

## OVERVIEW OF THE REAL ESTATE

### (REGULATION AND DEVELOPMENT) ACT, 2016

#### BRIEF HISTORY

- In 2009, the Ministry of Housing and Urban Poverty Alleviation had published a Model Real Estate Regulation and Development Bill, to regulate and promote real estate and ensure consumer protection.
- Indian Courts in the cases of *Belaire Owners Association vs DLF, Priyanka Estates International Pvt. Ltd vs State of Assam, Esha Ekta Apartments Co-operative Housing Society Limited vs Municipal Corporation of Mumbai*, have addressed issues in the Real Estate sector such as unfair buyers' agreements, alteration in terms without consent, illegal construction, etc..
- In *Belaire Owners Association vs DLF Limited, HUDA, and Ors, CCI*, [Case No. 19/2010] CCI has pointed out that the absence of a single regulator for the real estate sector is partly responsible for poor grievance redressal. CCI imposed a penalty of Rs. 630 Crore for abusing the dominant position by enforcing unfair terms in buyers agreement.
- In 2013, the Committee on Streamlining Approval Procedures in the Real Estate Sector recommended making the sector more transparent, with information on real estate projects made easily available.
- Committee also recommended strengthening the grievance redressal mechanism in case of non-compliance with building standards or contracts
- Real Estate (Regulation And Development) Bill, 2013 was introduced in Rajya Sabha on 20<sup>th</sup> August 2013.
- Bill was referred to Standing Committee on Urban Development on 9<sup>th</sup> September, 2013 for examination and report thereon.
- Standing Committee submitted its report /recommendation on 12<sup>th</sup> February, 2014 in Rajya Sabha and in Lok Sabha in 17<sup>th</sup> February, 2014
- Bill was then referred to Select Committee on 6<sup>th</sup> May, 2015.
- Select Committee Submitted its report on 30.07.2015.
- The Bill was passed by the Rajya Sabha on 10<sup>th</sup> March, 2016
- By Lok Sabha on 15<sup>th</sup> March, 2016
- Received assent from President on 26<sup>th</sup> March, 2016.
- Came into force on 1<sup>st</sup> May, 2016 vide Notification dated 26.04.2016.
- The Act Contains 10 Chapters and 92 Sections.

#### OBJECT

- to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector
- to ensure sale of plot, apartment or building or real estate project, in an efficient and transparent manner
- to protect the interest of consumers in the real estate sector

- to establish an adjudicating mechanism for speedy dispute redressal
- 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.

## **IMPORTANT PROVISIONS**

### **Section 2: Definitions**

There are 43 definitions included in this Act. The important one are as follows:

- Advertisement
- Agreement for Sale
- Allottee
- Appellate Tribunal.
- Authority
- Carpet Area
- Commencement Certificate
- Completion Certificate
- Estimated Cost of Real Estate Project
- Interest
- Occupancy Certificate
- Promoter
- Real Estate Agent
- Real Estate Project.

## **REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENT:**

### **Section 3: Prior Registration of real estate project with RERA.**

- Promoters are not allowed to advertise, market, book, sell, or offer for sale any plot/apartment/building before registering the project with Real Estate Regulatory Authority (RERA).
- Ongoing projects are required to be registered within 3 months from commencement of the Act.
- Registration not required where land size does not exceed 500 sq. meters, or when number of apartments in total does not exceed 8, or where completion certificate has been received for the project and for renovation, re-development and repair.

### **Section 4: Application for Registration**

- Details of the Promoter: Name and type of enterprise, Registered Address, particulars of registration, Name and Photographs of the Promoter.

- Details of the Projects launched so far: status of development, any delays in completion, pending cases.
- Authenticated copy of the Approvals and Commencement Certificate.
- Details of the Project: the location, sanctioned plan, layout plan, plan of development works, and other specifications of the proposed project.
- Ownership Documents: Proforma of the Allotment Letter, Agreement for Sale, and the Conveyance Deed proposed to be signed by the allottees.
- Details of Apartment: the carpet area, number and types of apartments along with areas of balcony/exclusive open terrace. Also, the number and areas of garages.
- Details of Real Estate Agents: Names and addresses of all real estate agents to be engaged.
- Details of Persons Involved in Development: Names and addresses of Architects, Engineers, Structural Engineer, and any other person involved.
- **Declaration by the Promoter supported by affidavit: That he has legal title to the land along with proof thereof, that the land is free from encumbrances or with details of the encumbrance, that prescribes the time period in which the project is to be completed, that 70% of the amount for the project from allottees shall be deposited in a separate account, and shall be used only for that purpose, that the Promoter shall take pending approvals on time, and that he has furnished such other document as may be prescribed by the Act.**
- RERA shall have an operational online system for submitting applications for registration, within a period of one year from the date of its establishment.

