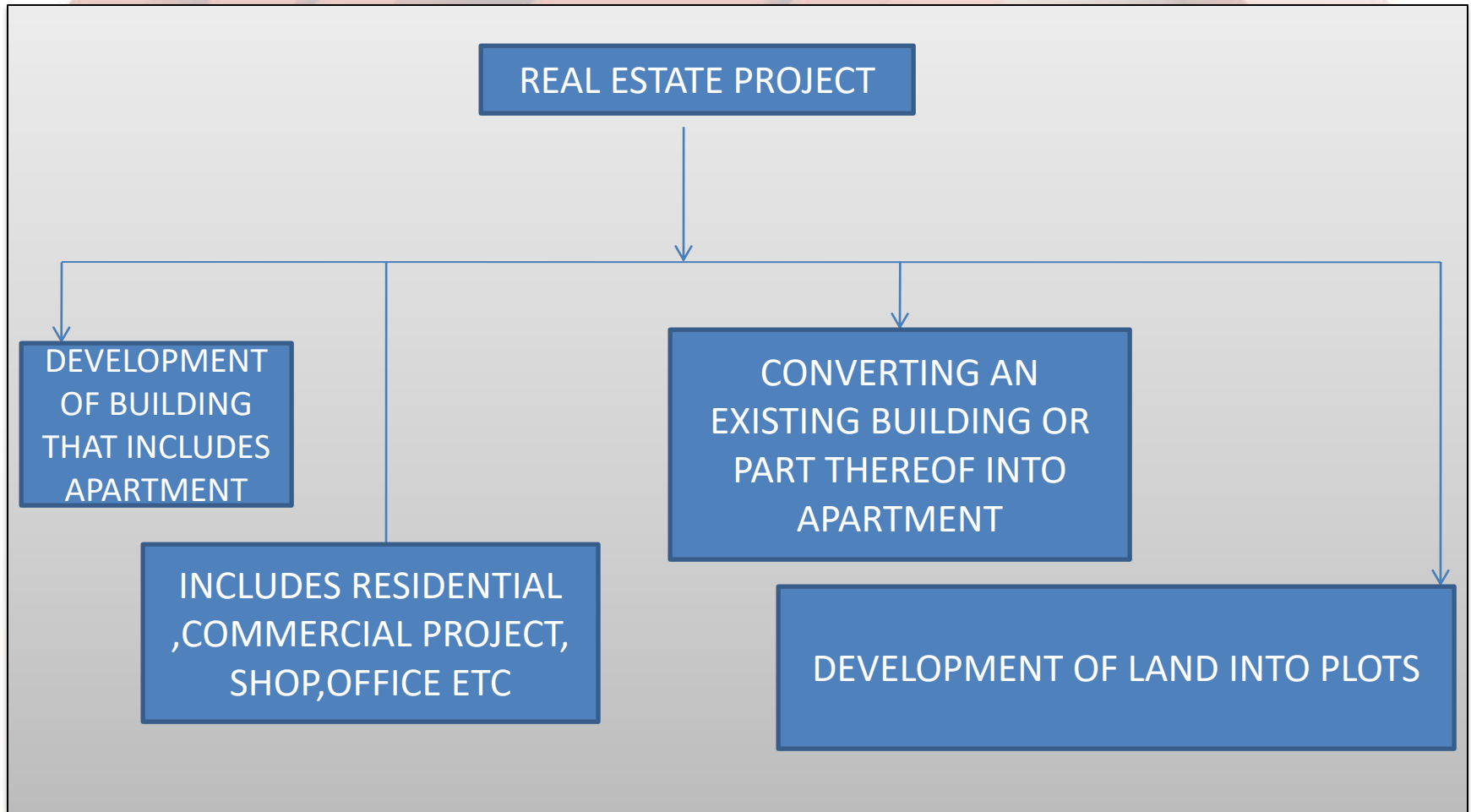
## RERA , 2016

- ✓ Real Estate Regulation and Development Act has come in force from **1<sup>st</sup> May, 2017**.
- ✓ The need of this act is to provide :
  1. **Regulatory authority** to govern the real estate sector .
  2. **Transparency** in the real estate sector .
  3. **Standardization and professionalism** in the real estate sector in India.

