LAW REAL ESTATE

Maharashtra Housing (Regulation & Development) Act 2012: Overview – Part I

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With the Presidential assent to Maharashtra Housing (Regulation and Development) Act 2012 (the “Act”)[2] in February this year, the State is all set to establish a new authority to regulate the housing sector in the State. This Act sets to bring about sweeping changes to the organization and management of the real estate sector, which is largely unorganized at present.

Way back in 1963, the State of Maharashtra has enacted Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (“MOFA) to prevent abuses and malpractices related to the construction and sale of the flats. One of the main problems of MOFA is the absence of an effective regulatory mechanism. The Act attempts to over ride this problem by establishing regulatory authorities. The Act will repeal MOFA.

The purpose of this article is to give an overview of the Act. First part of this article deals with the regulations relating to construction, sale and management of flats. The second part, which will be published in the next week, will cover the proposed regulatory authorities under the Act.

Object of the Act

Following are the two objects of the Act:

1. Regulate and promote construction, sale, management and transfer of flats on ownership basis; and
2. Establish Housing Regulatory Authority (“HRA”) and Housing Appellate Tribunal (“HAT”).

Disclosure to be made by the Promoter

The Act attempts to remove the huge information asymmetry currently prevailing in the real estate sector by providing elaborate disclosure to be made by the promoters or developers. The disclosures to be made by the promoters include:

- title to the land;
- encumbrances on the land;
- enterprise details;
- name and address of the architect, structural engineer and contractor including turnkey contractor; if any;
- number and size of the plots; layout plan, carpet areas, utility area of the flat, FSI,TDR, additional FSI, common area, limited common area and facilities /amenities of the building/layout;
- allowing inspection of plans, structural design, specification of the building, etc;
- building wise time schedule of each phase of the project;
- time schedule for connecting the project with water supply, electricity, sewerage, drainage etc.
- nature of fixtures and fittings, lifts, etc
- particulars of design, type of material, technology, earthquake resistance, etc
- date of possession of the flats along with amenities;
- list of parking spaces;
- nature of organization to which the title will be passed and the terms and conditions governing such organization;
- keep all documents, plans specifications at site and registered office of the promoter and allow inspection;
- disclose the name and address of the brokers, agents, middleman etc

In case of layout, promotes shall also disclose:

- phase wise lay out plan;
- plan of the phase of the development work;
- details of the parts of the colony/apartment/common areas; and
- aggregate area in square meters of parks, recreational ground, gardens, play ground in a layout.

Registering the project and displaying it on website of HRA

The Act makes it mandatory for every promoter to make an application to HRA for registering the project and displaying it on the website of HRA along with an application fee not exceeding Rs.50,000. If the project is proposed to be marketed and sold in phases, each phase will be considered as an independent project.

The HRA shall register the project within 7 days of receiving the application and provide a password to the developer for accessing the website. The promoter shall upon receiving such password, enter the required details of the project in the website.

The Act prohibits any transaction including sale or marketing of flats in new project without registration on the HRA website. The Act also prohibits promoters from issuing or publishing any advertisement or prospectus for inviting advance or deposit without displaying the project or phase on website of the HRA.

The mandatory requirement of the registration is exempted, if :

- the area does not exceed 250 square meters;
- the total number of flat is less than 5 in project/phase
- the promoter received occupation certificate;
- the project is renovation, repair, reconstruction and does not involve new allotment of flat.

The HRA is entitled to cancel the registration, if a court declares that the document pursuant to which the promoter derives right to the land or development right is invalid.

