



REAL ESTATE

Real Estate (Regulation and Development) Act, 2016

AUTHOR Varsha G. Subramanian, Rujuta Sonawane

PUBLISHED 13 May 2016

Introduction

The Real Estate (Regulation and Development) Act, 2016 (“**Act**”) has received presidential assent on 25th March 2016. The Act seeks to standardize procedures in the real estate sector, bring transparency in the system thereby boosting customer confidence in the sector. The Act provides for registration of real estate projects and real estate agents and also imposes several obligations on the promoters and the real estate agents. The Act also establishes a new institutional framework for effective regulation of the real estate sector. The Act repeals corresponding state acts like The Maharashtra Housing (Regulation and Development) Act, 2012.

The following are the salient features of the Act:

PART I – Establishment of a New Institutional Framework

1. **The Real Estate Regulatory Authority** – The Act provides for the establishment of a Real Estate Regulatory Authority (“Authority”) in each state by the respective state government. The state government shall constitute the authority within one year from the date of commencement of the Act. Until the establishment of the Authority, the state government shall designate any other authority or any officer preferably the Secretary of the department dealing with Housing, as the Authority. The Authority shall be a body corporate and consist of a Chairperson and not less than two whole time Members. The Chairperson and the Members shall be appointed based on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary.

The functions of the Authority shall include —

- to register and regulate real estate projects and real estate agents;
- to publish and maintain a website of records, for public viewing, of all registered real estate projects, registered real estate agents, list of defaulters etc.
- to ensure compliance of its regulation, order and the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- to act as an adjudicatory authority and penalize violations of provisions of this Act.
- to make recommendations to enable the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

2. **Establishment of Real Estate Appellate Tribunal** – The state government has to establish a Real Estate Appellate Tribunal (“Appellate Tribunal”) within a period of one year from the date of coming into force of this Act. The Appellate Tribunal will act as the appellate authority to hear appeal arising from the direction, order or decision made by the Authority or adjudicating officer under the Act. Until the establishment of an Appellate Tribunal, the state government shall designate any other appellate tribunal to be the Appellate Tribunal.

Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

3. **Central Advisory Council** – The Central Government may establish a Council to be known as the Central Advisory Council. The Council shall consist of a maximum of 10 representatives including representatives from the industry, consumers, research bodies, non-governmental organizations etc. The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council. The functions of the Central Advisory Council shall be to advise and recommend the Central Government on policy making, implementation of the Act, protection of consumer interests and growth of the real estate sector.

4. **Adjudicating Officer (for compensation)** – The Authority shall, in consultation with the state government, appoint one or more judicial officer, who is or has been a District Judge to be an adjudicating officer for the purpose of adjudging compensation under certain sections of the Act.

Any person whose complaint in respect of matters covered under sections 12 (obligations of promoter), 14 (adherence to sanctioned plans), 18 (failure to give possession) and 19 (rights and duties of allottees), is pending before the consumer forum, on or before the commencement of this Act, may, with the permission of such forum, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

The time period to dispose off such application is sixty days from the date of receipt of the application. However, if such application could not be disposed of within the said period, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

PART II – Registration of Real Estate Project and Real Estate Agents

1. Scope of Real Estate Project – The scope of real estate project includes development of a building or a building consisting of apartments, or converting an existing building or part thereof into apartments, or development of land into plots or apartments. Apartment includes residential as well as commercial projects. In cases, where the real estate project is developed in phases, each phase will be considered as a standalone project and has to be registered separately.

2. Compulsory Registration of Real Estate Projects – The Act mandates registration of the real estate project, which falls within the planning area, with the Authority. Planning area is an area designated by the state government or the competent authority for the purpose of future development. The Authority also has the power to direct the promoter to register projects developed beyond the planning area.

In case of ongoing projects for which the completion certificate has not been issued, the promoter shall apply for registration within three months from the date of commencement of the Act.

