

Amendments to Real Estate (Regulation and Development) Bill, 2013

AUTHOR Suresh Palav, Shweta Tiwari

PUBLISHED 20 April 2015

Introduction

Until 1980s, real estate development and housing construction was primarily the concern of State institutions with very few private promoters. Although, liberalization of the economy, led to several private players contributing to the development of the otherwise nascent industry, the real estate and housing sector is still largely unregulated. Since 2009, efforts have been taken to introduce a regulator for the real estate sector on the lines of other regulatory bodies monitoring sectors such as insurance and telecom. A Real Estate (Regulation and Development) Bill, 2013 was also introduced in Rajya Sabha in August 2013.

The Union Cabinet recently approved amendments to the Real Estate (Regulation and Development) Bill, 2013 ("**Amended Bill**") [1]. The Amended Bill seeks to protect the interest of consumers, to ensure timely execution of projects and promote fair play in real estate transactions. The Amended Bill is in tandem with the objective of the Government of India to provide 'Housing for All by 2022', through enhanced private participation. A Central Advisory Council would also be established to recommend policy, protect consumer interests and encourage growth and development of the real estate sector.

Highlights of the Amended Bill

The initial Bill was applicable only to residential real estate. The Amended Bill has now been extended to commercial real estate as well.

Rights of the Allottee

Fifty percent or such lesser percent as notified by the Appropriate Government, of the amounts realized for the real estate project from the allottees have to be compulsorily deposited in a separate account in a scheduled bank within a period of fifteen days to cover the cost of construction to be used for that purpose. This will thwart builders from diverting funds of their projects.

The Amended Bill provides the allottee with a right to obtain stage-wise time schedule of project, claim possession as per promoter declaration, seek refund with interest and compensation for default by the promoter.

Registration and Mandatory Disclosures

Real estate projects and real estate agents who intend to sell any plot, apartment or building have to be mandatorily registered with the Real Estate Regulatory Authority. Mandatory public disclosure norms have also been suggested for all registered projects such as details of promoters, project, layout plan, plan of development works, land status, status of statutory approvals and disclosure of proforma agreements, names and addresses of real estate agents, contractors, architect, structural engineer etc.

Real estate agents will be allowed to sell only registered properties. They will have to maintain proper books of accounts, records and documents and restrain from unfair trade practices.

Obligations of the Promoter

The following functions and duties have been prescribed for the Promoters:

- Disclosure of all relevant information of project;
- Adherence to approved plans and project specifications;
- Obligations regarding veracity of the advertisement for sale or prospectus;
- Rectify structural defects;
- Refund money in cases of default;

The promoter will be barred from altering plans, structural designs and specifications of the plot, apartment or building without the consent of two-third allottees after disclosure. However, minor additions or alterations permissible due to architectural and structural reasons.

Dispute Resolution Mechanism

The Real Estate Regulatory Authority ("**Authority**") is being established to act as a nodal agency to co-ordinate efforts regarding development of the real estate sector and render necessary advice to the appropriate Government. No other court or authority would be allowed to entertain complaints in respect of matters covered under the Amended Bill. The Authority would be established in each State/ Union Territory (UT), or one Authority for two or more States/UT, by the Appropriate Government for oversight of real estate transactions. One or more adjudicating officers would be appointed to fast track the dispute resolution

mechanism. The appeals against the order of adjudicating officers and the Authority would be heard by Real Estate Appellate Tribunal. The Appellate Tribunal would be headed by a sitting or retired Judge of the High Court, with one judicial and one administrative/technical member.

The Amended Bill would also provide for punitive provisions including de-registration of the project and penalties in case of contravention of provisions of the Amended Bill or the orders of the Authority or Tribunal;

Conclusion

The Amended Bill has extended the benefits of orderly growth through efficient project execution, professionalism and standardization to commercial projects while the earlier Bill was restricted to residential projects alone. The Amended Bill will also curb the practice of setting unrealistic targets by developers and make them more reasonable in terms of project execution and delivery. The move is said to bring about transparency and accountability in the sector and restore confidence of the consumers and the general public.

These measures are also expected to boost domestic and foreign investment in the sector. The sector needs better access to capital and financial markets, for its long term growth.

[1] <http://pib.nic.in/newsite/PrintRelease.aspx?relid=118039>