# **IMPLEMENTATION STATUS OF RERA**

- 31 States/UTs have notified rules under RERA;
- **30 States/UTs have set up Real Estate Regulatory Authority (Regular - 24, Interim - 06)**
- **51,809 Real Estate Projects and 40,463 Real Estate Agents have registered under RERA across the country.**
- **46,152 Complaints have been disposed-off** by the Real Estate Regulatory Authorities across the country.
- West Bengal has enacted its own Act namely 'West Bengal Housing Industry Regulation Act, 2017' however, state has been advised by MoHUA to notify the rules under Real Estate (Regulation & Development) Act, 2016.

# MEANING OF REAL ESTATE PROJECT



# **MANDATORY REGISTRATION OF REAL ESTATE PROJECTS**

- The Act deals with **registration of real estate projects and real estate agents.**
- The promoter of real estate project has to **compulsorily register** its project with RERA **before the launching of the project (advertising , sale, Booking or invitation/offer of sale by whatever means )**.
- In case the project has **already commenced before the applicability** of the Act but **not received completion certificate** , then promoter was given **3 months to register** the project with the regulatory authority from commencement of this Act.

# EXEMPTION FROM REGISTRATION

- Area of proposed land does **not exceed 500 square meters** or number of apartments to be constructed in the project **does not exceed 8**.
- Project where **completion certificate** has been **obtained prior to the commencement of the Act**.
- Project for the purpose of **renovation or repair or redevelopment** which **do not involve** marketing, advertising selling or new allotment of plot or building.

# AS PER RAJASTHAN RERA ONGOING PROJECT EXCLUDES (1 OF 2)

- Where **common areas and facilities** have been **handed over to the association of allottees** or the competent authority, as the case may be, for maintenance.
- Where **sale/lease deeds or possession letter** of minimum **sixty percent** of the apartments /houses/plots in the phase/project have been executed.
- Where **all development works** have been **completed** and **completion certificate** has been obtained from chartered engineer in practice as per prevalent Township Policy.

# ONGOING PROJECT EXCLUDES(2 OF 2)

- Where **completion certificate** has been obtained from the competent authority **or where all development works have been completed** and **application** has been **filed** with the competent authority.
- Where **development is done in phases** then **each phase** shall be considered as a **separate project** and the phases which fulfill any of the above conditions shall be excluded.
- **Where competent authorities/local bodies have started issuing lease deed for plots** by organizing camps or otherwise in township schemes.
- Where **services** have been **handed over to local authorities** for maintenance or more than 50% of the development charges have been deposited to local authorities.

# **GRANT, REFUSAL AND REVOCATION** **OF REGISTRATION**

- **On receipt of application for registration**, the authority shall within a period of **30 days grant registration**.
- Authority can reject the application for the **reasons to be recorded** in writing if such application is not as per the act and rules.
- If **RERA doesn't grant registration**, then file an **appeal to REAT** or **file writ petition to High court** . Practicing CA or Cost Accountant or CS or Legal Practitioner can appear before RERA/REAT.

# **DEPOSIT OF AMOUNT IN SEPARATE BANK ACCOUNT AND AUDIT OF ACCOUNTS**

- **Deposit 70%** of the amount realized for real estate project in **Separate Scheduled** bank account from time to time .
- Withdraw amount from separate bank account to cover cost of project only on percentage of completion basis after due **certification by Engineer, Architect and CA .**
- Get accounts **audited within 6 months** from the end of the financial year by chartered accountant.
- The promoter not allowed to accept an amount **greater than 10% of cost of apartment/plot/flat** as an advance payment/application fees, if written agreement of sale is **not registered**.