### **Section 5: Grant of Registration**

- Authority shall within a period of 30 days from receipt of application reject or grant registration. If registration is granted, then RERA shall provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.
- If neither rejected or granted registration, within 30 days time, the application shall be deemed to be granted registration.
- Registration shall be valid for the duration of time as mentioned by the Promoter in the application, the time in which the project is to be completed.

### **Section 6 : Extension of Registration**

- The registration may extended on an application made by the Promoter due to *force majeure* or without default on part of Promoter to the Authority
- The Extension will not exceed a period of one year.
- No rejection of extension is allowed without giving opportunity to the Promoter of being heard.

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### **Section 7 & 8:Revocation of Registration**

- RERA may suo motu, on receipt of a complaint, or on the recommendation of the competent authority, revoke registration:
- If Promoter makes default in doing anything required under the Act.
- If Promoter violates terms and conditions of the approval granted by a competent authority.
- If Promoter is involved in any kind of unfair practices (false representation of the standard of services, of approval or affiliation that does not exist, or any other false or misleading representation regarding the services, or practice of any fraudulent practices)
- Revocation may only be done after, RERA gives, in writing, a 30 days' notice stating the grounds for proposed revocation, and consideration of any cause shown by the Promoter within the notice period.

#### **RERA, upon revocation:**

- Shall debar the Promoter from accessing the Authority's website in relation to the project and the name of the Promoter shall be added to the list of defaulters along with his photograph on the website. Other State RERAs shall be intimated of such revocation.
- Shall facilitate the remaining development works to be carried out as per the decision taken by it, which may include carrying out of the remaining development works by competent authority or by the association of allottees.
- Shall direct the bank holding the project bank account to freeze it, and thereafter may direct the bank to de-freeze it for the purposes of facilitating the completion of the project.

### **Section 11: Functions and Duties of Promoter**

- A registered Promoter shall create a webpage and enter all details of the project for public viewing, including details of registration and quarterly up-to-date status of

project, list of number and type of apartment/units and garages booked, list of approvals taken and pending approvals.

- Promoter shall, at the time of booking and issuing of allotment letter, make available to the allottee:
  - i. Sanctioned plans, layout plans with specifications as approved by competent authority, by display at site or as may be prescribed by RERA;
  - ii. Stage wise schedule of completion of project
- Promoter shall obtain all relevant documents such as completion certificate or occupancy certificate (or both, as applicable), the lease certificate (with all dues paid in regard to leasehold land, where the project is on a leasehold land) and make it available to the allottees.
- Promoter shall execute a registered conveyance deed of the apartment, plot or building in favour of the allottee along with undivided proportionate title in the common areas to the association of allottees or competent authority as the case may be.
- Promoter shall pay all outgoing until he transfers the physical possession of the project to the allottee. Outgoings may include: land cost, local taxes, electricity/water charges, maintenance charges, loans and mortgages.
- Promoter also has the right to cancel allotment, but only on the terms of agreement of sale. Although, allottee shall have the right to approach the Authority aggrieved by such cancellation citing it unilateral and not in accordance with the terms of the agreement of sale.

#### **Section 12: Compensation for loss/damage due to incorrect or false information provided by Promoter**

- Promoter shall have to compensate any person who makes a payment on the basis of information in the notice advertisement or prospectus or model apartment and sustains loss or damage due to incorrect, false information.
- If such person shall decide to withdraw from the project then his entire investment along with interest shall be returned to him along with the compensation.

#### **Section 13: No Deposit or Advance without Agreement for Sale**

- Promoter shall not accept amount more than 10% of the cost of the apartment as advance payment/application fee without entering into a registered agreement for sale.

- Such an agreement shall include details of the project, dates and manner of payments are to be made, and the date on which possession is to be handed over, rates of interest payable by either party in case of default.

#### **Section15: Transfer of Rights and Liabilities in Project to Third-Party**

- Promoter shall first obtain consent form two-third allottees and written approval of the Authority before transferring or assigning his majority rights and liabilities in the project.

#### **Section18: Return of Amount and Compensation**

- If Promoter is unable to complete or give possession on time as stipulated in the agreement for sale due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable, if the allottee wishes to withdraw from the project, to return the investment with interest on it as well as compensation for the same.
- If the allottee does not wish to withdraw then the Promoter shall be liable to pay interest for every month of delay till possession.
- Promoter is liable to pay compensation for failure in discharging any other obligation imposed on him under the Act or the agreement for sale.
- In case of loss caused to the Promoter due to defective title of land, he is liable to compensate the allottees according to the Act.