3. Projects for which Prior Registration is not required – No registration would be required in the following scenarios:• the area of land proposed to be developed is below 500 square meters or the number of apartments proposed to be developed is below 8 inclusive of all phases;

- completion certificate for a real estate project has been received prior to the commencement of this Act;
- renovation, repair or re-development projects which do not involve marketing, advertising, selling or any new allotment of any apartment, plot or building, under the real estate project.

4. Application for Registration – The Authority will operationalize a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

Every promoter has to make an application to the Authority for registration of the real estate project. The promoter shall enclose list of documents pertaining to the details of project, authenticated copy of approvals, sanctioned plan, commencement certificate etc. along with the application. This would also include a declaration by the promoter (“Declaration”), supported by an affidavit stating:

(A) that he has a legal title to the land along with legally valid documents authenticating such title, where such land is owned by another person;

(B) that the land is free from all encumbrances, or the details of the encumbrances, if there are encumbrances on such land.

(C) the time period for completion of project or phase;

(D) that 70 % of the amounts collected from the allottees will be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose; and

(E) that he shall take all the pending approvals on time, from the competent authorities.

5. Review of Applications by the Authority – On receipt of the application, the Authority shall within a period of thirty days:

- a. grant registration, and 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; or
- b. reject the application for reasons to be recorded in writing and after giving the applicant an opportunity of being heard in the matter.

Upon lapse of 30 days period, the project will be given deemed registration, and the Authority shall within a period of seven days of the expiry of the 30 days period, provide access to the website of the Authority.

6. Validity of the Registration – The registration granted will be valid for a period, which is stated by the promoter in his Declaration as period required for completion of the project or phase. The Authority may extend the registration in reasonable circumstances, which shall not exceed a period of one year, in aggregate.

7. Revocation of Registration – The Authority may, on receipt of a complaint or suo motu or on the recommendation of the competent authority, revoke the registration, due to:

- (a) contravention of provisions of Act, rules and regulations by the promoter.
- (b) violation by the promoter, of any of the terms or conditions of the approval given by the competent authority;
- (c) any kind of unfair practice or irregularities caused by the promoter.
- (d) any fraudulent practices by the promoter.

The Authority, upon the revocation of the registration:

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out.

(c) shall direct the bank holding the project back account to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works.

In case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

PART III – Promoter’s Functions and Duties

The Act defines a promoter as a person –

a. who constructs or causes to be constructed a building or converts an existing building for the purpose of selling some of the apartment to other persons; or

b. who develops a land into project, whether or not he constructs structures in the plots, for the purpose of selling the plots to other persons.

The definition of promoters includes development authority, cooperative society, which constructs building for its members or any other person who constructs building for sale to the general public.

1. Creation of Webpage – Upon receipt of Login Id and password of the website of the Authority, the promoter shall create his web page for public viewing. The details shall include registration details and quarterly up-to-date list of number and types of apartments or plots, number of garages booked, list of approvals taken, pending approvals, status of the project etc.

2. Details in Advertisement and Prospectus and Compensation for False/Incorrect Information – The promoter shall be responsible for the veracity of the advertisement. The promoter shall compensate for the loss incurred by any person, who has made the advance based on the information provided in the advertisement, on account of any falsity or inaccuracy of such information. However, if the affected person intends to withdraw from the proposed project, he shall be returned his entire investment along with interest and compensation.

The advertisement or prospectus published by the promoter shall mention prominently the website address of the Authority, registration number of the promoter and his webpage.

3. Details to be provided during allotment – The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, information regarding sanctioned plans, along with specifications and the stage wise time schedule of completion of the project.

4. Execution of Agreement for Sale – Promoter shall not accept an advance payment of more than 10% of the cost of the apartment, plot, or building, as the case may be, without executing and registering an agreement for sale with such person. The Agreement for Sale shall be in a prescribed form and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, etc.