# DETAILS TO BE PUBLISHED ON WEBSITE OF AUTHORITY(1 OF 5)

- **Developer Profile** (status of enterprise , promoter's background i.e. educational qualification, work experience), name, address etc.
- **Track record of the promoter** incl. no. of year experience, no. of ongoing project, no. of completed project etc.
- Details of **litigation in past 5 years** in relation to real estate projects developed or being developed.
- Details of **all litigation against any promoter/director** which incl. FIR No., name of police station, case under which section, case date and status.

# DETAILS TO BE PUBLISHED ON WEBSITE OF AUTHORITY (2 OF 5)

- **Web link** of developer and project website.
- Details of the project.
- Registered **agents** details.
- **Financial details of Promoter.**
- **Details of separate bank A/c** with name, branch name, IFSC code, bank account number and bank address.

# **DETAILS TO BE PUBLISHED ON** **WEBSITE OF AUTHORITY (3 OF 5)**

- **Approvals such as:**
  - i) **NOC (Environmental clearance, Fire NOC, Permission for Water Supply, Height clearance from AAI etc.)**
  - ii) **Authenticated copy of land use permission.**
  - iii) **Authenticated copy of the site plan or site map.**
  - iv) **Authenticated copy of Occupancy Certificate or Completion Certificate etc.**

# DETAILS TO BE PUBLISHED ON WEBSITE OF AUTHORITY (4 OF 5)

- Legal documents:

i) **Performa of : application form**, allotment letter, agreement for sale and conveyance deed.

ii) Details of **encumbrances** on the land on which development is proposed or no encumbrance certificate from **advocate having experience of at least 3 years in land related matters.**

iii) Sanction letter from banks (if any).

iv) Details of mortgage or charge etc.

# DETAILS TO BE PUBLISHED ON WEBSITE OF AUTHORITY (5 OF 5)

- Details of Real Estate Agent :

**Registration number** and period of validity, brief details of his enterprise, particulars of registration as per **status** of the agent, authenticated copy of the **PAN** card, authenticated copy of the address proof of the place of business.

- **Land Cost and Development Cost**

- **This list is illustrative.**

# STRUCTURAL DEFECT

- The Act mandates that in case the allottee, within **5 years** of date of possession, notifies the builder of any **defect in workmanship, quality of construction ,quality or provision of services**, the promoter is bound to **rectify such defect** without any further charges **within 30 days**. In case of failure on the part of promoter, the allottee is entitled to claim relief under the act.
- **There is no time limit for filing the claim for compensation by allottees.**

# ALTERATION/MODIFICATION & TRANSFER OF REAL ESTATE PROJECT

- **No modification/alteration except minor changes** can be done without prior permission of the  $\frac{2}{3}$ <sup>rd</sup> of allottees.
- **Minor addition or alteration excludes** structural change including an addition to the area or change in height, or the removal or cutting into of any wall or part of a wall etc.
- **No transfer of real estate project to third party** can take place before prior permission as mentioned in the law including written consent of **two third allottees**.

# RIGHTS AND DUTIES OF ALLOTTEES

## (1 OF 3)

- Prior written consent of **2/3rd of the allottees is required** in case there is **major alteration** and addition in the layout plan, sanctioned plan and specifications of the buildings or the common areas within the project.
- **Only 10% of the cost of the apartment**, plot, or building shall be accepted by the promoter before executing the agreement for sale.
- Allottees shall be entitled for any **loss caused to him due to defective title** of the land, and no such limitation is there for the claiming of such compensation.
- Each Allottee shall be entitled for the **completion and occupancy certificate**.

# RIGHTS AND DUTIES OF ALLOTTEES

## (2 OF 3)

- The promoter is bound to execute the **conveyance deed** within the time period provided in the local laws. If there are no local laws governing the time period, the **conveyance deed** is required to be executed within a **period of 3 month from the date of issue of occupancy certificate**.
- In case of the defect in **workmanship, quality or provision of service** or other obligation the allottee can claim compensation if such defect is not rectified within **30 days** and the promoter's liability is for **5 years**.
- Allottee shall be entitled to know **stage-wise time schedule** of completion of the project as well as provision for civic infrastructure like water, sanitation and electricity .
- The allottee shall be liable **to pay interest**, which is SBI- MCLR+2%, for any delay in payment towards any amount or charges to be paid.

