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

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One of the main reason for the repeal of MOFA[1] was the lack of an effective regulatory arm to implement its provisions. As a result, flat buyers can only approach the consumer forums or civil courts for enforcing the provisions. The Act proposes to overcome this lacuna by providing for the establishment of regulatory authorities for effective implementation of the Act.

Competent Authority (“CA”)

The Act authorises the State Government to appoint an officer, not below the rank of the District Deputy Registrar of Cooperative Societies, as CA for exercising the powers and performing the duties under the Act. CAs can be appointed for different areas. CA has been invested with various powers and duties under the Act including the power :

- to take steps to form cooperative society, company, apex body etc., if the promoter failed to take these measure in accordance with the Act.
- to issue a certificate to the Registrar or Sub-Registrar under the Registration Act 1908, for conveyance of title of the land to the cooperative society, company etc., if the promoter failed to execute such conveyance in accordance with the Act.

Housing Regulatory Authority (“HRA”)

The Act authorised the State Government to establish HRA for the purpose of effective implementation of its provisions. HRA shall be a body corporate consisting of a Chairperson and two or more members.

The functions of the HRA include :

- ensuring compliance of obligations cast upon Promoters and allottees under the Act;
- causing an enquiry into compliance of its orders and directions;
- levying fees and charges;
- reporting matters to the appropriate authority for action against promoters or allottees for commission of any offence;
- hosting and maintaining a website of records of all housing projects within its jurisdiction;
- performing such other functions relating to housing projects as may be entrusted to HRA;
- making recommendations in relation to Development Control Regulations, changes in FSI and other related matters;
- conducting an enquiry upon receiving complaints and passing reasoned order; and
- adjudicating dispute between promoters, allottees and organisation of flat owners.

HRA has been vested with the powers of a civil court. HRA has the power to regulate its own procedure and shall be guided by the principle of natural justice. The powers of the HRA include :

- calling for information and explanation in writing from the promoters with regard to their compliances of various obligations;
- issuing binding directions to promoters, purchasers and organizations;
- prohibiting the promotes from marketing and selling the flats for which the registration is cancelled under the Act; and
- taking measures for planned development and promotions of housing sector.

Housing Appellate Tribunal (“HAT”)

The Act authorises the State Government to establish HAT. HAT shall have a chairperson and not more than two person appointed by the State Government. The chairperson shall be a serving or retired judge of High Court.

HAT shall have the power to adjudicate any dispute, hear and dispose of appeal against any direction, decision or order of the HRA. The CA or any person aggrieved by the decision of HRA may prefer an appeal to the HAT within 60 days of the order.

HAT shall have the powers of a civil court and shall be bound the procedure laid down in the Civil Procedure Code.

Any person aggrieved by the decision of the HAT can prefer an appeal to the respective High Court with 30 days of the order.

Penalty

Offence	Penalty
Non-registration of flat by the promoters	Rs. 1000 per day
Promoter's failure to upload information in the website/failure to give possession of the flat with in time/creation of mortgage on the flat after the execution of agreement for sale	Rs. 10,000 per day or Rs. 50,00,000 whichever is lower
Flat purchaser or an organization contravenes the provisions of the Agreement for Sale, including non-payment of any amounts or charges	Rs. 10,000 or 1% of the sale price of the property

Non-compliance of HRA or HAT order	Rs. 10,00,000 or three year imprisonment or both
Any person other than the Promoter failing to comply with the Act or Rules or not paying penalty imposed by HRA	Rs. 50,000
<ul style="list-style-type: none"> • Promoter's failure to execute the Sale Agreement and register it before accepting advance payment of 20% of the Sale Price • Promoters failure to maintain separate account and disburse the amount for the purpose for which it was given • Promoter's making any alteration or addition in the structure once the plans are disclosed • Promoters failure to take steps for formation of cooperative society, company, apex body or federation • Promoters failure to convey title 	Rs. 100,00,000
Promoter's failure to comply with any other provision for which penalty is not expressly prescribed.	Rs. 100,000

Conclusion

The Act provides for a comprehensive law to regulate and provide for promotion of the construction, sale, management and transfer of flats in the State of Maharashtra. The Act proposes to achieve this object by:

- bringing transparency in the sector through detailed disclosures to be made by the promoters and making it mandatory to register the housing projects with HRA ; and
- establishing regulatory authorities equipped with adequate power to implement the provision of the Act.

The Act is has been subject to fair share of criticisms also. One of the main criticisms is that it is a diluted version of the Real Estate (Regulation & Development) Bill, 2013, which is a Central Bill currently awaiting passage. The Central Bill is much more stringent and provides for severe penalties than contemplated under the Act. Another criticism is that it covers only private builders within its fold and does not include government bodies such as the Maharashtra Housing and Area Development Authority.

The Act could have followed the Central Bill and provided more stringent mechanisms to prevent malpractices. Despite that, the Act takes some definitive measure to bring transparency in the sector. The Act can bring about a positive change in the sector if adequately implemented.

[2] Please refer to Part I of this Series for the definitions