5. Restriction on Mortgage – The promoter cannot mortgage or create a charge after the execution of an agreement for sale for any apartment, plot or building. If any such mortgage or charge is made or created, it will not affect the right and interest of the allottee.

6. Cancellation of Allotment – The promoter can cancel the allotment only in terms of the agreement for sale. The allottee may approach the Authority for relief, if he is aggrieved by such cancellation.

7. Adherence to Sanctioned Plans and Project Specifications – Project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the authorities. The promoter has to take consent of the allottee before making any additions or alterations to the approved plans in respect of his apartment, building or plot except minor alteration as may recommended by authorized architect.

In case of any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project, the promoter has to take the previous written consent of at least two-thirds of the allottees. Allottees shall be considered as one allottee irrespective of the number of apartments or plots booked by him or booked in the

name of his family, or booked for company, firm, association etc.

8. Obligation of obtaining approvals – The promoter shall—

- a.** be responsible for all obligation towards allottees and association of allottees including provision of essential services at a reasonable charges, payment of all outgoing such as municipal taxes, water chargers, etc. till the conveyance of apartments or plots to allottees and the common areas to the association.
- b.** be responsible to obtain the completion certificate or the occupancy certificate and to make it available to the allottees individually or to the association of allottees;
- c.** be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land.
- d.** be responsible to obtain insurances such as insurance in respect of title of the land, building and construction of the project, etc. and shall transfer such insurance to allottees or the association of the allottees as the case may be.

9. Execution of Registered Conveyance Deed – The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees and hand over the physical possession of the same to the respective parties alongwith other title documents within period specified under the local laws. In the absence of any local law, conveyance deed shall be executed within three months from date of issue of occupancy certificate.

10. Transfer or Assignment of Project by Promoter – 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 allottees, excluding the promoter, and without the prior written approval of the Authority.

Upon such transfer or assignment, all the pending obligations under the agreement for sale and the Act shall stand transferred to the new promoter. Any transfer or assignment permitted shall not result in extension of time to the intending promoter to complete the real estate project.

11. Failure to give possession by the Promoter – If the promoter fails to complete or is unable to give possession of an apartment, plot or building, he shall be liable to return the amount received by him alongwith interest and compensation. However, if the allottee does not intend to withdraw from the project, the promoter shall pay interest for every month of delay till the handing over of the possession.

12. Rectification of Structural Defects occurring within 5 years – The promoter has an obligation to rectify structural defects brought to his notice by the allottee within a period of five years from the date of handing over of possession. It shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive compensation.

13. Compensation for Defect in title – The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land and the claim for compensation shall not be barred by limitation provided under any law for the time being in force.

14. Formation of an Association or Society – The promoter shall enable the formation of an association or society or co-operative society of the allottees. In the absence of local laws, the association shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building.

PART IV – Real Estate Agent's Registration and Duties

a. Compulsory Registration – The Act defines real estate agent as any person who negotiate or act on behalf of one person in a transaction of transfer of plot, apartment or building in real estate project and receives remuneration for his services. The definition includes person who introduces prospective buyer and seller through any medium.

The Act makes it mandatory for real estate agent to apply for registration and the Authority will grant a single registration for the entire state or reject if the application do not confirm the requirements. If the application doesn't receive communication from the Authority within a prescribed period, the application shall be deemed to be granted. The agent has to quote the registration number granted by the Authority in all transaction. The Authority has the power to revoke the registration if the agent violates the provisions of the Act if the registration has been obtained through fraud or misrepresentation.

b. Obligations of Registered Real Estate Agent – The agent shall not enable the transaction of an unregistered plot, apartment or building. He shall not be involved in unfair trade practices such as making any false representation regarding standard of services, registration, and affiliation etc. of himself, promoter or any project. He shall also ensure that the allottee receives all information and documents to which the allottee is entitled at the time of booking.