# RIGHTS AND DUTIES OF ALLOTTEES

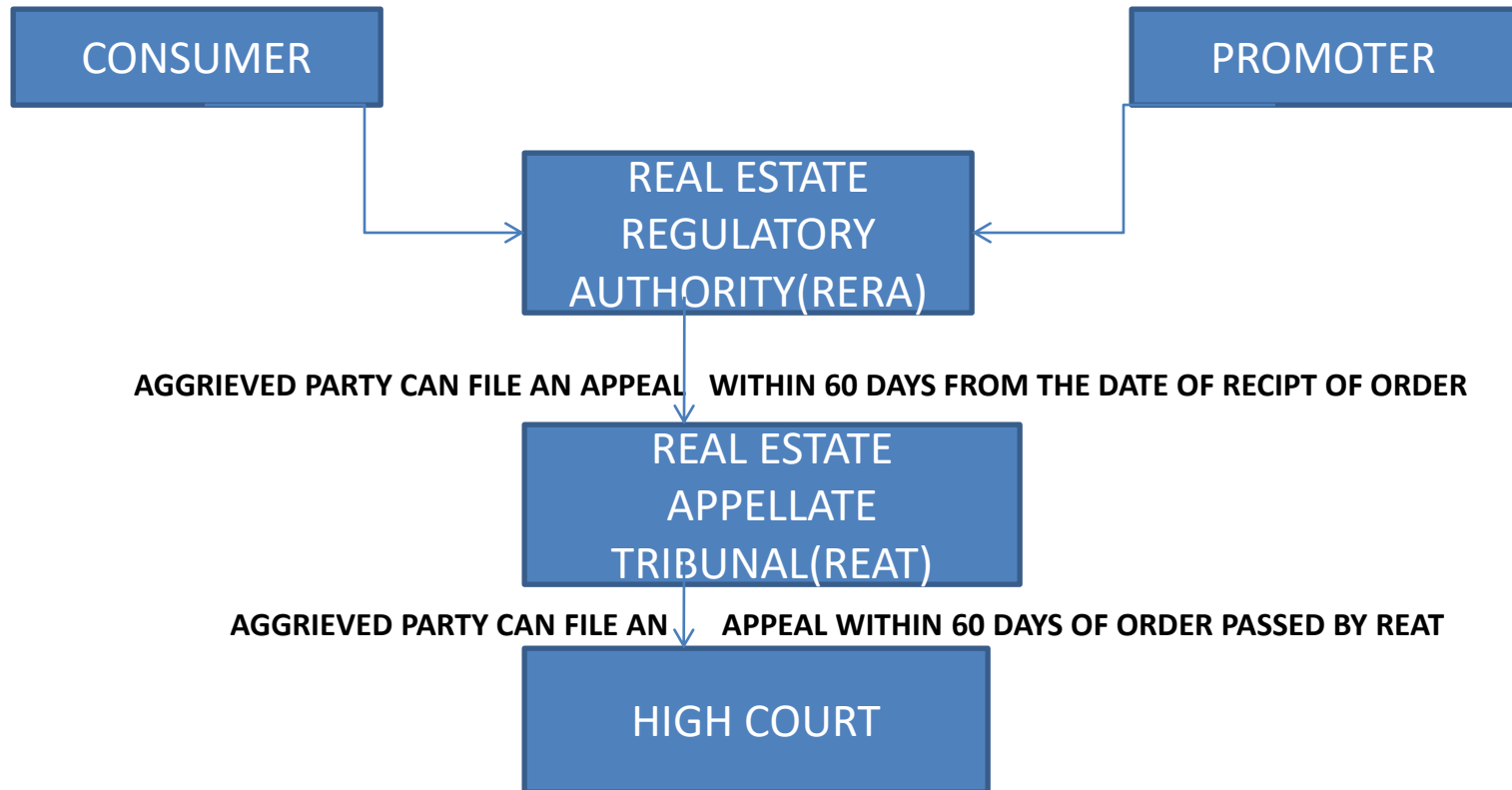
## (3 OF 3)