#### **Section 19: Rights and Duties of Allottees**

- Allottee shall be entitled to obtain information regarding sanctioned plans, layout plans with specifications as approved by the competent authority, and any other information as provided for in the Act or the agreement for sale.
- entitled to obtain stage wise schedule of completion of project.
- entitled to claim possession of the apartment on such date as declared by the Promoter to be the date of completion.
- entitled to obtain a refund with interest and compensation from the Promoter, if the Promoter fails to give possession of the apartment in accordance with terms of the agreement of sale or due to revocation/suspension.
- entitled to have the necessary document and plans, including that of common areas after physical possession of the apartment.
- Allottee shall be responsible to make payments within such time and manner as prescribed in the agreement for sale, including any taxes and charges.

- Allottee shall be liable to pay interest for any delay in payment towards any amount or charges mentioned above.
- Obligations and liabilities of the Allottee shall be reduced when mutually agreed upon by allottee and promoter.
- Every Allottee shall participate in forming an association of allottees.
- Allottee shall take physical possession of the apartment within 2 months of issuance of the occupancy certificate.
- Allottee shall participate towards registration of the conveyance deed of the apartment.

### **Section 20: Establishment and Incorporation of Real Estate Regulatory Authority**

- The Real Estate Regulatory Authority (RERA) will come into existence one year from the date of commencement of the act, by a notification, which will be issued by the appropriate government.
- The Government or Governments, as the case may be, have the discretion of establishing just one RERA for two or more states, or establish more than one RERA in a single state.
- The Government can appoint any authority to carry out the functions of a RERA for as long as the RERA is not established. As soon as the RERA is established, all the cases would be transferred from the authority acting as RERA to the established RERA.
- RERA shall be a body corporate.

### **Section 21, 22 and 23: Composition , Qualification and Term of Members**

- RERA will consist of 1 Chairman and minimum 2 whole time members.
- The appropriate government will have the authority of appointing the members, on the recommendation of a selection committee which will comprise of the Chief Justice of the High Court, Secretary of the Department (Housing and Law Secretary).
- The Chairperson is to have a minimum experience of 20 years in the members are to have 15 years in urban development, real estate development, infrastructure, management, industry, etc.
- The Chairperson and the members will hold the office for 5 years or until they turn 65 years of age.

### **Section 31: Filing of Complaints**

- Any aggrieved person may file a complaint with the Authority or the adjudicating officer for any violation of the provisions of the Act against any promoter allottee or real estate agent.
- “Person” shall include association of allottees or any voluntary consumer association registered under any law for time being in force.

### **Section 32, 33 and 34: Functions of RERA**

- creation of Single window clearance system for ensuring time bound project approvals and clearances for timely completion of the project.
- To register and regulate real estate projects and real estate agents.
- To publish and maintain a website of records, publicly accessible, of all projects with details.
- To maintain a database online, publicly accessible, of defaulter Promoters with their names and photographs.
- To maintain a database online, publicly accessible, of registered real estate agents and a list of those whose registration has been rejected or revoked.
- To advice and make recommendations to the Government to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector

### **Section 35: Powers of RERA**

- To impose penalty or interest on Promoter/Allottee/Agent in regard of any contravention of obligations.
- To regulate its own procedure.
- To suo motu make reference to Competition Commission of India of any matter that has effect of market power of monopoly situation being abused for adversely affecting the interest of allottees.
- To suo motu or upon a complaint, call upon Promoter/Allottee/Agent at any time and order to furnish in writing information or explanation.
- Authority may appoint persons to investigate and inquire in relation to the affairs of Promoter/Allottee/Agent.
- Authority may have the following powers, same as a civil court, namely:



- i. Direct the discovery and production of books of accounts and other documents;
- ii. Summon and enforce the attendance of persons and examine them on oath;
- iii. Issue commissions for the examination of witnesses or documents.

- To restrain Promoter/Allottee/Agent from carrying any act until the conclusion of inquiry, which it believes to be in contravention of the Act. (Interim Orders)
- To give directions to Promoter/Allottee/Agent, that would be binding on them.
- To amend orders passed by it, only within 2 years of the date of passing of order.
- To recover interest/penalty/compensation from Promoter/Allottee/Agent.
- To enforce orders or directions of any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be.

