

## Chapter X

### **Offences and Penalties**

**10.0.0** The Act lays down obligations on the promoters, allottees and real estate agents and also provides for consequences for defaults by way of penalty, fine and imprisonment for contravening those provisions by them. Chapter VIII of the Act containing sections from 59 to 70 deals with such provisions.

#### **A - Penal consequences of defaults by the promoters**

##### **(i) Contravention of Section-3 dealing with registration of the project (Sec. 59)**

**10.1.0** Section 3 requires the promoters of real estate projects to get their projects registered with the RERA and prohibits them from advertising, marketing, booking, selling, offering for sale or inviting people in any other manner for purchasing the buildings, apartments or plots in the project without getting the project registered. In case the promoter contravenes the provision and does any such publicity without registration, he can be made liable to pay penalty which can be of an amount up to 10% of the estimated cost of the project.

**10.1.1** In case the promoter continues to default even after the order imposing penalty mentioned above is passed, he can be punished either with imprisonment up to three years or

with fine up to 10% of the estimated cost of the project or with imprisonment as well as fine.

**10.1.2** The amount of penalty and the estimated cost of the project is to be determined by the RERA.

**(ii) Contravention of Section-4 obligating the promoter to make application for registration and furnish information (Sec. 60)**

**10.2.0** In order to get the project registered, the promoter is to make an application u/s. 4 to the RERA within the prescribed time. The application is to be accompanied by the documents containing information prescribed in sub-section (2) of section 4 and declarations to the effect mentioned in (A) to (D) of Clause (1) to section 4(2).

**10.2.1** If the promoter does not act as per the provision or submits information or, makes declaration which is false, he can be made liable to penalty up to the maximum amount equal to 5% of the estimated cost of the project as may be determined by the RERA.

**(iii) Contravention of other provisions of the Act (Sec. 61)**

**10.3.0** Punishment for contravening any provision of the Act or rules or regulations thereunder, except provisions of Sections 3 and 4 in respect of which consequences are provided separately in terms of Section 61. Such contravention is made punishable with penalty which can be up to an amount equal to 5% of the estimated cost of the project as determined by the RERA.

**10.3.1** The provision takes within its ambit contravention of all the provisions (except Section 3 and 4) without specifying individual defaults which can be made punishable. Going through the provisions of the Act, the penal consequence

provided in the section may, *inter alia*, be for contravention of following provisions: -

- i. failure to enter details on website [Sec.11(1)]
- ii. failure to quote website address in advertisement for sale [Sec. 11(2)]
- iii. failure to make prescribed information available at the time of booking and issue of allotment letter [Sec. 11(3)]
- iv. failure to obtain completion/ occupancy certificate and make it available to allottee [Sec. 11(4)(b)]
- v. failure to obtain lease certificate where the development is on leasehold land [Sec. 11(4)(c)]
- vi. failure to provide and maintain essential services [Sec.11(4)(d)]
- vii. failure to enable formation of a society or any other association of buyers [Sec. 11(4)(e)]
- viii. failure to execute conveyance deed in favour of allottee and association of allottees [Sec. 11(4)(f) and Sec. 17]
- ix. failure to pay outgoings until transfer of possession [Sec.11(4)(g)]
- x. Mortgaging or creating a charge on property after executing agreement for sale [Sec. 11(4)(h)]
- xi. failure to prepare and maintain details as may be specified by RERA [Sec. 11(6)]
- xii. Accepting more than 10% of the cost without executing and registering agreement for sale [Sec. 13]

**By K.K. Ramani & N.C. Jain**

- xiii. Not adhering to sanctioned plan and project specifications [Sec. 14(1)]
- xiv. Not rectifying defects brought to notice within five years [Sec.14(3)]
- xv. Transferring or assigning majority rights without obtaining prior consent of two-thirds allottees [Sec. 15]
- xvi. failure to get notified insurances [Sec. 16]
- xvii. failure to complete the project in time and give possession as per agreed terms [Sec. 18]

**10.3.2** The penal provision is common for all these defaults and other contraventions/ defaults. A view is possible that the amount of maximum penalty specified as up to five per cent of estimated cost is for all the defaults taken together. This appears to be a contentious view. Considering that the specified amount if applied to individual defaults might involve unintended harsh punishment particularly in cases where one default necessarily follow the other, the RERA in such cases is likely to take a reasonable view taking the nature of default into consideration.

**(iv) Failure to comply with the orders of RERA (Sec. 63)**

**10.4.0** A promoter who fails to comply with or contravenes any of the orders or directions of the RERA is made punishable by penalty calculated at the determined amount per day for the period during which the default continues subject to the maximum imposable penalty of amount equal to 5% of the estimated cost of the project as may be determined by the authority.

**(v) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 64)**

**10.5.0** Failure by the promotor to comply with the orders, decisions or directions of the Real Estate Appellate Tribunal is made punishable with imprisonment for a term up to three years or with fine for every day of default or, with both. The fine to be imposed can be of an amount up to 10% of the estimated cost of the real estate project.

**B - Defaults committed by the allottees**

**(i) Failure to comply with the order of the RERA (Sec. 67)**

**10.6.0** The allottee contravening or failing to comply with any order, decision or direction of the Regulatory Authority will be liable for penalty as may be determined by the Authority for the period during which such default continues. The total penalty so imposed can be up to an amount equal to 5% of the cost of building, apartment or plot as determined by the authority.

**(ii) Failure to comply with the orders of the Real Estate Appellate Tribunal (Sec. 68)**

**10.7.0** If any allottee fails to comply with or contravenes any of the orders or directions of the Real Estate Appellate Tribunal, he can be made punishable with imprisonment for a term up to one year or with fine for every day during which such default continues or with both. The fine so determined as payable can be up to an amount equal to 10% of the cost of building, apartment or plot in respect of which the defaulter is an allottee.