- Every allottee shall take **physical possession** of the apartment, plot or building as the case may be, within a period of **two months** of the **occupancy certificate** issued.
- The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from **two-third of the allottees**, excluding the promoter, and without **the prior written approval of the Authority**.
- Where any **person makes an advance** or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, **he shall be compensated** by the promoter.

# OTHER RELEVANT PROVISIONS

- Compulsory **Insurance of title of land & building** and construction of the project.
- **Quarterly update** of bookings and development of project within 15 days of that quarter.
- Promoter **can not pay Interest, Penalty and Compensation** to allottee out of the 70% of amount realised and deposited in separate bank account.

# APPEAL UNDER THE ACT



A 3D graphic featuring a house with a red roof and the words 'ESTATE SALE' in large, light-colored block letters. The text 'ISSUES IN RERA' is overlaid in purple, underlined.

# ISSUES IN RERA

# **1. Land Mark Judicial Pronouncements**

**•NEELKAMAL REALTORS SUBURBAN PVT LTD AND ORS VS UNION OF INDIA**

**BOMBAY HIGH COURT**

**DATED: 06.12.2017**

**•BIKRAM CHATTERJI & ORS VS UNION OF INDIA**

**SUPREME COURT OF INDIA**

**DATED: 23.07.2019 ( Amarpali)**

**•POINERR URBAN LAND AND INFRASTRUCTURE LTD VS UNION OF INDIA**

**SUPREME COURT OF INDIA**

**DATED: 09.08.2019**

## 2. Validity of OLD ATS under RERA?

- Whether Valid in TOTO or not???
- Bombay High Court in matter of Neelkamal Realtors V/s Union of India held that old agreement valid.
- Haryana Tribunal in case of **Mazic Eye Developer V/s Yogesh Tomer dated 17.12.2019** held that Old Agreement valid .
- If ATS one sided, not fully enforceable.

# **3. Definition of On-going projects .**

- No Definition in Act.
- Various states defined the term on-going projects in the Rules.
- Dilution done by the states.
- Centre Govt has taken a strict view.
- To be settled in Upper Court.

## 4. Unregistered projects under RERA ?

- Unregistered projects covered under RERA as per some RERA Authorities.
- **Bombay High Court** in matter of **Mohd Zain Khan V/s MahaRERA** also affirmed the same but only for filing of complainants.
- Affirmed by Haryana Tribunal in order **Omaxe Ltd V/s Arun Prabha dated 19.12.2019.**
- Affirmed By **Punjab Tribunal** in order **Silver City Construction Ltd V/s State of Punjab and ORS dated 24.07.2019.**
- **Rajasthan RERA** in order of **Saroj Devi V/s Berry Developers** and Infrastructure dated 29.04.2019 held that complaint is not maintainable in respect of unregistered projects.

## **5. Extension of registration for period beyond one year.**

## **6. Land Owner as promoter .**

- Land owner treated as promoter in various states.
- Karnataka RERA issued specific circular to cover land owner as promoter. Liability co-Terminus with JDA.
- In Rajasthan in matter of **Shankuntala Narendra Singh Chauhan V/s Modest Infra Ltd** , it was held that obligation to allottees are only of promoter and not of landowner.

# **7. Long term Lease in RERA ?**

- Long term lease to be covered under RERA.
- Colour of agreement to be seen.
- **Bombay High Court in matter of Lavasa Corporation Ltd & Ors V/s Jitendra Jagdish Tulsiani & Ors dated 07.08.2018 affirmed the same.**
- Rental Agreements are not covered under RERA.