#### **Section 43: Establishment of Real Estate Appellate Tribunal**

- Any person aggrieved by the direction, decision or order made by the Authority or by an adjudicating officer may appeal before REAT.
- Ordinarily one state to have one REAT. By the act of governments, one may have more than one Tribunal and more than one state may have one sole Tribunal.
- States to establish Tribunals within one year from enactment that are to be known as— (name of the State/Union territory) Real Estate Appellate Tribunal.

#### **Section 44: Application for Settlement of Disputes and Appeals**

- Appeals may be filed by appropriate Government or the competent authority or any person aggrieved.
- Appeals may be filed within 60 days from date of order of Authority. Tribunal may entertain appeals beyond this period subject to satisfaction of the cause of delay.
- On receipt of an appeal Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

### **Section 53: Powers of Tribunal**

- To regulate its own procedure.
- Same Powers as a civil court.
- Tribunal to be not bound by procedure in the CPC or by the rules of evidence contained in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice.

### **Section 57: Orders passed by Tribunal to be executed as Decree**

- Every order made by the Tribunal shall be executable by itself or via civil court having local jurisdiction, as if it were a decree made by court.

### **Section 58: Appeal to High Court**

- Within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, one may file an appeal to High Court on grounds specified in section 100 of the Code of Civil Procedure, 1908.
- No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

### **Section 59-61, 63 & 64 Penalties & Punishment for Promoter**

For non-registration:

- Promoter found in contravention of section 3 (registration), he shall be liable to penalty up to the extent of 10% of the estimated cost of project.
- Repeat violation or non-compliance of the above shall be punishable with imprisonment of up to 3 years or with fine up to the extent of 10% of project cost, or both.

For Contravention of Section 4 (Application for Registration)

- A Promoter for providing false information or contravention of Section 4, shall be liable to a penalty up to 5% of project cost.

For Contravention of any other Provisions

- A Promoter for contravention of provisions other than Sections 3 & 4, shall be liable to pay a penalty up to 5% of project cost.

For failure to comply with orders of Authority

- A penalty for every day during which default continues extending up to 5% cost of project.

For failure to comply with orders of Appellate Tribunal

- Punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to 10% of project cost.

**Section 62, 65 & 66 Penalties & Punishments for Real Estate Agent:**

- For Non-registration and Contravention of Sections 9 (Registration) & 10(Functions):
  - Any Agent if contravenes Section 9 (Registration) or Section 10 (Functions), he shall be liable to a penalty of Rs. 10,000/- for everyday during which default continues, which may extend up to 5% of cost of apartment.

For failure to comply with orders of Authority:

- Liable to a penalty for every day during which such default continues, which may cumulatively extend up to 5% of the estimated cost of apartment.

For failure to comply with orders of Tribunal:

- Punishable with imprisonment for a term which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up to 10% of the estimated cost of apartment.

**Section 67 and 68: Penalties for Allottee**

For failure to comply with orders of Authority

- Liable to a penalty for the period during which such default continues, which may cumulatively extend up to 5% of the apartment.

For failure to comply with orders of Tribunal

- Punishable with imprisonment for a term which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up 10% of the apartment.

**Section 69: Offences by Companies**

- All persons in charge of the conduct of business of company, at the time offence was committed, as well as the company, shall be deemed guilty of the offence, and shall be proceeded against and punished accordingly.
- If consent or connivance or any neglect with regard to an offence under the Act may be established on the part of any director, manager, secretary or other officer of the company, such officer of the company may deemed guilty

- Defence may lie in the establishing the fact that the offence was committed without one's knowledge and that due diligence was exercised to prevent commission of such offence.

### **CHALLENGES**

- In cases, where the cost of construction activities is less than 70% and cost of land more than 30%, then some part of the fund collected may remain unutilized while some financing from other sources may be required to cover the land cost. This could raise the project cost. Also each state has its own rules on valuation of land further leading to ambiguity.
- Also when project is financed by the bank or financial institution and whether one will have to deposit aforesaid percentage in bank account in the light of provision of deposit of above percentage of funds in escrow account. In a situation where the builder has started the project and say 50% of the project is completed before start taking advance from the customers. Would that also required to keep 70% of amount collected in that account in light of circumstances, half the project cost is already met by the developer from its source?
- The Act is also silent as to what would be amount of compensation, when developer decides to not to charge any interest on delayed payment by the customer. In that scenario the customer shall also not be entitled to claim any compensation on delay in handing over the possession by the developer.

**For further information on this topic please contact Kuriakose Varghese or Surya Prakash at KMNP Law by telephone (+91-11-45502527) or email (kuriakose@kmnplaw.com).**

**The KMNP Law website can be accessed at [www.kmnplaw.com](http://www.kmnplaw.com) .**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*