PART V – Penalties, Compensation and Dispute Resolution

1. Offences and Penalties – The Act provides for following penalties:

Offences	Penalties
If the promoter contravenes the provisions of section 3 which pertains to prior registration of the real estate project.	Penalty which may extend up to ten per cent of the estimated cost of the real estate project as determined by the Authority.
If any promoter provides false information or contravention of the provisions of section 4 pertaining to application for registration of the real estate project.	Maximum of five per cent of the estimated cost of the real estate project.
If any promoter contravenes any other provisions of this Act.	Maximum of five per cent of the estimated cost of the real estate project.
If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10 which pertain to registration and functions of real estate agents.	Ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been enabled.
If any promoter fails to comply with any of the orders or directions of the Authority.	Every day during which such default continues, which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.
If any promoter fails to comply with or contravenes any of the orders, decisions or directions of the Appellate Tribunal.	Imprisonment for a term which may extend to a maximum of one year or a fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of the real estate project, or with both.
If any real estate agent fails to comply with any of the orders or directions of the Authority.	Every day during which such default continues, which may extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been enabled.
If any real estate agent fails to comply with the orders, decisions or directions of the Appellate Tribunal.	Imprisonment for a term which may extend up to one year or a fine for every day during which such default continues, which may extend up to ten per cent of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been enabled, or with both.
If any allottee fails to comply with any of the orders, decisions or directions of the Authority.	Penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be
If any allottee fails to comply with the orders or directions of the Appellate Tribunal.	Imprisonment for a term which may extend up to one year or a fine for every day during which such default continues, which may extend up to ten per cent of the plot, apartment or building cost, as the case may be, or with both.

2. Cognizance of Offence – An offence punishable under the Act can only be tried by Metropolitan Magistrate or a Judicial Magistrate of the first class. The court shall take cognizance of such offence only on a complaint in writing made by the Authority or by any officer of the Authority duly authorized by it for this purpose.

3. Compounding of offences – The Act provides for compounding of offences before as well as after the institution of the prosecution. However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine, which may be

imposed for the offence so compounded.

4. Quantum of Compensation – The quantum of compensation or interest is to be determined after giving due regard to:

- a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b) the amount of loss caused as a result of the default;
- c) the repetitive nature of the default;
- d) other relevant factors.

5. Procedure for Dispute Resolution

a. Bar on Jurisdiction – No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which falls under the jurisdiction of the Authority or the adjudicating officer or the Appellate Tribunal.

b. Review of Complaints by the Authority – Any aggrieved person may file a complaint with the Authority or the adjudicating officer, for violation of the provisions of this Act.

Upon a complaint or suo motu, the Authority may call upon such promoter or allottee or real estate agent to furnish explanation relating to its affairs. The Authority may appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent.

The Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit.

c. Appeals to be heard by Real Estate Appellate Tribunal – Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal within a period of sixty days from the date of the order. The Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

While filing the appeal, the promoter has an obligation to deposit at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, before the said appeal is heard.

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

d. Appeal to High Court – Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court, within a period of sixty days from the date of the decision or order of the Appellate Tribunal. The High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

e. Failure to pay Interest or Penalty – If a promoter or an allottee or a real estate agent, fails to pay any interest or penalty or compensation imposed on him, it shall be recoverable from him as an arrears of land revenue.

PART VI – Notification

So far, the following provisions under the Act have been notified:

- Section 2 pertaining to definitions of the terms used in the Act.
- Sections 20 to 39 pertaining to the establishment and functioning of the Authority.
- Sections 41 to 58 pertaining to establishment and functioning of the Central Advisory Council, Appellate Tribunal and appeals to the High Court.
- Sections 71 to 78 pertaining to adjudication of compensation and financial matters.
- Sections 81 to 92 pertaining to miscellaneous provisions.

The following provisions are yet to be notified:

- Provisions regarding registration of real estate projects and real estate agents.
- Provisions regarding obligations of promoter, real estate agent and allottees.
- Provisions regarding offences and penalties.