# 8. Refund to be granted by whom ?

- Difference of opinion who has power to grant refund.
- In **Rajasthan RERA**, in order **Amit Kumar Lamba V/s Shekhar Home Developers dated 23.04.2019**, it was held that :  
By Authority: Section 14(1), 14(2), 18(1) if refund and interest asked for and 19 (6) to 19(11)  
By adjudicating officer: Section 12, 14(3), 18(1) if compensation asked for ,18(2) and 18(3).
- **Haryana Tribunal** have barred authority to grant refund in matter of **Vijay Pal Singh v/s Ansal Housing & Const Ltd dated 22-07-2019**  
Matter pending at upper court.

## **9. Land and Development Cost .**

- No uniformity in land and development cost among states.
- Central Govt. to bring more clarity and uniformity.

## **10. 500 sq mtrs or 8 units or both ?**

- Ambiguity on applicability.
- Raj RERA: If one condition applicable then project liable to be registered.
- **Maharashtra Tribunal** in matter of **M/s Geetanjali Aman Constructions & Ors V/s Hrishikesh Ramesh & Ors** held that both conditions to be satisfied.

# **11. IBC V/s RERA**

- In matter of **Pioneer Urban Land & Infrastructure Ltd Vs. Union of India** & related matter dated 09.08.2019 before Hon'ble SC, it was held that **IBC to prevail over RERA in matter of conflict.**
- In ordinance dated **28.12.2019** : The threshold limit for filing an application under IBC is a joint application by minimum of **100 allottees or 10% of such allottees whichever is less.**
- In notification dated **24.03.2020**, limit to trigger IBC has increased to **Rs 1.00 cr.**

A 3D graphic of a house. The roof is a reddish-pink color and has the word 'RENT' written on it in large, white, 3D block letters. The base of the house is a light beige color and has the words 'FOR SALE' written on it in large, white, 3D block letters. The house is set against a plain white background.

**12. Whether Investor covered  
under definition of allottee ?**

A 3D illustration of a house. The roof is a reddish-pink color and features the word 'RENTAL' in large, white, 3D block letters. The base of the house is a light beige color and features the word 'ESTATE' in large, white, 3D block letters. The house is set against a plain white background.

## **13. Pre-requisite fees for filing appeal before Tribunal?**

# **14. Format of Certificates not proper.**

- Every state has own rules.
- Every State drafted different certificates
- There should be correlation and matching among the certificates.
- Certificates complicated and not in proper format.

## **15. Planning at time of registration**



# 16. Special window fund for stalled projects.

- Hon'ble Finance Minister announced a **“Special Window” Fund**. The total size of the same Rs **25,000 crore**.
- The fund set up as a Category-II AIF (Alternate Investment Fund) registered with SEBI and would run professionally. **SBI Capital Venture assigned**.
- Funding to be done for the projects which meet following criteria:
  - Stalled for lack of adequate funds
  - Affordable and Middle Income Category
  - Net worth positive projects
  - RERA registered
  - Priority for projects very close to completion
- Only two projects financed till now others in pipeline.

# 17. Stalled Projects



# 18. Impact of Covid-19 (1/2)

- **Steep decline in the sales** in the realty sector.
- **Construction activity to a standstill.** Delay in completion.
- **Liquidity problem** among the developers as the current allottee may also defer their pending instalments.
- Covid19 will be considered as a **force majeure in RER Act.** Force Majeure period may vary.
- **Relaxation** by various state authorities **for compliances till 30.06.2020 like Maharashtra.**

A 3D graphic of a house with a red roof and white walls. The word 'REAL ESTATE' is written in large, 3D, white block letters across the front of the house. The '2/2' text is in the top right corner.

2/2

- **Relaxations for real estate sector** is also expected in RER Act as highlighted by Secretary Shri Durgesh Mishra Ji recently.
- **Dispute in real estate in each and every case**
- Prices will go down.

# Thank you



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