Sale Agreement

The Act requires the promoter to enter into agreement with buyers of flats before accepting advance payment or deposit which exceeds 20% of the sale price. The Act requires sale agreement to provide various aspect of the project upfront. The agreement shall include the following :

- approved plan and specifications;
- date of possession;
- extend of carpet area and utility area;
- total price of the flat including proportionate price of the limited common area and facilities and parking spaces which should be shown separately, to be paid by the purchaser and intervals of the payment.
- allotment of fixed parking space (no parking space shall be allotted in minimum area)
- nature of the organization to be constituted;
- nature, extent and description limited common area & facilities of the building / same for the layout, if any;
- aggregate area of the park ,garden, recreation ground and playground in the layout;
- statement of the use for which the flat is intended and restriction on its use, if any; and
- percentage of undivided interest in limited common area & facilities of the Building

In addition, copies of the following documents shall be attached to the agreement:

• certified title report;

• property card or extract of Village Forms Vi or VII and XII or any other relevant revenue record showing the nature of the land; and

• plans and specification of the flat approved by the local authority

The Act requires that the sale agreement shall be registered. However, non-registration does not affect the admissibility of the document in a court as evidence for suit for specific performance under chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purpose of section 53 of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

Non-completion of the Project

The Act provides various powers to HRA to enable the completion of the project, if the promoter is not able to complete the project within the agreed time period. Such power include creation of a legal entity of 60% flat purchasers, appointing the legal entity as escrow agent for taking over the possession of the building and area appurtenant thereto and allowing the legal to take various measure to compete the construction. If the promoter is unable to give possession of the flats within the prescribed time period, then he shall refund the amounts together with interest at the prescribed rate. Such amounts and the interest shall be a charge on the flats subject to any prior encumbrances.

Responsibility of the Promoter

The Act imposes various responsibilities on the promoters regarding various aspects of the development of the project. Such responsibilities include the following:

• If purchaser sustains any loss by reason of any willful untrue statement in any advertisement made by the promoter, the purchaser shall be compensated by the Promoter. If the purchaser withdraws from the project on account of wilful untrue statement, the investment shall be returned along with interest at the prescribed rate but not exceeding 15% p.a.

• The Act requires the promoter to take various measures to ensure the protection and safety of the property including building constructed thereon.

• Promoter must obtain occupation certificate or building completion certificate and give a copy to the flat purchasers individually or to the co-operative society. No possession shall be given until occupation certificate or building completion certificate has been given.

• Promoter shall be responsible to provide essential services such as water supply, electricity, light in passages, lift, sanitary services. Details of essential supplies and services shall be kept by the promoter in the form of a statement and made available to the purchasers.

• Promoter shall have a building-wise separate account in a bank including for sum taken towards share capital of cooperative society, outgoings, taxes, water charges etc. Accounts must be audited by a chartered accountant.

• Promoter shall be responsible to pay all outgoing till the property is transferred.

• If the promoter has disclosed the approved plans to the purchaser, then no alteration shall be made without the consent of that person.

• Promoter shall be responsible to rectify defects noticed within five years of handing over the possession.

• Promoter shall not create any mortgage or charge on any flat after an agreement to sell has been executed.

• Promoter shall take steps for formation of cooperative society, company, apex body or federation:

• Within 4 months from the date of occupation certificate or 60% possession taken or promoter received full money whichever is earlier, in case of single building not being a part of lay outs; and

• In case of layout, within 4 months from the date of occupation certificate or 60% possession given whichever is earlier. If promoter has formed more than one cooperative society of companies in structures consisting of more than one building, then the promoter shall form an apex body or federation for the purpose of maintaining common areas and amenities.

• The promoter shall convey the title and execute the document in this regard within four months from the date of formation of cooperative society or company subject to the promoter's right to dispose of the remaining flats. In case of layouts, conveyance shall only be in respect of the structures of the buildings in which a minimum number of 60% of the flats have been sold, along with FSI consumed in such building, subject to the right of the Promoter to dispose of the remaining flats, if any. If the conveyance is not executed, the purchasers or the society etc. may apply to the competent authority for a unilateral deemed conveyance and the same may be registered.

Currently, real estate sector is plagued with lack of transparency and accountability. Various provisions in the act such as mandatory registration of the project, elaborate disclosure mechanisms, building-wise separate accounts requirement, detailed responsibilities upon the promoters etc can bring about much needed transparency and accountability in the sector.

[2] *External link*