**C - Penal consequences for default by agents**

**(i) Failure to facilitate sale/ purchase without registration (Sec. 62)**

**10.8.0** Section 9(1) of the Act prohibits a real estate agent from facilitating the sale or purchase of a building, apartment or

plot in a registered real estate project or acting on behalf of any person for such facilitation without obtaining registration as a real estate agent.

**10.8.1** Any violation of the provision makes him liable to a penalty which will be ₹ 10,000/- per day of default. The total amount of penalty shall be subject to maximum amount equal to 5% of the cost of building, apartment or plot, sale or purchase of which was facilitated by him.

**(ii) Failure to perform the functions under the Act (Sec. 62)**

**10.9.0** Section 10 of the Act lays down the functions of the real estate agent which he is required to perform under the Act. Failure to perform such functions in the way laid down in the Act can be made punishable with penalty computed at ₹ 10,000/- for every day of the default which can cumulatively go up to 5% of the cost of building apartment or plot of which he facilitated the sale or purchase.

**(iii) Failure to comply with orders of the RERA (Sec. 65)**

**10.10.0** If any real estate agent, fails to comply with, or contravenes any orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated by him and as determined by the Authority.

**(iv) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 66)**

**10.11.0** If any real estate agent, fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment

for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated, or with both.

#### **Nature of Prescribed Punishment**

**10.12.0** The Act gives the title “Offences, Penalties and Adjudication” to Chapter VIII which prescribes the consequences for various defaults. For most of the defaults barring (i) continued default by the promoters u/s. 3 and (ii) contravention of the orders, decisions or directions of Appellate Tribunal by the promoter, the agent or the allottee, the punishment is by way of penalty which is to be computed with reference to the estimated cost of the project or the cost of the building, apartment or plot in question. The question arises as to whether the penalties prescribed are civil penalties or penalties on conviction for an offence which is taken as illegal act or crime inviting prosecution. In case the defaults mentioned in Chapter VIII are considered as offences being acts which are illegal, the consequences will involve prosecution to be dealt with in accordance with the procedure laid down for such complaints.

**10.12.1** The Act does not specify whether the penalties are civil penalties or penalties for contraventions considered as offence. The title of the chapter mentions ‘offence’ as well as ‘penalties’ which seem to indicate that while some of the punishments are for default considered as offence and involve prosecution, the others are of the nature of civil penalties to be imposed by the RERA. The distinction is material because of the different principles of jurisprudence applicable to them. While a civil penalty mainly considers the fact of defaults simply, conviction

requires establishing the intention of the defaulter, his guilty mind, motive and other factors pointing to the state of mind which play a decisive role.

**10.12.2** Wherever penalty is provided, the maximum amount of penalty is to be determined with reference to the estimated cost of the real estate project or of building, apartment or plot in question as determined by the Authority. These penalties appear to be of the nature of civil penalties and can be imposed by the Regulatory Authority on the establishment of default within the maximum amount laid down under the Act without a decisive consideration of the motive or mental state of the offender. These are the penalties prescribed under –

Section 59(1) – default u/s. 3

Section 60 – default u/s. 4

Section 61 – default by promoter under other section

Section 62 – default by agent u/s. 9(1)

Section 63 – contravention by promoter of the orders of RERA

Section 65 – contravention by the agent of the orders of RERA

Section 67 – Contravention by allottee of the orders of RERA

The proceeding in respect of these penalties will be initiated and carried out by the Regulatory Authority.

**10.12.3** Consequences provided under the following provisions prescribe punishment with imprisonment or fine or both:-

**By K.K. Ramani & N.C. Jain**



Section 59 (2) - Continue default by the promoter u/s. 3

Section 64 - Contravention by promoter of the directions of REAT

Section 66 - Contravention by agent of the directions of REAT

Section 68 - Contravention by allottee of the directions of REAT

These are provisions in respect of default by the promoter and contravention of orders of the Appellate Tribunal by the promoter, allottee and the real estate agent. These provisions prescribe prosecution for defaults considered as offence which proceedings are not before the Regulatory Authority. These are provisions for prosecution as is indicated by prescription of 'fine' and 'imprisonment' instead of penalty and the absence of expression 'as determined by the Authority' used in other sections.

**10.12.4** For offences described under 59(2), 64, 66, and 68, the penal action by way of prosecution will be on a complaint by the Authority. Reference in the convention may be made to the provision contained in Section 80 under which no court shall take cognizance of any offence punishable under the Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for the purpose.

#### **Offences by Companies**

**10.13.0** If the offence punishable under the Act is committed by a company, every person who, at the time of the offence, was in charge of the conduct of the business of the company or was responsible for its conduct as well as the Company will

be deemed to be the person committing the offence and shall be proceeded against in accordance with the provisions of the Act. This will, however, not apply if the person in charge of or responsible for the conduct of business proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

**10.13.1** It is not only the person in charge or responsible for the conduct of business who can be punishable but also the director, manager, secretary or any other officer of the company who can be charged for the offence if it can be proved that the offence was committed with his consent or connivance or was attributable to any neglect on his part.

#### **Compounding of offences**

**10.14.0** If any person is punishable for an offence under the Act, he can either before or after the initiation of proceedings, seek compounding of the offences by the court and the Act permits such compounding subject to the terms and conditions and on payment of fees as may be prescribed in the rules to be framed. It is also provided that the amount to be charged on compounding will not exceed the maximum amount if fine imposable under the Act for that offence.

